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TABLE OF CONTENTS

THE CONTROL OF PUBLIC ADMINISTRATION.....	7
ALBULENA BRESTOVCI	
RE-QUESTIONING GREEN ARCHITECTURE IN EGYPT: A NEED, A MOVEMENT OR A STYLE?	12
KARIM KESSEIBA	
IS GRIT THE KEY ELEMENT TO IMPROVE THE LIFE ATTITUDE? A STUDY WITH MILITARY STUDENTS FROM ARGENTINA.....	30
MARÍA CECILIA BARNI FLORENCIA TERESITA DAURA	
TRADITIONAL MEALS AND SENSE OF AT-HOMENESS – FINNISH IMMIGRANTS WITH DEMENTIA IN BILINGUAL RESIDENTIAL CARE IN SWEDEN	42
SIRPA ROSENDAHL	
CAUCASIAN MULTICULTURALISM, AS THE BURDEN AND THE OPPORTUNITY AND THE PRIVATE ARCHIVE OF RUSSIAN EMPIRE'S GEORGIAN GENERAL.....	51
ESMA MANIA	
RESTRICTION ON THE AUTHORITY TO REPRESENT IN TURKISH JOINT STOCK COMPANIES LAW.....	58
SITKI ANLAM ALTAY	
TECHNIQUE PREPARATION OF WOMAN'S XHOKE: AN IMPORTANT ELEMENT OF ALBANIAN FOLK COSTUMES	67
SILVANA NINI	
THE IMPACT OF SYRIAN REFUGEE ON JORDANIAN NATIONAL SECURITY	83
MAZEN A. S. ALOUGILI	
THE RIGHT TO FREE AND FAIR ELECTIONS: AN ANALYSIS OF THE APPROACH OF THE AMERICAN LAW DOCTRINE ON BALLOT SECRECY	100
ADA GUVEN	

The Control of Public Administration

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Abstract

Public administration in Kosovo is in a development phase and it is being built under new circumstances which derived from the international civil administration. In this regard it is also ready to undergo under various forms of the control and supervision. With this paper the author makes an analysis of the ways of the judicial control the public administration undergoes based on the positive legislation in Kosovo. For the needs of this paper the combined methodology is used whereas the following methods will be used: method of systemic analysis, method of legal analysis, theological method and the method of theoretical analysis. Analysis, findings and conclusions will contribute the academic debate as well as they will serve the practical work which is being developed within the institutions of the public administration and the work of those that deal with the judicial control and the supervision of the public administration.

Keywords: administration, judicial control, institutions, Kosovo, supervision

Introduction

Kosovo Public Administration could be treated as it has passed through various phases of building and development, whereas Kosovo is one of the seven new states created in the process of the dissolution of former federal Yugoslavia. The process of dissolution of the Yugoslav federation was painful and with big consequences for Kosovo as the former federal unit. Firstly, in an unconstitutional way Kosovo status was abolished by an act of occupation undertaken by the other federal unite [Serbia]. After the Kosovo autonomy was unconstitutionally abolished, in Kosovo as a result we see two systems being built and consequently two administrative powers as well: one, of the power installed by the force from Serbia and second, the parallel power constituted against the Serbian forcefully installed power in Kosovo. And this that was known as the parallel system indeed was totally legitimate because it derived from the majority population of Kosovo which supported it. Of course the field of activities of this administration was narrow and this was dictated from the circumstances and the situation created as the consequence of occupation. Thus administration, based on the existing circumstances had limited space of acting, but it was very useful and it provided services for citizens in the field of health, education and in one other fields. This way of organizing the life of the public administration and the parallel system of public administration which would provide services for citizens will continue until the end of the war in Kosovo.¹ The end of war brought the international civil administration in Kosovo as a power which was not applied until then in any other post conflict situation in the world.

International Civil Administration in Kosovo

Legal basis for establishing the international civil administration in Kosovo is the UN Security Council Resolution 1244. Based on this resolution, the international civil administration would be established through four pillars known as UNMIK (UN Mission in Kosovo) pillars. Regarding the organizing the temporarily administration,

UNMIK is led by Special Representative of the Secretary General, as the highest civil authority in Kosovo, who has four deputies. Each deputy is responsible before the Special Representative of the Secretary General and at the same time is the head of so called "pillar" which is obliged to exercise determined administrative functions. This "pillar (s)" is led by the

¹ War in Kosovo has ended with the end NATO of air strikes against Serbian military forces and with the UN Security Council known as 1244 Resolution.

determined international organization. Four pillars include police and justice (UN), Civil Administration (UN), democratization and capacity building of cadres (OSCE) as well as the economic development and reconstruction (EU).¹

In order to exercise the duties of the Special Representative of the Secretary General as the highest power in Kosovo to him were given competences of promulgating regulations, which from the obligatory force are laws based on which the life was organized in Kosovo. In addition to this, in Kosovo there were applied also laws of former Yugoslavia which were in force until March 22, 1989 conditioned with a classification that they were not discriminatory and that they were not against the rights known internationally regarding the human right. This in principle was called the applicable law.

During first five years after the conflict the process of establishing the public administration has passed through the three big phases: establishment of temporary UN power, creation of the provisional institutions of local governance and the launch of the plan for applying the standards for Kosovo.² Regarding public administration and its establishment in Kosovo, it could be said that the UNMIK pillar for public administration in Kosovo in 2003 started the process of creating the strategy for public administration in Kosovo. Thus since 2003 UNMIK transferred responsibilities to the provisional institution of local governance in Kosovo and this in the fields which were not reserved only for UNMIK, including the budget.³ From here the process of transfer of the power from UNMIK to the local institutions has continued during a long period of time, passing through a phase known as the phase standards before the status. This phase – standards before the status was a process which had to be monitored and evaluated as a pre condition for a green light before starting with the negotiations for the Kosovo final status. The process of monitoring of standards ends with the report of Kei Eide who was in charge with the competences of evaluating if Kosovo had fulfilled standards for going forward towards negotiations for the final status of Kosovo. And standards were the rule of law, free movement, sustainable return and the rights of communities, economic development, property right, negotiations with Belgrade for technical issues, Kosovo Protection Troops were the determined standards, whose fulfillment was the joint duty of UNMIK and the provisional institutions of self governance, whereas the middle of 2005 was determined as the period of standards of evaluation.⁴

Kei Eide positive report made Kosovo move forward defining the Kosovo final status through process of negotiations which would be lead by former Finish President Maryi Ahtisaari. Process of negotiations for solving the Kosovo final status has taken determined time and in these negotiation there were applied almost all forms of negotiations. But however the process for determining Kosovo final status was not finalized with an international agreement therefore President Ahtisaari came up with a solution which would be called the Comprehensive Proposal for Kosovo final status.⁵ This because Serbia did not accepted the proposed Ahtisaari Plan. It should be noted that Kosovo accepted the mentioned Plan and based on this Kosovo Parliament being that all conditions were fulfilled for going forward, on February 02, 2008 declared Kosovo Declaration of Independence which will be developed as the independent state and which will be internationally recognized. Since then Kosovo has been recognized by 116 states.⁶ Starting from here the process of establishing and strengthening the Kosovo independent state takes high intensity and Kosovo right to self determination strengthens and it was sealed also by the opinion of the International Court of Justice in 2010. Thus Kosovo starts to act as the independent state and under the context of this topic it starts to establish its public administration. However the process of statebuilding and the development of the public administration was monitored and evaluated continually by the international community. Below are drawn some data according to the Progress Reports for some years. Thus there are underlined EU Progress Reports.

Administration from the Progress Report viewpoint

During the next years Kosovo should especially:

→ monitor application of the public administration reform from the strategic framework under the umbrella of a broader developing strategy, ensuring a clear connection between the public administration reform and the economic development;

¹ KIPRED, Misioni i Kombeve të Bashkuara në Kosovë dhe privatizimi i pronës shoqërore, Prishtinë 2005, pg.9.

² Mirinda Batalli, *Reform of Public Administration in Kosovo*, Thesis, nr 1. (<https://aab-edu.net/uploads/docs/thesis/2012/01-2012-anglisht/01.%20Reform%20of%20Public%20Administration%20in%20Kosovo-%20Mirinda%20Batalli.pdf>) (qasur me 20.09.2018)

³ Esat Stavileci, Agur Sokoli, Mirinda Batalli, *E Drejta Administrative*, Universiteti i Prishtinës, Prishtinë 2010, pg.305

⁴ www.zeriamerikes.com/ala-30-a-2003-12-10-4-1-85537332/372595.html (accessed on 23.09.2018)

⁵ <https://www.kuvendikosoves.org/common/docs/Comprehensive%20Proposal%20.pdf>

⁶ www.mfa-ks.net

→ to increase accountability through total review of all agencies and to improve the access in the administrative justice by addressing issues which are not made administrative;

→ to approve general financial management of the program reform.¹

Development of the public administration and stagnations in this development will not be described or analysed with this paper, since stagnations are various and the resources for these stagnations are also various. The main aim is discussion about how is the solution of the administrative conflict as one of the forms of the control over the work of organs of public administration, which as it is seen from many reports should be deep and various. However, Kosovo has a good level of preparations for the public administration reform. A progress has been made with the fact that the general strategy of financial management and the Law on Public Administration were adopted. However, Kosovo has not addressed recommendations of EU Commission in the field of accountability. Recruitment on the non merit basis has affected the efficiency and the efficacy as well as the professional independence of administration. First reports of monitoring show that the reform package has considerable delays.²

Administrative conflict as a special form of control on the work of administration

Regarding the judicial control of the administration there are various thoughts in theory. Judicial control of the administrative work is the main form of judicial control over the administration which is exercised by courts.³ Courts while acting during the process of judicial control in one way contribute the process of legality. Even though judicial/court control shows that it as such has some specifics which make it to differ from other forms of administration. These characteristics could be divided into formal and material. Formal characteristics of judicial control are: 1. organs that exercise the control and 2. procedure according to which the judicial control is exercised.⁴

Judicial control as a special form on the administration is important and necessary, especially in the states of transition and in the post conflict states, thus consequently for Kosovo as well. Kosovo in many foreign or inner reports appears to be as a country where the administration is overloaded, to a determined extent politicized and in determined segments not professional. Under such circumstances there are not rare cases when the misuses of official positions are present, especially in the labor relationships, in violation of human rights, etc. In addition to all efforts on building a professional, effective administration which doesn't allow the misuse of position, which doesn't allow the violation of human rights, Kosovo Parliament has adopted the Law on Administrative Conflict.

Kosovo Law on Administrative Conflict

This law has been promulgated by the Kosovo Parliament in 2010. Its characteristics are as follows:

The aim of this law is to ensure judicial protection of the rights and legal interests of physical persons, judicial persons and the other parties, the rights which were violated by individual decisions or with the acts of public administration organs.⁵ During their work, courts act respecting some principles and under this context law underlines the principle of verbal review (art.6), principle of efficacy (art.7), principle of the help for uninformed parties. It is good that these principles are underlined and sanctioned by law because in fact these are the principles which are not respected well. Principle of the verbal review is one of the principles which is frequently violated in a way that parties are not given the possibilities to declare regarding their pretensions and thus the organ decides in contradiction to the European Convention for human rights. Court in the administrative conflict decides on the legality of final administrative acts by which administrative organs while exercising public authorisations, decide on rights, obligations and judicial interests of physical and judicial persons in the administrative

¹ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_kosovo.pdf (accessed April 17, 2018)

² https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_kosovo.pdf (accessed April 17, 2018)

³ Esat Stavileci, Agur Sokoli, Mirinda Batalli, *E Drejta Administrative*, Universiteti i Prishtinës, Prishtinë 2010, pg.139

⁴ Esat Stavileci, Agur Sokoli, Mirinda Batalli, *E Drejta Administrative*, Universiteti i Prishtinës, Prishtinë 2010, pg.141, cited by Bashkim Rahmani

⁵ Art. 1, Kosovo Law on Administrative Conflict

issues.¹ Law on administrative conflicts in a specific way gives the parties who could initiate procedure of administrative conflict and that as follows:

-the right to initiate administrative conflict have physic and judicial persons if they consider that by the final administrative act in the administrative procedure there is violated a rights or legal interest, - organ of administration, ombusperson, associations and other organizations that acts on protecting public interests could initiate administrative conflict,-organ has the right to initiate conflict of administration against the decision which was taken based on the appeal in the administrative procedure, if he/she considers that a righ or an interest was vioalated, -if with the administrative act was violated a law in favour of physic person, judicial person, the administrative conflict could be initiated by the authorized public prosecutor. Administrative organs are obliged that when they are informed about this to inform the prosecutor or the organ authorized by law.- administrative conflict could be initiated by competent prosecutor or by authorized person if with the administrative act is violated the law against the national governance bodies or the organs accountable to them, against the interests of local governance and their constituents,when the property righth of these organs were violated.²

Law on administrative conflicts with its disposal further foresees in a precise way and sanctions the court competences, the procedure of appeal against the decisions that made possible initiation of the administrative conflict, deadlines and the execution of the decisions which are taken in the administrative conflict. Besides creation of a legal infrastructure the issue of administrative conflict remains to be as something that has to be used and that has to be intensified, by what the public administration is strengthened and where the possibilities for misusing the official position and the violation of human rights will be reduced.

Conclusions

Kosovo has passed through several phases of its development and these phases determined the level and forms of the development of public administration. Before the war (1999) there were also some phases through which the Kosovo public administration was built within the Yugoslav federation-within a system know as the system of socialist self governance in the system of delegation. No matter of weaknesses the pre Miloshevic system had there existed an administration which to some extent was efficass and professional and this always [talking] under the context of existing state system which was socialist which anyway was different from the clear communist systems. After the war, in Kosovo we have the international civil administration which later on became mixt and which after 2008 became an administration which belongs to an independent state. It has been noted that Kosovo public administration is overloaded a lot and this has a dual impact: it doesn't help the process of professionalization of the administration in one side, and it has the budgetary implications on the other side. Engagements and the employment in the administration continue to be under a political impact even though a progress has been made. Beeing that however the administration remains to be under a political impact then this is a basis or a resource of appearance of various forms of misuse, nepotism, etc. Thus this administration has to be necessarily controlled and supervised by courts. But it is not to be said that there is an enthusiasm only from the fact that there exist a legal infrastructure that makes possible the functioning of the public administration. The fact that existence of the administrative conflict doesn't mean that it helps without limit parties whose rights were violated. This amongst the other also from the fact that courts themselves are overloaded with huge amount of cases in one side and the judiciary system itself is not criticized part of the system on the other side. Based on this, parties when their right are violated hesitate to initiate the court procedures whose endings are difficult to be foreseen.

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Re-Questioning Green Architecture in Egypt: A Need, a Movement or a Style?

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Abstract

Green architecture is considered the contemporary architectural paradigm. Amid threats of the lack of non-renewable energy, the calls for environmental sustainability and sustainable development, being 'green' is becoming an aspiration as well as a threat for many architects. Architects to a wide extent are required to adopt one sort of being 'green' in their contemporary additions to the built environment. However, very limited differentiations are subjected to the difference between 'sustainable architecture', 'environmentally-friendly architecture', and 'green architecture'. This is one side of the debate; however, the most important side is, whether this new trend in contemporary Egyptian architecture is a need, a movement, or merely a style. The other important query is whether 'sustainable architecture' is becoming a commodity to fulfill international claims regardless of how it is implemented. In order to answer those questions, the paper first presents the differences between notions of 'green architecture', 'sustainable architecture' and 'environmentally-friendly architecture' and based on literature review as well as observations from international precedents. Afterwards, those three notions are explored and analyzed in the Egyptian context to understand where precisely the claimed sustainable or environmentally friendly buildings in Egypt stand in relation to the outcomes of the literature review. Finally, the need for following those notions in Egypt are re-questioned, in order to explore whether the claims for sustainability are becoming a commodity, especially in the shadows of the misuse of previously discussed slogans.

Keywords: Commodity in architecture, Green architecture, Sustainable architecture in Egypt.

1. Introduction

The paper aims to explore the state of contemporary architecture in Egypt based on a group of common concepts and ideologies related to environmental architecture. In order to do so, the paper follows a methodology primarily based on literature review of the concepts of "green architecture", "sustainable architecture" and "environmentally-friendly architecture". Following that two cases of the local attempts are analyzed based on the main concepts and strategies of each case. A final discussion is then presented to re-question the state of the selected cases in the analysis according to the definitions explored previously. This helps in drawing a better conclusion for the paper to pinpoint the needed achievements related to the built environment in Egypt.

Literature Review: Definitions Related to Study

This part explores the terms "green architecture", "sustainable architecture" and "environmentally-friendly architecture". The aim of this part of the literature review is to understand the broad concepts related to environmentalism as a dominant architectural concept. Thus, this will aid in evaluating the Egyptian experience in this field, based on points of analysis to be summarized at the end of the definitions debate.

2.1. Green Architecture

As Raof (2011) presents, the shift towards green design was initiated strongly in the 1970s and was a "pragmatic response to higher oil prices". It was then that the first of the oil shocks, in 1973, increased fossil fuel prices to an unprecedented extent, and the 'futurologists' began to look at the remaining resources to estimate the future of energy consumption on Earth, (p. 1). Accordingly, this point of initiation of the 1970s resulted in the rise of what was called the solar house movement; homes built to use clean renewable energy from the sun, (p. 5).

As a matter of fact, many scholars explored how in Architecture there are many ways a building may be "green" and respond to the growing environmental problems of the planet. From those are Ghani (2001), who presented the five basic areas of an environmentally oriented design. Those scopes are "Healthy Interior Environment", "Energy Efficiency", "Ecological Building Materials", "Building Form" and "Good Design".

Those five scopes are further explained as follows by Ghani (2001); "Healthy Interior Environment" is related to how well insure the building materials and systems used do not emit toxic unhealthy gases and substances in the built spaces. Further extra cars and measures are to be taken to provide maximum levels of fresh air and adequate ventilation to the interior environment. As to "Energy Efficiency", it is related to ensuring that the building's use of energy is minimized. This includes various HVAC systems and methods of construction as well, which are to be designed to minimize energy consumption. The "Ecological Building Materials" aims to provide the use of building materials from renewable sources and having relatively safe sources of production. As to the "Building Form", this is essential to respond to the site, region, climate and the materials available thereby generating a harmony between the inhabitants and the surroundings. Finally, "Good Design" aims to provide both "Structure and Material" and "Aesthetics" are the basic attributes of defining design. They should be so integrated that the final outcome is a well built, convenient and a beautiful living space, Ghani (2001, pp. 21-22).

2.2. Sustainable Architecture

One of the most debatable concepts which emerged lately, especially with relevance to architecture is the terminology of "sustainability" and "sustainable architecture". Thus, the vagueness of the word "sustainable" makes the term "sustainable architecture" equally vague and ambiguous. There are different dimensions of sustainability; economic, political, social, or environmental, while we have to take into consideration that what is "sustainable" for one group is not necessarily sustainable for another as Hagan (2001, p. 3) exposes.

The literal interpretation of the words "sustainable environment" as Milosevic (2004) presents is the creation of an environment for human occupation, performance and the support of life to which sustenance or nourishment is continuously given, (p. 91). This includes the more wide dimension of sustainability as "meeting the needs of the present without compromising the ability of future generations to meet their own needs", (p. 92).

This more well-known definition is associated with modifying patterns of development and consumption to reduce demand on natural resource supplies and help preserve environmental quality. Achieving greater sustainability in the field of construction is particularly important, because building construction consumes more energy and resources than any other economic activity. Not only does a home represent the largest financial investment a family is likely to make, but it also represents the most resource- and energy-intensive possession most people will ever own. Making homes more sustainable, then, has a tremendous potential to contribute to the ability of future generations to meet their own needs. Thus as Ghani (2001) explains, specifically sustainable housing design is a multifaceted concept, embracing major concepts such as : "Affordability", "Marketability", "Appropriate design", "Resource efficiency", "Energy efficiency", "Durability", "Comfort" and "Health", (pp. 23-24).

Guy and Farmer also classified sustainable architecture under six different categories based on the main logic and methods as: eco-technic, eco-centric, eco-aesthetic, eco-cultural, eco-medical and eco-social. One or more logic can be found in a sustainable architecture according to the main environmental problem. Definition of "sustainable" for an architecture changes depends on the logic. "Eco-technic" logic defines sustainable architecture as energy-sufficient architecture placing importance to the development of technology while in "eco-centric logic" sustainable architecture is considered to be an architecture that is a part of nature through using natural materials and has zero ecological footprint. Sensuous, stylish and creative qualities make the green architecture as sustainable for "eco-aesthetic" logic. On the other side, architecture creating "healing environment" and supporting the healthy lifestyle of the people is considered as sustainable within eco-medical logic. Also, there is an eco-social logic defining the architecture that embodies the spirit of the society, freedom and togetherness as sustainable, (pp. 262-263).

2.3. Environmentally-Friendly Architecture

The term "environmentally friendly architecture" is primarily related to energy efficiency and energy economics. Taking into consideration the inter-relation of architecture with both art and science, limiting architecture to environmentally- friendly aspects limits architecture to science, technology and economics. This is related to affecting the architect's choice to the

degree to which energy efficiency and economy of means are a greater priority than any of the others involved in the design process as Hagan (2001) exposes. If they are the most important consideration, then the architecture will inevitably reflect its supremacy in configuration, in choice of materials, in techniques and technologies employed (pp. 4-5).

As a matter of fact, the environment is more than just the biosphere, into which we should adapt to or totally ignore. It is also the 'built environment', a cultural as well as a physical entity. Thus, the most debatable question remains whether architects pursuing sustainability can afford to address only the environmental aspect of the built environment when it is qualitative as well as quantitative? Architects view 'environmental architecture', like 'green architecture' before it, as part of yet another 'back to nature' movement in which we all weave our own clothes and villages. For such skeptics, 'environmental architecture' connotes a narrowing of horizons, an abdication of ambition and imagination, and a self-imposed restriction to a palette of twigs and thatch as Hagan (2001) questioned, (p. 11).

2.4. Summarizing the Definitions:

The table below, (table 1) summarizes the main definitions explored in the previous part based on different scholars' reviews, to aid in the classification of the Egyptian Architectural experience related to environmentalism. The table also highlights the main aspects of analysis related to each concept to be used in the analytical part.

It is important to review the theoretical debate reflecting on sustainable development, in order to provide a wider scope of understanding of the issue. According to Jabrren (2008), the definitions of sustainable development are vague, and in order to understand the debates stemming from sustainable development, it is important to highlight some concepts. The concepts are related to the concept of ethical paradox, the concept of natural capital stock, the concept of equity, the concept of eco-form, the concept of integrative management, the concept of utopianism and finally the concept of political global agenda.

In relation to this discussion which will be more elaborated in the case studies analysis, Guy and Moore (2007), discuss that pluralism is related to the understanding of pluralism. For them, "Environmentalism" is simply a convenience, a vague label for an amazingly diverse array of ideas that have grown around the contemplation of the relationship between human beings and their surroundings. Stemming from the paradoxical debate regarding sustainability, with special reference to the Egyptian context, El-Husseiny (2011) presented how the sustainability experience in Egypt is bounded between two ends; the first is the "traditionalist" approach, claiming vernacular architecture to be the most sustainable environmentally as well as socially, and the second is the race for a LEED certificate, which became a strong marketing tool for multi-national corporates' headquarters. The environmentally friendly approach will be the main focus of the case studies analysis discussed below, which will help provide a better understanding for the current case of environmentally sustainable attempts.

Analysis of The Egyptian Experience in Environment-oriented Architecture

This part is concerned with exploring and analyzing the Egyptian architecture experience in the attempts towards implementing agendas related to environmentalism, either through governmental initiatives or through individual architects' works. The two selected examples are the Green Pyramid Rating System, which was elaborated as building regulations by the government, but still not applied on a wide scale and the other case is the vernacular architecture projects related to Hasan Fathy's school in architecture. The analysis aims to cover the main concepts and initiatives in each case, followed by a categorization of each attempt according to the previously discussed literature review. The outcomes of the analysis pinpoint the current state of the Egyptian trials to attain environmental architecture either as a way to promote architecture or real trials aiming to provide better environment.

3.1. The Green Pyramid Rating System in Egypt:

The Green Pyramid Rating System (GPRS) is a national environmental rating system for buildings. It provides specific criteria by which the environmental credentials of buildings can be evaluated, and the buildings themselves can be rated (The Green Pyramid Rating System, First Edition 2011). It was drafted by the Housing and Building Research Centre (HBRC) in conjunction with the Egyptian Green Building Council (EGBC) in 2010, and the first edition was made available for public review in April 2011. The GPRS provides 4 levels of certification depending on score of the project in the weighted factors; 'Certified', 'Silver Pyramid', 'Gold Pyramid' and 'green pyramid'.

This rating system aims to evaluate the buildings newly added to the Egyptian environment according to a group of aspects. This rating system was supposed to be implemented and widely elaborated as a building code for all new additions to the built environment. However, its application is not yet achieved. The delay in implementation led to the neglecting of those regulating aspects especially in the urban development boom Egypt is witnessing nowadays, since there is no regulating law for the creation of more environment- friendly buildings. On another side, this rating system was criticized for not adding any new aspects of achievement other than the already applicable LEED rating system. Thus, firms in Egypt aiming to provide a social responsibility towards the environment prefer to achieve LEED certificates.

As a matter of fact, spreading green architecture in Egypt requires reshaping the current legislations and codes. This starts by revising the existing local building laws and regulations. Numerous parts of the Unified Building Law no.119 released in 2008, and its executive appendix released by the Ministerial decree no. 144 in 2009, show negligence of important green concepts. However, many of these concepts were considered in the Green Pyramid Rating System (GPRS) public review edition released by the Egyptian Green Building Council (EGBC) –which was established the same year the Unified Building Law was released- and the Housing and Building Research Centre (HBRC) in April 2011, but with no specific schedule for releasing the final rating system or a timeline for enforcing it. This schism in building legislation policies makes it difficult to determine the right strategy for spreading green architecture in Egypt. (p. 60).

However, the drawbacks are that GPRS documentation does not specify any timeline for its enforcement although it described itself as legislation and although it describes the application of its contents as urgent. These negative aspects are mainly because the GPRS was made as a project for a legislation that is still under analysis and public review. However, the seriousness of the issue it addresses should have motivated the law and code makers to refer to it and give incentives for its application. (p. 63)

The GPRS has a hierarchy of scores, which are: (strong > 70% - medium > 50% -weak >50%), assigned according to the extent of application of rating criteria, which includes:

1. Site sustainability
2. Energy efficiency
3. Water efficiency (minimization and efficiency of water use)
4. Resources and construction materials
5. Indoor environment quality (ventilation and lighting quality, acoustics control)
6. Innovation, inventiveness and flexibility of management and maintenance
7. Reduction of pollution and recycling of waste.

All the above aspects are used in the following equation to calculate the overall percentage of Green Pyramid criteria met: total percentage of criteria met / the number of criteria. (pp. 13-14) In addition to this, The Green Pyramid Rating System is designed for use in new building works. The Rating can be used to assess individual new buildings at either or both of the following stages: at the Design Stage or at Post-Construction Stage. It will be mandatory for applicants wishing for a Green Pyramid assessment at Post-Construction stage to have first undergone a Green Pyramid assessment at Design Stage, (pp. 7-8). The table, (table 2) shows the relative weight of each aspect of the evaluating criteria.

To earn Green Pyramid certification a project must satisfy all the stated Mandatory Minimum Requirements and may obtain Credit Points by meeting certain criteria. Projects will be rated, based on Credit Points accumulated, according to the following rating system:

- GPRS Certified: 40–49 credits
- Silver Pyramid: 50–59 credits
- Gold Pyramid: 60–79 credits
- Green Pyramid: 80 credits and above

Projects with less than 40 credits will be classified as 'Uncertified'.

3.2. Vernacular Architectural Attempts in Egypt as Environmentalism Experience:

This part is concerned with exploring the Egyptian architects' attempts in implementing vernacular architecture as a means of an environmental approach. The pioneer architect who initiated this movement was Hasan Fathy, through his projects

calling for the cultural sustainability, continuity of space characteristics and the use of local materials and proper responses to nature through his projects in Goruna and other vernacular attempts in Egypt.

New Gourna Village (fig. 1) is seen as a reinterpretation of a traditional urban and architectural setting by Hassan Fathy who is an early visionary of sustainable architecture. It provides sustainability both in culture through use of local materials and techniques and in environment with its extraordinary sensitivity to climatic problems. It is an outstanding example of the integration of vernacular technology with modern architectural principles. Fathy brought back the use of mud brick (adobe) and with special techniques keep building cooler during the day and warmer during the night. Fathy believed that architecture was about bridging the gap between new architectural techniques and older techniques. These older techniques are sustainable and energy efficient, helping the villagers to reduce their reliance on modern technologies, which are not only expensive, but have negative effects on their culture and environment.

Based on Hasan Fathy's approach to architecture, architects like Ramy El-Dahan and Soheir Farid provided a continuation of his attempts to build with adobe, yet devoid of the cultural and social aspects of sustainability advocated by Fathy. Both architects used those techniques in touristic resorts in Gouna, as a sort of providing a new brand for architectural excellence. As a matter of fact, what initiated as "Architecture for the Poor" was transformed into "Architecture for the Rich", (fig.2).

Another important attempt for the re-interpretation of Fathy's attempts is the work by ECCA, "The Egyptian Earth Construction Association", a group of Egyptian architect's whose work was focused in Sinai, to re-adapt the local building techniques and traditions in a contemporary way of building. Their most acknowledged project was a Visitors Center in "Wadi el Gemal", a natural preservative in Marsa Alam (fig. 3), in which all building materials and techniques were derived from the direct context.

The Visitors' Center serves two main functions, first is orienting visitors and disseminating essential information about the park's nature and inhabitants (Ababda tribes) through maps, brochures, tours, audio/visual and interpretive presentations of the surrounding features (Wadies, Mountains, Coast, Reefs, Fauna and Flora). The main purpose of the facility is to increase Visitors' appreciation of, and sensitivity to, the distinctive natural, environmental and cultural resources of the area, and to aid the Egyptian Environmental Affairs Agency in securing the sustainable use of the bountiful assets of the region. Also, reception and welcoming pit-stop, that is predominantly open, serves basic Visitors's' needs such as refreshments, local crafts. In addition, it houses office space, a store room and provides ample uncovered parking at its front entrance. Restrooms are housed in a separate annex.

The Visitors' Center introduced in its composition the same materials used by the nomadic Ababda tribes in erecting their houses, the Bersh, the sole indigenous structure in the region. Living in a predominantly arid climate, the Ababda use local acacia tree branches as structural columns, sheet metal obtained from barrel drums and particle board as roofs and walls, in addition to woven palm tree leave mats to protect their homes from the elements. The building used local igneous Basalt stone quarried by the local Ababda tribes from nearby mountains as the main construction material for foundations, walls and columns. The prevalent architectural element that hovers over the building and conveys its main character while astutely protecting its spaces; is a large corrugated sheet metal roof covering a latticework of wooden trusses supported by thick stone bearing walls and columns. Undemeath this roof a second ceiling made of modular palm tree midrib panels and wooden beams shelters the exhibition space. This double roof system, a main architectural concept, allows for the free permeation of air, thus, dissipating the heat of the desert direct sunlight. The thick bearing stone walls while acting as a latent mass for the enclosed exhibit space also shields the outdoor space from the strong prevailing northwest winds creating a comfortable shaded area through which Visitors can move freely. Openings are screened with rough tree branches to filter light.

Discussion: Questioning the Commodification of Sustainable Architecture in Egypt

At the beginning of the twentieth century, Le Corbusier warned, 'architecture or revolution'. At the end of the century, we know 'architecture' doesn't have the power to be an equivalent term to 'reform'. So we can't say in the current context, 'architecture or pollution'. The ideas developed in architecture and discussed in this paper as definitions and attempts by local Egyptian architects for the benefit of the built environment won't 'save the world', but they may help save the built environment. In so doing, architectural practice could regain a moral and practical authority it hasn't had, (Hagan, 2001, p. 15).

This is important to reflect upon in our discussion, since what the paper aimed to discuss primarily was whether the Egyptian attempts are serious enough to attain change in the built environment. The first discussed case was the Green Pyramid Rating System, which showed to be very much focused and inter-related with the concepts of “Green Architecture” and “Environmentally-Friendly Architecture”, however, as mere conceptual agendas without any applicable attempts derived.

The second experience discussed, related to individual architects’ trials to provide environment sensitive architecture, were mostly ‘sustainable architecture’ attempts, however, on a limited scale, without generalization on the scale of national projects. Those attempts also touched upon the issues of material sustainability, without much focus on the other aspects of sustainable architecture. Also, those attempts were at times used as a marketing and branding tool to promote for economic projects. Accordingly, the actual achievement of any of the previously discussed concepts of environmental architecture is still very limited in the Egyptian context, lacking laws and regulations primarily as well as general awareness among architects.

Conclusion

The paper presented a review of the current state of environmental architecture in Egypt based on the selected definitions explored in the literature review. The outcomes of the paper were to answer the re-questioning of the need of adopting more serious attempts towards environment sensitive architecture. The cases used in the analytical part showed the gap between the governmental attempts and the individual attempts by architects. Thus, the need is not re-categorize or re-define the Egyptian experience, but actually to provide a totalitarian agenda focused on the real needs of the built environment in Egypt.

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Tables:

Table 1. Main Concepts and Analysis Aspects Extracted from the Literature Review.

	Green Architecture	Sustainable Architecture	Environmentally-Friendly Architecture
Definition	Architecture focusing on the use of renewable energy with lesser dependency on fuel and petroleum.	The creation of an environment for human occupation, performance and the support of life to which sustenance or nourishment is continuously given.	The creation of architecture related to energy efficiency and energy economics.
Points of Analysis		Affordability. Marketability. Appropriate design.	Energy Efficiency. Energy Economics in the design process.

		Resource efficiency. Energy efficiency. Durability. Comfort. Health.	
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Table 2. Green Pyramid Categories and Weighting.

Green Pyramid Category	Category Weighting
Sustainable Site, Accessibility, Ecology	15%
Energy Efficiency	25%
Water Efficiency	30%
Materials and Resources	10%
Indoor Environmental Quality	10%
Management	10%
Innovation and Added Value	Bonus

Figures:



Fig. 1 – New Gurna Village by Hasan Fathy



Fig. 2 – Gouna Resorts by Ramy El-Dahan

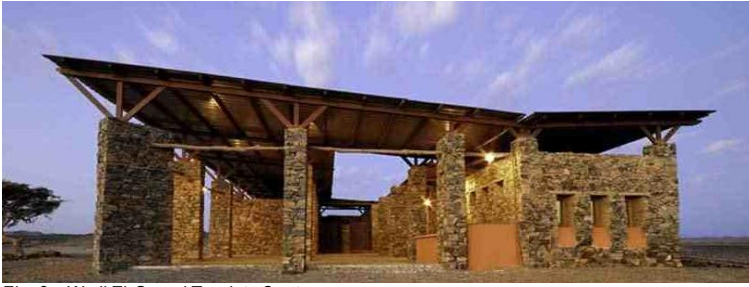


Fig. 3 – Wadi El-Gemal Tourists Center

Albanian Legislation on Restitution of Property Confiscated During the Communist Regime: Its Structural Inconsistencies and a Negative Social Perspective for Achieving an Effective Domestic Remedy

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Abstract

Following more than two decades of failures to implement an efficient system for the recognition, restitution and compensation of property to owners expropriated by the communist regime, in 2015, the Albanian Parliament passed law no. 133/2015 "On the Treatment of Property", which aims to build an efficient mechanism to complete the already delayed process, within a reasonable timeframe. Now, more than three years since its enactment, the law and the enforcing authorities have failed to uphold a number of crucial deadlines and tasks, rendering many facets of the process essentially unfeasible and jeopardizing the possibility of a positive evaluation of the new mechanism by the ECtHR. This paper will examine the objectives set out in the law, the procedures foreseen for the successful completion of the property compensation process and the numerous problems experienced so far in the process, among which the deficient financial funds for the compensation procedure, the excessive delays in the examination of applications on the merits, as well as the ineffectiveness of the administrative procedures envisaged in the law. The analysis will show that, despite the new implemented remedies differ greatly from the provisions of previous laws and the expected positive results, these structural failures have inevitably undermined the social and economic interests of former owners, and failed to meet the Convention standards set out in the numerous ECtHR judgments against Albania.

Keywords: property compensation, ECtHR, legal certainty, compensation mechanism, administrative act

Introduction

The subjective right to ownership is a civil property right, the content of which lies in the assertion that the owners of the right are recognized by the prescribed law, the possession, enjoyment and the disposal over their immovable property. *Proprietas* (ownership) is a technical term that means full ownership upon its literal meaning (physical and legal power over the object). This term appears to be used for the first time, in the late Republican period in Rome. For some lawyers, this term replaced the previously used, *dominium*, while for others it is a new term, with a wider meaning than the previous term (*dominium*). *Proprietas* means the right of use, enjoyment and disposition of your item, to the extent permitted by the judicial order "*Dominium / proprietas est ius utendi, fruendi, new abutendi sua, quatenus patitur ratio juris*".

The sense of ownership is the property right of enjoyment and disposition of the property within the limits provided by Albanian law, more precisely under article 149 of the Civil Code, which provides for "the right to possess and to use the item (*ius utendi*); the right to collect all natural and civil goods (*ius fruendi*); and the right to destroy the item eventually, to alienate it, or to establish any ownership rights in the interests of other persons (*ius abutendi*)". Ownership has never been an absolute right, a full and exclusive right of the owner. This means that along with the right of ownership restrictions remain on the use, enjoyment or its destruction. The existence of these kind of restrictions shows that the purpose of the law is not only the recognition of the rights of individual property on the one hand, but also the determination of the limits of their exercise, in order to safeguard the right of joint usage of objects such as a good created by nature and people for the purpose of mutual co-existence.

The right to private property has been of great importance, especially after the downfall of the communist regime in Albania, under which following a number of reforms and legal and constitutional amendments, private ownership was all but

abolished (Albania P. o., 1976, p. 4). The great injustices that took place during this regime continue to constitute today a great legal and practical challenge to providing a final solution to this systematic and ongoing problem (Manushaqe Puto and Others v. Albania, 2012). There are a number of difficulties, both legislative and a lack of funds for the compensation of all dispossessed subjects, mainly due to the lack of a clear vision of the appropriate means and procedures for restituting and compensation property to the rightful owners, and partly due to the financial toll this issue has caused to the state finances (European Commission for Democracy Through Law, 2016, p. 9).

This right constitutes a fundamental human right sanctioned in Article 41 of the Constitution of the Republic of Albania, which stipulates that: *"The right to private property is guaranteed. The law provides for expropriation or restriction on the exercise of property rights solely for public interest. Expropriations or limitations of property rights that are equal to expropriation are only allowed against fair remuneration. Disagreements over the amount of remuneration can be appealed to the court."* Likewise, Article 42 provides that: *"Freedom, property and other rights recognized by the Constitution and by law cannot be violated without a due legal process."*

The right to property is envisaged as a fundamental right also by the provisions of the European Convention on Human Rights and Fundamental Freedoms, its Protocol No. 1 providing that: *"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."*

This provision contains three main rules which are:

1. The enjoyment of private property (Every natural or legal person is entitled to the peaceful enjoyment of his possessions)
2. Deprivation by the right of property (Exceptionally and only in justified cases)
3. Control of the use of property (in the case of taxes, contributions or fines)

The European Court of Human Rights has also defined in the sense of this article three main principles:

1. The principle of legality;
2. The principle of a justified purpose in the public interest;
3. The principle of a fair balance.

The right to enjoy property in the interpretation of this article is guaranteed not only to natural persons, but also to legal persons. The Court has emphasized (Kopecky v. Slovakia, 2004) that the object of this article is only existing property and the provision and the case-law of the court do not include guarantees to acquire property in the future. This article protects individuals or legal persons from arbitrary state interference in their property, with the exception of exceptional case the Convention itself provides for, such as public interest. These principles enshrined in the European Convention on Human Rights, as well as the case-law of the Court were the basis of the laws enacted by the Albanian Government for the remedy of the crime committed against former owners by the communist regime. However, despite Albania becoming part of the Convention System only in 1996 (Parliament, pp.gov.al, 1996) and the obligations stemming from it, the principles were first met in a number of laws tackling the issue of private property at the beginning of the 1990-s.

Despite the positive intention of the legislative power and its initial initiatives to restate the property to the original owners, these efforts were consistently undermined by the socioeconomical conditions of the time (de Waal, 2004, p. 20) and the need for new legal measures to regulate them.¹ With Law 7501/1991 "On the land" started the process of distribution of more than 420 agricultural cooperatives to 365,000 rural households (Stanfield & Jazoj, 1995), land which in practice belonged to the formerly expropriated owners. The majority of the population of Albania (50% of the workforce and 65%

¹ Law 7501/1991 "On Land"; Law 7592/1992 "On Privatization of State Housing"; Law 7512/1991 "On the regulation and protection of private property, free initiative, private and independent activity, as well as privatizations (amended); Law no. 7665, dated 21.01.1993 "On the development of priority areas for tourism"; Law no. 9482, dated 3.04.2006 "On legalization, urbanization and integration of illegal constructions (amended).

of the population) benefited in one way or another from this form of land redistribution (Cungu & Swinne, 1999). In order to minimize the issues created by the Law on Land, in April 1993, Parliament passed the Law on Restitution and Compensation of Property to Former Owners (Parliament, ikub.al, 1993), for the property unjustly expropriated by the state during the communist regime. The implementation of the law was plagued by delays in the decision-making process as well as a total lack of implementation of the decisions held by the Commissions on the Restitution and Compensation of Property.

This law was followed by the new Law on Restitution and Compensation of Property (Parliament, drejtesia.gov.al, 2004) adopted in violation of the deadlines set out in Article 181 of the 1998 Constitution of the Republic of Albania, further contributing to the prolonged deadlines for the completion of the process of restitution and compensation of property. It also suffered from a lack of emphasis on technical capability, financial and human resources for its full implementation (Manushaqe Puto and Others v. Albania, 2012, p. 16). This led to an increasing number of former owners who began addressing the European Court of Human Rights (ECtHR) to resolve their cases. Following a number of considerable financial penalties for the Albanian state in relation to this issue, the ECtHR in 2012 issued the Pilot Judgment *Manushaqe Puto and Others v. Albania*, emphasizing the need for general measures as an urgent matter to effectively ensure the right to compensation with a certain margin of appreciation for the state. For the purposes of the successful implementation of a new legal policy and initiative on this issue, it was important for the Government to implement an accurate database on the number of decisions on property restitution and compensation to owners, a new compensation scheme based on the provisions of the Convention and ECtHR case-law, a transparent process, and realistic binding timeframes, with respect to each step of the compensation process, to be achieved after a public consultation with the interest groups.

With regard to the process of restitution and compensation of the property, both these laws, in contrast to the provisions of the current law and its compensation methodology provided for the full restitution and compensation of property to former owners, and where not possible for objective reasons, its compensation. Law no. 7698, dated 14.03.1993 "On Restitution and Compensation of Property", provided in Article 4 that:

"Former owners or their heirs are recognized and restituted all the properties, which at the moment of enactment of this law were in the form of free unoccupied real estate or unchanged buildings, with the exception when it provided differently herein."

The law also provided for a number of limitations with respect to the quantity of property to be restituted, limiting the full compensation/restitution of up until 10,000 sqm. When properties were from 10,000 sqm to 100,000 sqm, compensation/restitution would provide for an additional 10% of the property (over 10,000 sqm). When the property was over 100,000 sqm, +1%.

Conversely, Law 9235, dated 29.07.2004 "on Restitution and Compensation of Property" in Article 6 provided that:

"Expropriated subjects are entitled to the right of ownership and are restituted the real estate without restriction, with the exception of agricultural land, which is restituted or compensated up to 100 ha, if the expropriated subject (his heirs) have not benefited from the application of Law No. 7501, dated 19.07.1991 on "Land"."

One underpinning element of the 2004 law was the provision of the right to compensation at market value of the property, something not previously expressly stipulated in the preceding law (Parliament, drejtesia.gov.al, 2004, p. 6). This provision was followed by the issuance of a number of Land Value Maps by the Council of Ministers, which set the value of land in a number of circuits of the Republic of Albania, land value maps which are still in use by the European Court of Human Rights as a reference for the just satisfaction of applicants to the court with cases relevant to the issue of compensation of property (Halimi and Others v. Albania, 2016). Further to these stipulations, the law also provided for the right of the expropriated subjects and their heirs to benefit interest based on the time from the recognition of the property until the time of the full enforcement of the decision, stating that *"For the period from the recognition of the right of ownership to the receipt of the remuneration in the form of cash compensation, the expropriated subject also benefits the banking interest, according to the annual average issued by the Bank of Albania"* (Parliament, drejtesia.gov.al, 2004, p. 10).

Despite the best intentions, this rendition of the property restitution framework was not effective either. It was amended numerous times through: Law No. 9388, dated 04.05.2005; Decision of the Constitutional Court (CC) No. 26, dated 02.11.2005; Law No. 9583, dated 17.07.2006; Law No.9684, dated 06.02.2007; CC Decision no.11, dated 04.04.2007; Law No. 9898, dated 10.04.2008; Law No. 10095, dated 12.3.2009; Law No. 10186, dated 05.11.2009; Law no.10207, dated

23.12.2009; CC Decision No. 27, dated 26.5.2010; Law No. 10308, dated 22.07.2010; CC Decision No. 43, dated 06.10.2011; Law No. 55/2012, dated 10.05.2012; and up until just months before the enactment of the current law, with Law No. 49 / 2014, dated 08.05.2014.

The law of 2015 On the Treatment of Property and the Completion of the Property Compensation Process

Law no. 133/2015 "On the Treatment of Property and the Completion of the Property Compensation Process" was guided in its merits by the Pilot Judgment "Manushaqe Puto and Others v. Albania", where the ECtHR imposed the general obligations for the Albanian state, to take concrete measures to enforce the unenforced decisions recognizing the right of compensation of former owners and examine pending applications on the matter.

The problems noted by the ECtHR in this judgment, which were also found in other similar cases (see Ramadhi v. Albania, Beshiri and Others against Albania, Hamzaraj v. Albania, Nuri v. Albania, Driza v. Albania, etc.), were the frequent changes to the legislation related to property restitution and compensation (at least seven times between 2004-2010); the fact that none of these laws or any other domestic provision provided for the manner in which the decisions of administrative bodies for restitution and compensation of property would be implemented; the fact that there was no time limit for appealing these decisions to domestic courts or any specific means for their implementation; as well as the fact that these laws again awarded the Council of Ministers, namely the executive power, the right to determine the form and manner of compensation, by defining the relevant rules and methods. The previous activity of property restitution and compensation bodies, in most cases, did not include the issue of assessment of property, but aimed only at the recognition of the former owner's status, the recognition of the property rights of the former owners to restitution or compensation, allowing in this manner for binding decisions to be left pending indefinitely. Thus, the legitimate expectations of former owners were determined by decisions which in most cases recognized the rights to the real estate property but did not determine the financial value of the compensation. The transitory compensation scheme according to the market value of the compensation time was considered by the ECHR in Manushaqe Puto and Others as an ineffective means of enforcing decisions recognizing the right to compensation. Likewise, the non-execution of the final decisions in favor of the former owners, who were granted the right to compensation, had also violated their rights to a fair hearing within the meaning of Article 6/1 of ECHR.

Law 133/2015, entered into force on the 23rd of February 2016, in parallel with a new Property Value Map (Albania C. o., 2016), which was instrumental to the implementation of the law due to it being the reference document for the land prices in the process of evaluation of compensation decisions. It has as its main object the regulation and just satisfaction of property rights arising from expropriation, nationalization or seizure, in accordance with Article 41 of the Constitution and Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms; the establishment and administration of the Compensation Fund, which would serve for the purposes of property compensation; and would determine the procedures for the treatment of property and the completion of the completion of the property process as well as the administrative bodies charged with their realization.

Article 3 of the Law stipulates that this law acts on all claims that are under review at the PRCA [Property Restitution and Compensation Agency, precursor of the current Property Management Agency] on the day of its entry into force as well as on all those applications that will be submitted within the terms of this law as it pertains to the recognition of the property rights. In addition, this law extends its effects, including in the financial assessment, to the: a) execution of all decisions that have not been implemented, for the recognition of the right of compensation provided by the administrative or judicial bodies in Albania; b) applications that are under consideration in the courts of all levels, at the Supreme Court as well as at the European Court of Human Rights, regarding their financial assessment.

This law, in contrast to the previous iterations of the legal framework on property restitution/compensation, provides for compensation as the only remedy for the rights of former owners and their heirs, substituting restitution with the concept of compensation in the land previously recognized as property of the former, a new and untested alternative, which was not welcomed by many of the interest groups (Top-Channel, 2015). In Article 8 of Law, the forms of compensation provided are: a) financial; b. with other immovable property of any kind, of equal value, owned by the state; c) in shares in state-owned companies or in which the state is a co-owner, having an equivalent value to the immovable property; d) with the value of objects, which are subject to privatization. The basic property value indicators under this law are assigned separately for land and construction objects (Article 8). When a property is a land union with a construction object, its value is derived per unit, as the sum of the values of the construction object and the land on which it sits. The value of the compensated property in this case is derived for the land based on the land value map, and for the building/facilities, on

the Decision of the Council of Ministers on the methodology of valuation of immovable property in the Republic of Albania (Ministers, 2012).

Further, contrary to the straight forward concept of previous laws of compensation/restitution at 100% of the land previously owned at market value, it introduced a new compensation mechanism, where the property to be compensated is to be evaluated based on the cadastral index that it had at the time of expropriation. The restituted property is evaluated by determining the differences that will result between its value pursuant to the current cadastral index and the value of the property pursuant to the cadastral index at the time of expropriation.

Put into a simplified explanation, the process is as follows:

$$Sp \times Vp = FVp$$

Where:

Sp - the surface of the property recognized for compensation

Vp - the value of the property (based on the land value map) according to the cadastral index the property had at the time of expropriation

FVp – Final financial value of the property to be compensated to the former owner or the heirs

Simplified Explanation on evaluation of property already restituted

$$Sp \times AVp - Sp \times VP + VRp$$

Where:

Sp - the surface of the property recognized for compensation

Vp - the value of the property (based on the land value map) according to the cadastral index the property had at the time of expropriation

Avp - value of property based on the actual cadastral index

VRp – Restituted property value

This new methodology was sanctioned in the law as irrefutable in court, leaving room to owners for challenges only with respect to the value calculated by the Property Management Agency, and not the manner in which it was calculated (Article 19/1).

The law provides also for the cases where in cases in which the expropriated subjects have benefited through a decision compensation or restitution, the difference calculated as per the letter "b" of paragraph 1 of Article 6 of the Law is deducted from the assessed value of the property recognized for compensation, calculated according to letter "a" of paragraph 1 therein. When this assessment shows that the subject receives a property that has a value greater than the property he had at the time of expropriation, then the subject is compensated in nature with the surface corresponding to the evaluation and the rest of the property is transferred to the land fund through a decision of the PMA. This provision, which would provide for the backbone of the land compensation fund for the state, was found unconstitutional by the Constitutional Court of the Republic of Albania (Decision no. 1, dated 16.01.2017, 2017).

However, the Constitutional Court failed to consider two of the most problematic and most disputed provisions of the law, failing to reach a majority in its ruling:

"Article 7, Item 2/ a and b:

If the assessment of the property restituted through a final decision is higher than the estimate of the land recognized for compensation, then the expropriated subject is considered as compensated in full.

b. If the assessment of the property recognized for compensation is greater than the evaluation of the restituted land, then the subject is compensated for the difference, pursuant to the provisions of this law."

These provisions have been seen by many parties, from the interest groups on property issues, the President of the Republic, the Ombudsman and Members of Parliament, as a violation of the right of former owners to legal certainty and unfair interference with their right to positive expectations on the issue.

The Albanian government justified the use of this new compensation scheme based on the characteristics and value of the property of origin, where most of the properties expropriated by the communist regime were agricultural land, forest land, and meadows and pastures, with the plot land surface being an extremely limited area; the numerous demographic, civic and geographical changes occurring during this regime and subsequent years, turning many of these areas, specifically those in the vicinity or boundaries of existing cities from agricultural land into plots of land, due to the natural extension of the boundaries of these inhabited centers; and the lack of financial value added to these areas by the owners themselves, but by the gradual and natural evolution of society. Consequently, this led to the financial impossibility of the state and the nation as a whole to pay the very high financial bill for full compensation of the owners on the basis of the current form of the land and market value.

The basic principle on which the Government relied on the conception of this methodology was that "return" is not an absolute right, but may be subject to numerous conditions and limitations (Maria Atanasiu and Others v. Romania, 2010), applying the principle of possible restrictions directly onto the property issue itself.

As a novelty to the compensation scheme, the law provides that applicants may apply for special compensation, waiving part of their claim for the benefit of a speedy enforcement.

- a) When the subject requests to be financially compensated within 1 year, then he receives 20% of the compensation value and foregoes the rest of this value.
- b) When the subject requests to be financially compensated within 3 years, then he receives 30% of the compensation value and foregoes the rest of this value.
- c) When the subject requests to be financially compensated within 5 years, then he receives 40% of the compensation value and foregoes the rest of this value.

According to the official figures of the PMA, for the year 2017 (Agency P. M., 2017) there have been 12 such applications with a total value of properties at 348,631,590 ALL. The financial value awarded after waiver to the owners has been that of 97,343,259 ALL, saving the state the financial burden of 251,197,331 ALL. For the year 2018 (Agency P. M., 2019) there have been 129 such applications with a financial value awarded after the waiver of 1,507,504,425 ALL, saving the state the amount of 3,010,751,266 ALL. This norm has been seen as a positive step towards not only the speedy and full enforcement of the decisions held by the applicants, but also as a means of providing a lighter financial burden to the state finances.

The problems observed in the practical implementation of new framework

Despite the finding of the law and methodology as an effective remedy by the Committee of Ministers of Council of Europe (Europe, 2018), many of the procedures envisaged for obtaining compensation were seen and are still seen as flawed legal projections by many domestic actors who have objected to the draft law and the successive law adopted by the Albanian Parliament (SotNews, 2019), culminating in the submission of a request to the Constitutional Court on the non-compliance of the Law 133/2015 with the Constitution of the Republic of Albania and the European Convention on Human Rights.

The process of reviewing the submitted petition continued for more than 9 months, at which time the Constitutional Court requested legal assistance from the European Commission for Democracy through Law (Venice Commission) on the conformity of the law with Article 1 of Protocol No. 1 to the Convention and the relevant case-law of the European Court. In its assessment, the Venice Commission maintained a highly realistic position on the then situation of the property issue, where more than 230 cases are pending review by the ECtHR (European Commission for Democracy Through Law, 2016, p. 3); 40,000 issues before competent local authorities; and the financial cost for full compensation of about 814 Billion ALL, estimating that a proportional solution was needed between the right of owners for just satisfaction and the financial burden for the Albanian state. Considering Albania's specific situation, the Commission considered that the new legal framework, which could bring lower compensation to former owners, met the requirement of proportionality (Ashingdane v. The United Kingdom, 1985), as set out in Article 1 Protocol No. 1 of the ECHR. Despite this, the Commission assessed that this opinion was issued to assist the Constitutional Court to evaluate the new law in an abstract manner.

Following this opinion, the Constitutional Court partially accepted the petition of the applicants, repealing Article 6, items 3 and 5 of the Law as unconstitutional, and rejecting the request for the abrogation of Article 6, item 1, letter "b", and Article 7, item 2, letters "a" and "b".

Even after the Constitutional Court's decision to abrogate Article 6, items 3 and 5 of the Law, the latter and its supplementing bylaws have presented a number of fundamental and procedural shortcomings that have affected its effective application, and have effectively halted the process to a standstill. With more than 40,000 decisions awaiting evaluation and later compensation as well as more than 16,000 unexamined applications pending before domestic institutions, the work started slowly and current statistics do not show promising results.

Pursuant to the aforementioned reports of the Agency before the Parliamentary Commission on Legal Matters, Public Administration and Human Rights, for the year 2017, the Property Management Agency has evaluated financially 4,038 decisions of the years 1993-1194, 6,941 decisions of 1995, and 4,877 decisions of 1996, totaling 15,856. The total financial fund awarded to the applicants for these assessed decisions was 1,959,411,055 ALL. The total physical fund used for compensation for 2016 was 65,9 hectares and for 2017, 257,5 hectares. In total, only 881 requests for compensation have been deposited near the agency, contributing in this way to the stagnation of the process. With regard to applications pending recognition, only 2529 of them were administered, with 2164 being returned to the applicants for need for supplemental documentation and 365 of them being refused by the Agency.

Meanwhile, things started to pick up for the Agency in 2018, when it evaluated financially 9458 decisions, where 8642 of the latter were evaluated financially at 34,156,228,643 ALL, 632 being found to have been compensated pursuant to Article 7 of the law and 184 decisions being awarded the right to first refusal. However, even in 2018, the number of applicants actually being awarded just satisfaction is considerably low for the number of pending decisions, with only 429 applications for compensation and only 18 of them awarded a final enforcement decision in the amount of 35,521,553 ALL and ~56 hectares in compensation in kind.

Despite the pick-up in the pace of examination of decisions and dissemination of compensation, in the three years allotted by the law for the process (Article 15), the PMA has evaluated financially only 25,314 decisions out of more than 40,000 pending applications, with the local courts now taking over the process.

The timeframe for the evaluation of already issued decisions pursuant to the law is 3 years. If the process is not concluded by this timeframe, interested parties may address the Tirana Administrative Court of First Instance, to carry out the evaluation pursuant to the law. Currently process has reached the deadline and as such applicants can only continue through judicial review, which in itself presents a further burden considering that Albania is undergoing the transitory evaluation of professionals of the judiciary, with a large number of the judges who have undergone the process having been let go of their position, contributing in this way to the backlog of cases pending examination (Commission, n.d.).

Even with regard to the examination of new applications for recognition, the law provides a binding timeframe of 3 years, deadline which has been passed with the 2018 report of the Agency stating that in the period of January-December 2018, there were 12,950 new applications administered by the Agency, of which 3000 have been dealt with, and the remaining 9,950 case files being processed currently. However, now that the deadline has passed the Agency has suspended the examination process and waiting for the pending cases to be examined by the Civil Court of First Instance (Article 34). One main question which has risen in the last months is in what capacity is the PMA taking part in the court proceedings of certification of fact by part of the applicants for the recognition of their right to property. The passive legitimacy of the PMA to be part of this proceedings has been questioned, but so far it has been impossible for the question to be answered as currently Albania does not have a functioning Supreme Court, nor a functioning Constitutional Court to rule on the matter.

The courts tasked by the law with the duty to review the applicants' challenges to the decisions of the PMA as well as the requests for recognition once the deadlines for the procedure have passed, in themselves exhibit serious problems in the efficiency of the examination of deposited casefiles. From the most recent data deposited by the Albanian Government to the CoE (Advocature, 2018), it is evident that the Administrative Courts of First Instance at country level for the years 2015, 2016 and 2017 had 21,540 registered cases and only 17,927 cases administered and examined; 24,606, registered cases and 20,365 examined cases; and 21,477 registered cases and only 17,451, examined cases, respectively, in this way contributing year after year to the buildup of a considerable backlog. For the Administrative Appeals Court, the situation is quite similar for the same years. At the same time, even the Civil Courts where the requests for recognition are poised

to be deposited from now on, the situation is quite similar. For the years 2015, 2016, and 2017, 89,416, 92,120 and 94,388 filed cases and only 71,589, 75,189 and 78,200 examined cases, respectively, showing the same pattern of backlog buildup which would pose a significant threat to the effectiveness of the mechanism envisaged in the law and the objective ability of applicants in reaching a satisfactory solution to their claims, depriving them of the rights guaranteed under Article 6/1 of the Convention, a core element of the Manushaqe Puto and Others judgment.

Even with regard to the funds made available to the Agency for the finalization of the process, the law has been breached from the outset. In its appendix, the law provides for a budget of ALL 50 billion made available to the Compensation Fund, with a specific amount for the PMA's annual activity (see Annex of Law 133/2015). Despite the provisions in the law stating that the budget for the years 2016 and 2017, pursuant to the Agency's reports, in total, would amount to 6,033,000,000.00 ALL, the fund available and used by the Agency was only 3,426,701,399.00 ALL. The same can be said for the year 2018, where despite the law providing a budget of 3,690,000,000 ALL, the PMA has used only 1,543,025,978.56 ALL. It is true that Article 10 of the law provides that the remainder of unused budget funds for a specific year are to be passed to the following year, the initial trends show that there is a failure to use the financial funds available and a delay in the compensation process, raising questions to the effectiveness of the mechanism.

One final remedy provided in the law as a means for the speedy compensation of applicants, as well as a means of providing the state with leeway in accumulating funds for the financial and physical compensation fund, was the procedure of compensation through auction (Article 13). The law provides that the PMA, in order to increase the financial resources for the compensation fund, would organize auctions for the sale of a property, part of the land fund. All owners holding a compensation decision financially evaluated by the PMA could participate in the auction. The owners holding an assessment on a final compensation decision could participate in the auction if they express their will to benefit from the physical compensation fund. The PMA would announce the winner in accordance with the legislation in force for public auctions, based on the highest bid. So far, not a single procedure of compensation through auction has been initiated and this process is seen as a failure and unnecessary step in the overall mechanism for the compensation of former owners.

Conclusions

The legal framework for property restitution / compensation, in the 27 years following the collapse of the communist regime, has undergone frequent and fluent changes with laws and bylaws that most times either don't complement each-other or are objectively unable to be implemented in full, a systematic problem that has been found to violate the rights of former owners both by the Constitutional Court of the Republic of Albania and the ECtHR. The most recent and current law has encountered many problems and challenges, among which non-participation of interest groups in the formulation of the new law, disregard of budget projections for the financial fund at the disposal of the process, passing of restrictive deadlines set in the law, possible delays in the examination of claims by of the competent institutions or the effective impossibility of the applicants to have access to the judicial system in order to finalize the process of review of their claims.

The present law is a law which does not base the compensation of property at current market value or size in origin other than the provisions of previous laws, thus creating a relatively high loss for entities still pending return and compensation for their lawful properties. This mechanism was accepted as being proportional by a number of actors, but it was contested by those groups of interests directly affected by its implementation, seeing it with skepticism and controversy, which has led to the official complaint of many associations and The President of the Republic of the Council of Europe and the ECtHR.

Despite the finding of the law as an effective mechanism by the Council of Ministers of the Council of Europe, the many challenges faced by the executive bodies charged with the implementation of the law, as well as the breach of deadlines for the examination of new claims and evaluation of already issued decisions has raised serious questions on the new mechanism. So far, the European Court for Human Rights has refrained itself from issuing a judgment examining the new remedy set in place by the Albanian Government, despite the Government submitting the request for examination in 2016, this due also to the lack of an Albanian judge in the panel to examine the case. Recently, a new Albanian judge was appointed to the Court, and the examination of the case seems to draw to a close. However, the most pressing issue remain on what will happen if there is a negative decision by part of the Court. In general, the Court, due to the principle of legal certainty, does not provide for measures of retrospective effect in its judgments, unless the state wishes to give such effect to the case (Marckx v. Belgium, 1979).

However, chances are that it will find the new mechanism incompatible with the Convention System and the case-law of the Court, guiding the state in finding a new methodology and domestic remedy in tackling this long-standing systematic issue. Nevertheless, all this remains speculation until the moment the Court itself issues a binding judgment, which will determine the fate of more than 40,000 already issued domestic decisions and more than 16,000 still pending applications for the right to property.

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Is Grit the Key Element to Improve the Life Attitude? A Study with Military Students from Argentina

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Abstract

The main goal of the study is to analyze the link between Grit and Life Attitude, and its relation with the permanence and academic performance of students from the National Defense University. This paper is mainly focused in the link between the first two constructs. Grit is defined as the passion and constancy to achieving goals, to resisting with effort and interest towards the challenges and difficulties, which is a leader's attribute (Duckworth, Peterson, Matthews y Kelly, 2007). Life Attitude based on the existential belief that life has a purpose, that persons draw meaning from a variety of sources: recreational and creative activities, personal relationships, achievements (Reker & Woo, 2011). A non-probabilistic sample was formed, for convenience, of 162 students; a sociodemographic questionnaire designed ad hoc; the Scale of Determination (Grit Scale) (Duckworth et al., 2007), which is in the process of validation (Tortul and Daura, in evaluation) and the Life Attitude Test (LAP-R (VE-AA)) in the Spanish adaptation of Barni (2017) were administered. Statistical analysis were made from the collected data, in order to corroborate if there were differences in the variables. The first results showed differences according to career and sociodemographic variables; the undergraduate students obtained higher scores in the positive dimensions of the LAP-R than in other researches made in the same geographical context. The work evidences data of interest in the training of defense professionals, for the decision making in the educational style necessary for an integral formation as a lifelong process.

Keywords: Grit, Life Attitude, Defence Professionals

1. Introduction

The time in which we are insert is a time of lack of the sense or meaning in life, the uncertainty and instability (Bauman, 2002) where is very difficult to find objectives and make decisions (Barni, 2013); the education is dealing with this reality and there is a need to find how to help young people in their search for meaning in life.

This research, as part of a broader work, deals with the connection between Grit and Life Attitude and its relationship with the permanence and academic performance in university students of military training to answer the need of adapting the way we teach within the frame of the educational styles and their link with the life attitude.

The personal meaning as a construct is conceptualized as the existential belief that life has a purpose. Reker and Woo (2011) claim that people draw meaning from a variety of sources, including recreational activities, meeting basic needs, creative activities, personal relationships, personal and academic achievements. This meaning of life is the knowledge that each person needs to know to develop their vital objectives.

Grit, defined as the passion and perseverance to achieve long-term goals, implies resisting with effort and interest in the challenges that may arise, regardless of the difficulties, the monotony and any failures experienced. It is a quality shared by leaders (Duckworth, Peterson, Matthews and Kelly, 2007), particularly those who set medium and long-range objectives,

and who cling to them to make them a reality. As a capacity that is not innate and can be developed, the role that trainers or educators can exert to promote it is crucial.

These two concepts show the great importance of this work and its importance is also shown with the fact that is the first time that they are studied in university students belonging to the armed forces in Argentina. Especially in a society that is crossed by many factors that influence the capacity of various dimensions both of the Life Attitude and the Grit scale. Other studies in Argentinian population have shown that not always the students (regardless of their stage in their vital cycles) are capable of achieve the goals they seek or to fulfil the academic aims they set themselves (Messing, 2009).

From these concepts and necessities we decided the three main goals to this stage of the study (a) analyse the differences between the global Grit score and the Life Attitude Profile Revised (LAP-R (VE-AA)) according to sex; (b) examine if there are significant differences in two selected subsamples of undergraduate and graduate students in the military field in the global Grit Scale and the Personal Sense Index extracted from LAP-R (VE-AA) and (c) analyse the correlation between the global Grit Scale score and the Personal Sense Index extracted from LAP-R (VE-AA).

The importance of having the results of this study underlies in the fact that this data will provide the authorities of the academic units information in order to make decisions based on empiric data and collaborate to improve the teaching styles. Besides, the students will be aware of the importance of knowing their own goals, capacities and the way to achieve them.

2. Theoretical Framework of Reference

Is Grit the Key Element in Education?

Grit is the theory of passion and perseverance as a significant predictor of success. In the context of this theory, it is defined as passion and perseverance to achieve long-term goals; it implies resisting with effort and interest the challenges that arise, regardless of the difficulties, the monotony and/or the experiences of failure that have to, sticking to future goals, make them come true. Therefore, it is considered as the quality shared by the great leaders (Duckworth, Peterson, Matthews and Kelly, 2007).

Consequently, the determined person conceives the long-term goal as a marathon, not as a race at full speed (Duckworth, 2013, April) and in that context is aware that its main advantage is to have a great resistance, which leads, in turn, to conceive the process more defiantly and to develop greater persistence.

This capacity is independent of the level of intelligence quotient (IQ) that a person has, a considerable number of studies had corroborated that people who excel in their profession do not do so much for their innate qualities, but for the effort and dedication they use to achieve various objectives (Duckworth, Peterson, Matthews and Kelly, 2007). The definition of the construct shows that the two variables that comprise it emerge as: interest in consistency or passion for long-term objectives and perseverance in the face of effort. What best allows to develop the Determination in people, is what is recognized as "growth mentality" (Dweck, Walaton and Cohen, 2014), it is the belief that the ability to learn is not fixed and that it can change as the person struggles to face the difficulties of any learning process; when the latter are resolved, a greater awareness of their own capacity to learn develops and the obstacles experienced are not perceived as impediments, but as challenges that can be resolved and that allow reaching higher levels of mastery in any domain.

The study of this construct can help the understanding on how to prevent academic dropouts, and on the perseverance necessary to complete the studies (Office of Educational Technology, 2013); through the inquiry of some motivational and cognitive variables that are closely linked to the Determination, in particular, the intrinsic and extrinsic goals, the assessment of the task, the metacognition, the regulation of the effort and the search for help. There are also points of connection between these terms in the definition that Fredricks, Blumenfeld and Paris (2004) make about the behavioral commitment, which refers to the participation that is needed to reach academic goals, and about the cognitive commitment, which entails the effort necessary to master complex thinking tools.

As a capacity that is not innate and can be developed, the role that trainers or educators can exert to promote it is crucial. There are numerous works in which the relationship between the Determination and the Academic Commitment is shown (Atapattu, 2015, Hodge, Wright and Bennett, 2017; Nelson, 2016), as well as with academic performance (Chang, 2014, Bazelayas, Lemay and Doleck, 2016, Palisoc et al, 2017, Reed and Jeremiah, 2017, Wolters and Hussain, 2015). Regarding

its relationship with learning developed by adult students, research developed by Duckworth (Duckworth, Peterson, Matthews and Kellu, 2007, Duckworth, Quinn, Seligman, 2009) show the importance of deepening their study.

From this theoretical approach, is where the study of Grit and its link to the Life Attitude is studied. In this work, we focus in particular, in undergraduate and graduate students of military careers, which are developed in National Defense University (Argentina).

Thereon, the present work covers a knowledge gap, since we could not find a research that would have been carried out with this population in the sociocultural context mentioned and, in the other hand, allows to establish links with previous research carried out in other countries (Borae & Jooan, 2017); Clark & Malecki, 2019; Lie, Fang, Wang, Sun & Cheng, 2018; Waring, Kemes & Bui, 2019) in which the relationship between Grit and job satisfaction, life satisfaction, self-esteem and satisfaction in emotional ties was addressed.

Life Attitude

Existential humanist psychology has, among its representatives, Frankl, who defines the meaning of life as '... the why, the reason, what drives you to achieve something or to be in a certain way', that is to say, what guides us. (Núñez, 2001, p.2 in Hernández Sampieri et al., 2010). PIL (Purpose In Life or Proof of Purpose of Life) is one of the first antecedents of the LAP-R and was developed by Crumbaugh and Maholick (1964, in Reker, 2007) as a form to measure the theoretical foundations of Frankl. The PIL consisted of a 20 items scale that evaluated the meaning of life and the purpose of life. It became an operational definition of Frankl's description of the concept of the will to meaning developed in 1963. Later, Crumbaugh (1977) builds the SONG (Seeking of Noetic Goals), which evaluates the degree of strength of motivation to find the meaning and purpose of life. Both instruments were considered as complementary to measure the meaning and purpose of life. PIL is considered as a one-dimensional measure to assess the discovery of meaning and the SONG to find the motivation, to discover the meaning. However, Reker and Cousins (1979) found that they had ten independent dimensions, which provided powerful evidence for the multidimensional nature of the construct of meaning and purpose of life. The PIL is made up of six dimensions called (a) life purpose, (b) achievement of objectives, (c) life satisfaction, (d) locus of internal-external control, (e) self-satisfaction, and (f) consideration of life. Within this line and in the search for the life mission or the life project, Reker and Wong (1988) define the sense of life dimension composed of dimensions: (a) knowledge of order, (b) coherence and purpose in the existence of oneself, (c) the pursuit and achievement of objectives valuable and (d) the feeling of satisfaction or fulfillment. The authors define that a person who has a high index of personal sense possesses a clear life purpose and sense of direction, feels satisfied with his past achievements and is determined to make the future meaningful. They say that the main focus of previous studies was to find personal meaning as a global construct, defined as the existential belief that life has a purpose and coherence. They claim that people have been found to derive meaning from a variety of sources including recreational activities, meeting basic needs, creative activities, personal relationships, personal achievements, personal growth and academics.

To point out the pedagogical action in education, is having conscious what each person should know about their own legacy, that is, how they want to be remembered. The main objective here is to know how to work from the pedagogical point of view for the integral formation of the person.

Reker, and Parker (1999) have studied the concept of existential repentance, which is defined as an interior experience of disagreement, of reflecting on missed opportunities, of not having reached one's potential, of having inconclusive undertakings and of not having respected the natural and global environment (in Reker & Woo, 2011). The authors explain that the incidence of the attitude of life has been studied and it has been found that students who showed goal-finding indexes showed a better academic performance (Dennis, et al., 2004, Dennis, et al., 2005). Not having respected the natural and global environment (in Reker & Woo, 2011) could lead to different kind of crisis.

The two constructs study variables that can be related between each other and the study aims to discover if working with Grit as a developing capacity could help people to achieve their own goals and have a more coherence life style; that is to say, to have a better sense or meaning of life.

3. Methodology and Procedures

The study was carried out in a National University (UNDEF) specifically two Academic Units of the *Facultad del Ejército* (Army College); they are the *Colegio Militar de la Nación* (Military College of the Nation) and the *Escuela Superior de*

Guerra (Superior War School). The first one is where the students are prepared to be officers of the Argentinian Army and the second one prepares the officers in their postgraduate studies.

Students who follow a university career and a postgraduate course, the first aimed at training officers of the Argentine Army and the second the officers of the General Staff of the Argentine Army. Both careers are taught by academic units that depend of the National Defense University.

3.1. Sample

A non-probabilistic sample was formed, for convenience, of 185 college and university students, of which 69,73% (N=129) are male and 30,27% (N=56) are female as shown in figure 1.

Figure 1

A descriptive, correlational research was carried out because the variables to be analysed were observed as they happened in their natural context at a given moment.

3.2. Purposes

- Analyse the differences between the global Grit score and the Life Attitude Profile Revised (LAP-R (VE-AA)) according to sex.
- Examine if there are significant differences in two selected subsamples of undergraduate and graduate students in the military field in the global Grit Scale and the Personal Sense Index extracted from LAP-R (VE-AA).
- Analyse the correlation between the global Grit Scale score and the Personal Sense Index extracted from LAP-R (VE-AA).

3.3. Instruments

Socio-demographic Questionnaire

A sociodemographic questionnaire designed *ad hoc* was conceived to collect information regarding gender, age, family background and willing to achieve different university level degrees.

Grit Scale

To evaluate Grit, we use the original Grit Scale designed and validated by Duckworth et al. (2007), which is in the process of validation in the Argentine population (Tortol and Daura, 2019). With a 5-choice Likert scale design (5 = Very similar to me - 1 = Not at all like me), the questionnaire is made up of 12 items, which are divided into two subscales: Consistency of Interest (CI, 6 items) and Perseverance versus Effort (PE, 6 items). The first measurement, the tendency to maintain the objectives and interests that have been proposed; and the second, the inclination to work intensely in the face of setbacks and difficulties.

As well, the scale allows obtaining a global level of Grit, which ranges between 1 and 5 points, corresponding to subjects with a very low level and with a very high level in Grit, respectively. For the purpose of this study, we consider that individuals have a low score if they reach a rating lower than 2.50 points because this is the average score between the minimum and the maximum that the scale throws.

Life Attitude Test (LAP-R (VE-AA))

To measure the Life Attitude, the LAP-R (VE-AA), with 40 items, will be used in the Spanish version in its adaptation of Barni (2017). The test is designed with a Likert scale design, and is made up of 5 dimensions, each one evaluates different aspects of the life attitude: (a) Coherence –consistent and logical understanding of oneself, of others and of life in general–, (b) Purpose –personal sense; have clear objectives, a mission of life and direction from the past to the future through the present–, (c) Choice/Responsibleness –describe the person's control and efforts regarding their achievements; freedom, confidence in decisions made, the will to specify them and the ability to discern and decide, (d) Existential Vacuum –it is characterized by uncertainty and not being able to find meaning in life– and (e) Goal Seeking –the person chooses new goals to achieve constantly or seeks to find barriers to overcome within their lifestyle–. Reker (2007) says that life has a

purpose and extracts meaning from various sources. The test is divided into two subscales; the Personal Meaning Index (PMI) and the Existential Transcendence (ET).

For the successive analysis that were carried out in the study, we considered appropriate to calculate the Personal Meaning Index (PMI), which provides a scale focused on personal meaning. This construct is made up of the Purpose (P) and Coherence (C) dimensions and is manifested through the selection of clear objectives that, on the one hand, are oriented to the fulfilment of a vital mission, and on the other, they are consistent with the past, present and future experienced by the subject, and that they consistently and logically understand the self, others and life in general.

In order to calculate this index, we chose to use the formula proposed by Reker (2007), adapting it to obtain an average score: the dimensions P and C were added and divided by two.

4. Procedure

In the first place, we requested the corresponding permission from the authorities of the two Academic Units that participated in the study. In the same way, students who completed the questionnaires were given information about the objectives of the work, the confidential and voluntary nature of their participation, and were given a document (Informed Consent) that they signed to give their consent. In the document and in the oral explanations we explained that the estimated time to complete the instruments varied between 40 and 60 minutes and asked their permission to use the data collected with educational and research purposes.

The collected data were processed using the SPSS-Statistical Package for the Social Sciences program – version 23.0.

5. Analysis of Results

Focusing on the sample's composition, although there is a 30,27% of female students and that there is an important proportion of them in relation to the male population taking into account that the female presence in the Argentinian Armed Forces dates back only few decades; the fact, and we consider that is important to observe that the proportion of female and male students in the university level in the country is the opposite based on percentages that the Argentinean Ministry of Education shows in its document "Characteristics of the Argentine Educational System", where it is observed that the percentage of women in higher education is 69.8% (DiNIEE, 2016).

5.1. Descriptive Statistics

A descriptive analysis (minimum score, maximum score, population mean and standard deviation) of the values obtained by the students in the Grit-O and LAP-R Scales (VE-AA) was performed.

Table 1 details the scores they reached on the factors that make up the Grit-O scale and the scale as a whole. According to the results, students who participated in the study are more likely to strive and work hard to achieve the goals they have set, and have greater difficulties in sustaining interest over time. Similarly, the result obtained by the sample in the global Grit score stands out, which is between the low score (2.50) and the highest score (5.00) of the instrument. Therefore, it would be convenient to work with this population, in particular, to maintain interest in achieving the objectives set out in their life project.

Table 1 here

When analysing the other instrument, the scores reached in the LAP-R (VE-AA) (Table X), the subjects are characterized by having a clear purpose of existence, and by making choices assuming the consequent responsibility. It also highlights the score they reached in the "Existential Vacuum" dimension in which the assessment is expected to be lower, so that students would have a lower propensity to suffer disorders that are comorbid with this phenomenon, (such as depression, apathy, among others) and, simultaneously, they would find or grant greater meaning to their entire existence.

Table 2 here

To analyse the extent to which the Grit and the Life Attitude are explained by various sociodemographic aspects, successive analysis of variance (ANOVA one way) were carried out, in which, as dependent variables, the global value of the Grit-O and the MPI of the LAP-R (VE-AA) were considered and as an independent factor the sex and the belonging career.

For this last analysis, two subsamples of the total obtained were randomly selected, comprising 25 students of the postgraduate degree and 27 of the undergraduate degree.

5.2. Comparison of levels of Grit and Life Attitude according to sex

As regards the sex of the subjects who participated in the study, although no significant differences were found in the overall Grit score and in the PMI obtained through the LAP-R (VE-AA), the score achieved is highlighted by men in the first variable, which is higher compared to that of women (Figure 2). This effect, not only is coincident with those found in another study carried out in a Latin American population (Becerra, Cuitún and Mézquita, 2016), but also it would be interesting to deepening in a future research involving samples with other sociodemographic characteristics (for example, studying other university degrees).

On the other hand, both women and men students achieved the same score in the PMI, which would be positive for both (Figure 3). This result could be related to those of Dennis et al (2004/2005) that found that in an African American population there were no differences in spirituality between male and female students but there were differences in the study of general population.

In this specific population, these results may be due to the influence of cultural and institutional factors that favour the development and strengthening of the capacities evaluated by the Grit-O scale and by the LAP-R (VE-AA) in men. In fact, although the careers in which the study was conducted have been mixed for some decades, the training provided in them, due to their characteristics, is more closely linked to the male psychological profile and to the formation of the military profile, to the detriment of the female psychological profile, which manifests itself through affections, care, the search for warmth, effort, among other aspects

Figure 2 here

5.3. Comparison of the levels of Grit and Life Attitude according to career

The same analysis was carried out to corroborate if there are statistically significant differences in the Grit global score and in the PMI depending on the membership career (undergraduate and postgraduate). In this sense, in the total sample, two subsamples were randomly selected according to the level of the university degree: undergraduate degree, consisting of 27 students; and postgraduate career, consisting of 25 students.

In this case, although no statistically significant differences were found (figure 1), the fact that postgraduate students obtained the highest score in both the Grit global score and the PMI is highlighted. This would help them both to be more persevering, as well as to maintain interest for longer than the goals they have set; in the same way, probably by stage of the life cycle in which they find themselves, to have greater clarity about the meaning that life has and to try to unify with it their existential objectives, in coherence with their life history, personal circumstances and sociocultural context in which they live.

Figure 3 here

5.4. Correlation between the factors of the Grit-O Scale and the dimensions of the LAP R (VE-AA)

The Pearson's r correlation index was calculated between the Grit global score and the PMI (as shown in Table 3), which yielded a positive and significant correlation between both variables $r(185) = 0.47^{**}$, $p = 0, 01$.

This result, which is consistent with the results obtained in the previous analysis, shows that at higher levels of Grit, the Personal Meaning Index develops exponentially and conversely, at higher PMI scores, the subjects are more passionate and persevering. to achieve the goals that would have been proposed.

The results found are noticeable for being the first found in the Argentine Army university population.

Table 3 here

Conclusions

In our opinion, the work done on these two concepts in a population so particular as the students from a university that forms the men and women that work on the Défense of the country is important *per se*, but the insights of the institution

and its educational styles will be of significance not only for the authorities but also for the students themselves. These careers are more than a profession and are a way of living.

In this line of thinking, the present work evidences data that are of interest to consider in the professional formation, for decision making in the educational style and the organizational management, that collaborates to the integral formation and the professional formation in vocations so specific and particular as those of the military life; such as character formation, leadership, etc. With these findings, the importance of conducting this type of studies for educational management was shown.

Accordingly to the results we can point out that there are significant correlations between the factors that make up the Grit and the LAP variables. Only a negative correlation between the variables Election/responsibility and Existential Vacuum is presented, but we will not inform this to focus only on the correlations existing between the instruments.

About differences between men and women there is a trend that was found, which does not reach significant values, in favour of men in the variables Existential Vacuum and Goal Seeking. The contrast between one result and the other would show that, although men have a greater tendency to set themselves goals, the difficulties to achieve them, would insist that they experience it with a feeling of emptiness and frustration. This could be seen in the influence of the socio-cultural and labour context of the country that should be deepened through other instruments, such as in-depth interviews or focus groups.

With the random sample the only significant differences were found in the Existential Vacuum variable, in favour of undergraduate students. In all the other variables, although there are no statistically significant differences, the students of the postgraduate career have higher scores. They have a higher level of Grit and, accordingly, have a higher score in the variables Purpose and Coherence of the LAP-R (VE AA), with the exception of Election/Responsibility, Existential Vacuum and Goal Seeking.

We believe that there is an important factor to go on studying about the percentage of female population if we compare with the percentages of women in superior education in Argentina that are so different in the two academic units studied, and search if it is for the kind of career or for the cultural believes.

Another important finding is the high scores the students obtained in the dimensions of the Life Attitude Test compared with the research made in the opportunity of the LAP-R validation in the country (Barni, 2017). We consider that it is important to link these results to the ones that Messing (2009) made in her own research and, after that, inquire if there is a link about the special profile and the spirituality they have and compare with the Grit scores and the academic performance and retention.

There are various lines of future possible investigations in order to deepen this study. We believe that a better understanding of oneself is very important to the decision-making process and the way you take them to practice and the logic consequences you have to live with. The links between Grit and Life Attitude are very relevant to determine the possibilities to elaborate and develop a life project that is so necessary in our society.

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Tables

Table 1
Descriptive of the factors that make up the Grit-O Scale and the total Grit score

Factors	Students	Minimum Score	Maximum Score	Media	SD
Perseverance of effort	185	2,50	5,00	4,06	0,56
Consistency of interest	185	1,83	4,67	3,36	0,52
Global Grit	185	2,58	4,83	3,71	0,42

Source: own elaboration from study's results

Table 2
Descriptive of the LAP-R (VE-AA)

Variables	Students	Minimum Score	Maximum Score	Media	SD
Coherence	185	2,38	5,00	3,80	0,55
Purpose	185	3,00	5,00	4,18	0,49
Goal Seeking	185	2,25	5,00	3,77	0,49
Existential Vacuum	185	1,00	4,50	2,30	0,75
Choice/Responsibleness	185	3,00	5,00	4,19	0,47

Source: own elaboration from study's results

Table 3
Correlation matrix between the global Grit score and the PMI

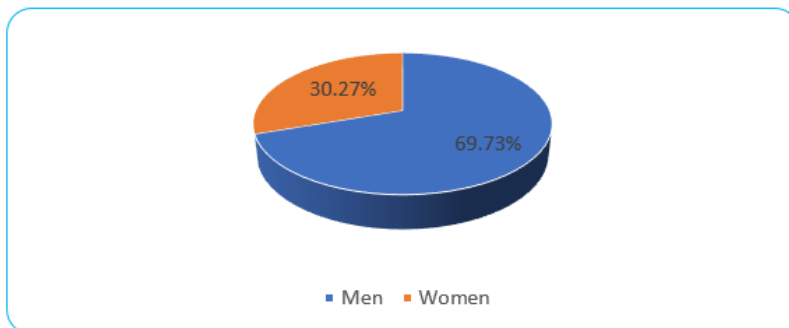
Variables	Personal Meaning Index
Grit Global Score	0,47** ,000

Source: own elaboration from study's results

Figures

Figure 1

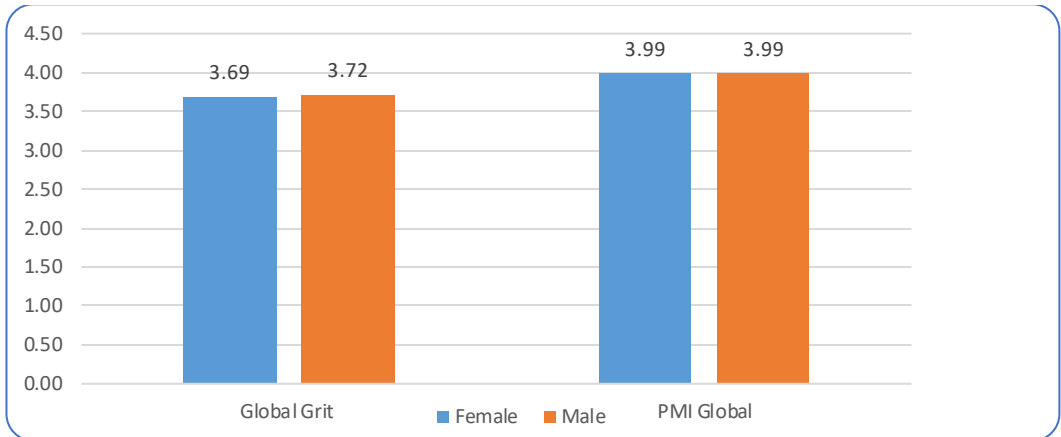
Sample composition by sex



Source: own elaboration from study's results

Figure 2

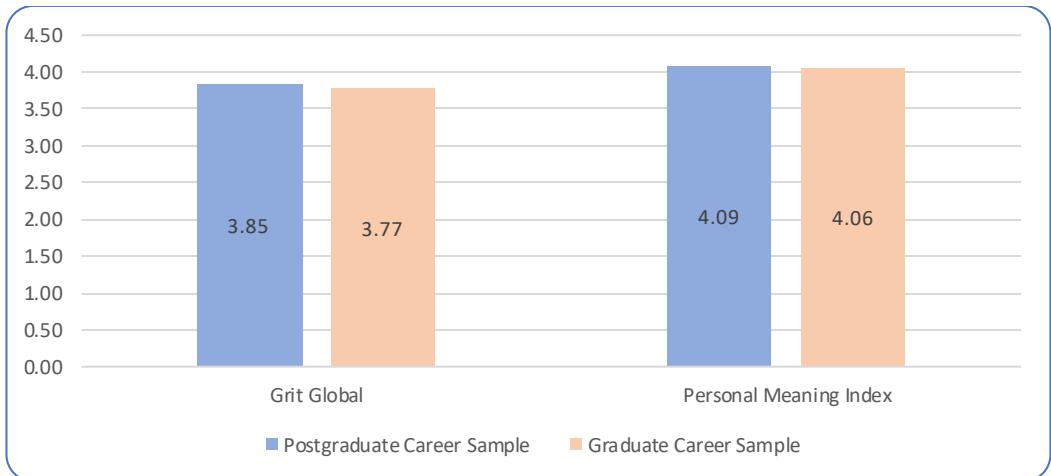
Differences between women and men in the overall score of the Grit and the Life Attitude



Source: own elaboration from study's results

Figure 3

Differences between undergraduate and graduate students in the global Grit and Life Attitude score



Source: own elaboration from study's results

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Traditional Meals and Sense of At-Homeness – Finnish Immigrants with Dementia in Bilingual Residential Care in Sweden

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Abstract

For immigrants with dementia the language learnt last is lost first, and then gradually the native language. When dementia has reached its advanced stages, professional care is needed. The transition to a dementia care unit may be a challenge for a person from another cultural background than in the hosting country. In a few cities, care is offered in ethnic settings with bilingual nursing staff and other cultural features familiar to the residents. One cultural aspect is related to meals and the aim of this study was to explore the food-culture in a Finnish-speaking care unit for Finnish-speaking immigrants with dementia in Sweden from the perspectives of bilingual nursing staff and family members. Method: A qualitative design was chosen to understand personal experiences of the care provided to Finnish immigrants with dementia. The 18 participants, caregivers and family members were chosen by purposive sampling. The interviews were based on semi-structured questions and data was analyzed using qualitative content analysis. Two main categories: *meals stimulating the appetite* and *meals as a cultural reminder* with respective sub-categories emerged. Findings: Being served traditional meals were important for physical as well as psychological reasons. Finnish dishes that the older persons with dementia recognized and liked, stimulated the appetite and contributed to keep the Finnish residents in good health. Traditional meals were considered triggering the residents' memories and when celebrating cultural holidays, Finnish dishes were a reminder of the residents' cultural identity and one of the aspects contributing to a feeling of belonging and at-homeness.

Keywords: Dementia, Finnish Immigrants, Home, Meals, Qualitative

Introduction

This study focuses on the food culture in a Finnish-speaking or a bilingual dementia care unit in Sweden. One of the most frequent activities in residential care is related to food. Meals are served several times during the day to keep the residents in a good physical and nutritional status. Besides nutritional reasons, meals are playing an important role as a social event and it is related to culture (Lam & Keller, 2015; Sidenvall, 1999). The food traditions of individuals are often shaped by the individual upbringing and social environment in where food is served and eaten (Andersson, 2005; Chaudhury, Hung & Badger, 2013, Evans, Crogan & Shultz, 2005; Fjellström, 2004; Meiselman, 2008). Meal in this study is defined as both the food/dishes and the social situation in which food is served and eaten and the physical environment where eating takes place.

The large global immigrant transitions of today, have brought along food and meal traditions and thus added to the variety of the food choice that we have today. For healthy individuals there are most often a large variety of foods to choose from whether it is nutritious or not. But for a person who is suffering from some kind of disease or health condition, eating can be a challenge. Older adults with cognitive decline, or diagnosed with dementia is a group at risk of developing malnutrition due to their condition. They may forget to eat or do not know how to eat or have problems swallowing food (Di-Maria Gallili & Amella, 2005; Stockdell & Amella, 2008; World Alzheimer Report, 2014). There is also a risk of developing malnutrition if the person cannot feed him/herself (Westergren, Unosson, Ohlsson, Lorefalt, & Hallberg, 2002). A report by Alzheimer's Disease International, (2014) has recommended strategies to prevent malnutrition in persons with dementia, such as stimulating the appetite by regular snacks and meals, try food that the person with dementia likes, naturally soft food, chopping up the food of necessary or giving 'finger food' and/or keeping the food hot. Also the social interactions during mealtime, for example nursing staff eating together with the person with dementia and if necessary help with the meal are

important, as well as giving the person with dementia time to eat and be observant to non-verbal clues such as body language. According to studies by Chaudhury, Hung & Badger (2013), and McDaniel, Hunt, Hackes & Pope, (2001), the dining room or place with a relaxed atmosphere is important for a positive meal experience.

As meals are part of an individuals' culture, older adults with other ethnic backgrounds may have other food preferences, regarding what, when and where to eat than those in the hosting country. According to a study on South Asian immigrants in the UK, it was reported that food and dieting also had religious meanings, as different religions have restrictions regarding what kind of food is allowed and not allowed (Rauf, (2011). Another study conducted in Norway on the Sami population, indigenous people of Northern Scandinavia, showed that when being served Sami food, the Sami patients with dementia appetite and nutritional intake improved, as well as that traditional food brought joy and a sense of belonging (Hanssen, 2013; Hanssen & Moene Kuvén, 2015). As such, cultural food preferences need to be considered when providing care for immigrant persons with dementia.

Among several conditions of dementia symptoms, the most common and well-known is Alzheimer's disease according to World Health Organization [WHO], (2019). Globally there are an estimated 50 million people living with dementia in 2018 and this number will more than triple to 152 million by 2050 (World Alzheimer Report, 2018). In Sweden with its over 10 million citizens there are many nationalities and there are also about 150 000 people diagnosed with dementia out of which approximately 20 000 have other ethnic origins (National Board of Health and Welfare, 2017). The exact numbers of immigrant persons with dementia are unknown, as culture can be a barrier for health seeking for dementia (Daker-White, Beattie, Gilliard & Means, 2002; Wezel, 2014). According to the American diagnostic and statistical manual for mental disorders (DSM-5) (American Psychiatric Association, 2013), dementia is a symptom complex including impaired memory function and reductions in one or more cognitive abilities such as language impairment, executive ability and visuospatial ability. The impaired memory makes it difficult to remember names of people, places and events and the person with dementia may have difficulties in focusing, communication difficulties and a disturbed sense of direction in places familiar to the person. One of the consequences of the language impairment for a bilingual or immigrant person with dementia, is that the later learnt language is lost first and as the condition progresses, also the native language (Divita, 2014; Ekman, 1994). The language impairment makes communication for an immigrant person a challenge, when having to communicate one's needs and wishes for example in receiving health care in the hosting country. The memory impairment and gradual loss of physical and psychological abilities affects the person's confidence and the sense-of-self is threatened. Experiencing all these losses, dementia can be described as being in a state of homelessness (Zingmark, Norberg & Sandman, 1993). The person with dementia therefore needs care, which supports the personhood and sense-of self. Other than that, basic nursing care should be as supportive as possible to enhance the person's with dementia well-being (Kitwood, 1997; National Board of Health and Welfare, 2017).

When dementia has progressed into advanced stages and the person can no longer take care of her/himself and not manage normal daily activities, professional and residential care is needed. Dementia care in Sweden is provided in larger care homes where there are older adults with multiple physical conditions mixed with older adults with dementia or in special care units/group homes only for people with dementia: These care units are small-scale units for 10-12 residents with the idea that the unit should look 'home-like' and have more nursing staff than in larger care homes (National Board of Health and Welfare, 2017; Trydegård, 2000.) Immigrant persons with dementia in Sweden, are generally admitted to Swedish-speaking care homes or a dementia unit. For an immigrant person with dementia the transfer to a Swedish-speaking care unit can be a challenge as it may be a culturally foreign environment, (Ekman, 1994; Heikkilä & Ekman, 2003). However, there are also ethnic or culturally profiled dementia care units in Sweden, where the nursing staff is bilingual and speak the residents' native language, for example for the older Finnish immigrants (Berg, 2001). In the areas of Sweden with a larger amount of older Finnish immigrants, there are care services in Finnish and also care units with Finnish-speaking nursing staff. Besides the benefits of being able to communicate in one's native language, cultural features such as food can play an important role for the residents. Nutrition and meals in ethnic dementia care units for immigrants with dementia has not been given much attention in earlier studies. Therefore, this study takes its' departure from a Finnish-speaking dementia care unit in Sweden.

Aim: to explore the food-culture in a Finnish-speaking care unit for Finnish-speaking immigrants with dementia in Sweden from the perspectives of bilingual nursing staff and family members.

Material and Methods

A qualitative approach and design were chosen to gain a deeper understanding of the studied phenomenon from a subjective point of view, namely that which is personally experienced by the participants. The design and method are intended to cover a variety of personal experiences (Graneheim & Lundman, 2004; Krippendorff, 2004), as in this study of the care provided to Finnish immigrants with dementia in the Finnish-speaking care unit. This sub-study is part of a research project which explored how Finnish culture was expressed in bilingual residential dementia care.

The setting

This Finnish-speaking care unit was situated in a larger Swedish-speaking care home consisting of several care units. The Finnish-speaking care unit had rooms for 10-12 residents with dementia and had Finnish/Swedish-speaking nursing staff. The residents had their own small one-room apartments with a small kitchenette and bathroom. These were furnished with the residents' own furniture and decorations. The common areas consisted of a large living room furnished for meals as well as it was a place for socializing. There was a kitchen where the meals were prepared and sometimes cooked. Otherwise the meals were cooked in the central kitchen of the whole care home. The interior decorations in the day/living room were Finnish pictures, a calendar with weekdays in Finnish and Finnish artworks. On a bookshelf, there were Finnish books, newspapers, music CD:s and old Finnish films available for the residents. By the time of the data collection of this study, there were 11 Finnish residents aged 70-90 years. The residents showed symptoms of middle or advanced stage of dementia. All, except one or two could eat by themselves, the two residents who could not eat by themselves were fed by the nursing staff or family members.

Participants

The 18 professional caregivers and family members were chosen by purposive sampling and consisted of 10 enrolled nurses and eight family members. The family members were spouses, daughters and sons and the nursing staff consisted of registered nurses, enrolled nurses and a nurse aid (table 1). All the nursing staff, aged 20-58 years, had emigrated from Finland to Sweden in the 1970s. The enrolled nurses had a two-year education and the nurse aid 20 weeks. The nursing staff had worked in this care unit for several years. The participating family members were fluent in Swedish and Finnish and visited their spouse/parent with dementia with various frequency depending on the geographical distance to the care unit.

Table 1 Participants

Nursing staff (n=10)	Family members (n=8)
8 female staff members 3 registered nurses 5 enrolled nurses	Adult children 2 sons 4 daughters
2 male staff members 1 enrolled nurse 1 nurse aid	Spouses 2 wives

Data collection

After having got permission from the operations manager to conduct the study, the participants received written information and thereafter they were called to give additional information about the study. The interviews were conducted individually with the participants at a quiet place in the care unit. The interview questions were based on a semi-structured interview guide, with questions like: *What is Finnish culture in this care unit? How is it expressed? Can you give examples of what kind of food you serve here? When and how?* By using semi-structured questions, the participants were encouraged to talk freely and not being limited to structured responses. The interviews were audio-recorded and lasted approximately 45 minutes. All, except one interview was conducted in Swedish. One interview was conducted in Finnish by the author of this study who speaks both Finnish and Swedish.

Analysis

The interview material was transcribed verbatim and analyzed using qualitative content analysis. The analysis method is a widely used method to analyze interview data in nursing research. The analysis here was done on a descriptive level, meaning working with the text based on what is clearly spoken in the text (Graneheim & Lundman, 2004; Krippendorff, 2004). After having read through the interviews several times to get a sense of the whole content. The next step was to identify sentences in the interview text related to the aim of the study, i.e. *meaning units*. A meaning unit consists of a part of a sentence, a whole sentence or several sentences related to the aim of the study. The step thereafter implied *condensation*, i.e. removing unnecessary words, but keeping the core content of the meaning unit. In the next step, the condensed meaning unit was labelled with a code and the next step implied *categorization* of coded meaning units based on commonalities and differences in the content of the meaning units. The final categorization was done in several steps and on different levels of abstraction which finally emerged into main categories with respective sub-categories. In the analysis of this study, two main categories were identified: *meals stimulating the appetite* and *meals as a cultural reminder* with respective sub-categories: *Traditional food for physical well-being/ Food for memory*, *Food associated with cultural holidays/ Finnish dishes rekindling identity*, which are presented in the findings section.

Ethical considerations

Oral and written information was given to the participants about the study and that all participation was voluntary and that they could withdraw from the study any time without having to explain the reason. The participants were informed that the interview material would be kept confidential and the material stored in a secure place not being available to anyone who was not been working with the study. To ensure confidentiality the real names of the participants would be changed into fictive names so that no participant could be identified. The participants also signed an informed consent. The study was approved by the ethical committee at Linköping University, Sweden (Dnr 02-053).

Findings

The food culture in the Finnish-speaking dementia unit was in fact both Swedish and Finnish in the sense that Swedish food was prepared in the care home's main kitchen. Swedish dishes were served during lunches and Finnish dishes at the evening meals. Although the Scandinavian dishes have similarities, it was considered important to serve traditional Finnish foods several times a week. Being served traditional meals which according to the nursing staff were physically and psychologically beneficial for the residents with dementia, and a cultural reminder of the traditions in the country where they came from (table 2).

Table 2 Categories

Main category:	Subcategory
Meals stimulating the appetite	<i>Traditional food for physical well-being</i> <i>Food for memory</i>
Meals as a cultural reminder	<i>Food associated with cultural holidays</i> <i>Finnish dishes rekindling identity</i>

Meals stimulating the appetite

The Finnish-speaking nursing staff were able to observe and compare the differences of when the meals served were Swedish or Finnish food. The food was cooked by the nursing staff at the kitchen in the care unit or it was bought in from a Finnish grocery store nearby. Examples of Finnish dishes served were Finnish sausage soup, macaroni casserole, Karelian Pirogues, and Finnish Rye Bread.

... and then we buy Finnish sausage and bread, the traditional Finnish loaf-bread, it's popular (nursing staff)

Traditional food for physical well-being

The nursing staff had noticed that traditional or familiar food seemed to stimulate the residents' appetite so that they ate enough and with a good appetite. From a medical point of view, it was considered important that the residents were served dishes that they were familiar with so they should eat with a good appetite and enough to keep a good nutritional status.

Enough food would keep the residents in a good health, make them more resistant to infections and pressure-sores. The evening meals often consisted of Finnish traditional food, a bit heavier and filling than the evening meals served in the Swedish-speaking units in the same care home according to nursing staff and family members. An explanation was that there were many hours between the evening meal and next day's breakfast and that no one should have sleeping problems caused by hunger.

We prepare a somewhat more filling food for the evening since so many hours will pass before they get to eat their breakfast, and we have noticed that when they get proper, nourishing food, they have no pressure-sores (nursing staff)

Mother eats better and more when she gets Finnish foods . . . I sense that she prefers that which she use to eat... Finnish food, it is more like at home (daughter)

The nursing staff had observed that when the residents did not like the food, they played with it, ate slower or needed support with their meal. As a contrast it was also noticed that some of the residents were more prone to eat independently and could function more adequately from their physical abilities when they were served traditional food or food that they really liked.

There was this lady that always complained about her bad teeth and that she could not eat the hard-bread, but one day when she was given Finnish Rye Bread, she ate it all, yes it was all consumed, even the bread-crust! (nursing staff).

Not only the particular dish itself was important, but also the social interactions during the meals. Most of the time the residents were eating all meals together, while the nursing staff first served the food to the residents and then sat down to eat together with them. Even though the conversations between nursing staff and residents were short and mainly focused on the food, the residents were able to respond, either verbally or non-verbally, as they understood the questions in their own language. It also happened that family members of the residents brought something to eat and had a meal or coffee together with the residents, which stimulated the residents to function from a more adequate capacity.

.....yes we have a lady here, she is now over 90 years of age and some years ago when her children from the south of Sweden came to visit her, we sat down at the round table [in the day-room] and had a meal together or coffee, they always bring coffee and pastry....so then she was able to eat so neatly with knife and fork and all, but otherwise she might not even eat at all on her own....she probably sensed that it was something special....

Some of the participants had problems swallowing the food and even if the food had to be run through the food-processor and looked unappetizing, the taste and smell might still be there, and perhaps giving a familiar taste experience according to the nursing staff.

Finnish foods were also considered trigger memories according to family members and nursing staff.

Food for memory

The residents with an advanced stage of dementia, were often unable to communicate verbally and had moments of enlightenment where they seemed to take in impressions and conversations, only these moments did not last for too long. Family members reported that, residents being served food triggered memories and moments of enlightenment.

....when we, 14 of us, sat at the kitchen table at Christmas, she commented that, and I thought all of us brightened up when Mom said...- It is Christmas Eve!...but then when we left the table, it was just as if it was not Christmas any more, but it was at that instant when she saw the Christmas food...a light came on (daughter)

Birthday celebrations could also trigger memories as each resident's birthday was celebrated with a cake, flowers and singing according to the nursing staff. It was considered important and meaningful to give special attention to the birthday person and a way of making the resident visible and feeling appreciated.

..Yes, when they have their birthday we all celebrate, on the day when someone has a birthday we go and buy a flower or something else, and birthday cake...then we sit down together and try [to celebrate] as best as we can (the nursing staff)

Traditional meals as cultural reminders

Holidays or festive food traditions were mentioned by all participants, not as much as how holidays were celebrated, as what kind of traditional food were served on each holiday. Although Swedish and Finnish food traditions have similarities, the differences between Finland and Sweden seemed to come to the participants' mind easily. Experiences from the war was another strong reminder of the Finnish cultural identity.

Traditional food was associated with cultural holidays

Responses to what Finnish food culture is, was strongly related to food traditions on holidays, like Christmas, Easter and Midsummer.

Everyone may have their personal food preferences even when it comes to holiday celebrations, but special foods served during these festivities seemed to be strongly rooted in the national culture and traditions:

They [the residents] remember this...if we talk about Christmas...it is the Christmas ham, turnip casserole, carrot casserole, she remembers all this...it is very important to stimulate that part too (daughter)

Yes, then we ate carrot casserole and Karelian pirogues for Christmas....and mämmi¹ for Easter! (nursing staff)

Finnish dishes rekindling cultural identity

The Finnish National Holiday, the 6th of December, was mentioned as an important day since many had experienced the War. The Finnish National Holiday was celebrated with Coffee, Cake and the presence of the Finnish flag and was considered enhancing a feeling of belonging and cultural identity.

Yes, we bought a cake, and we laid the table extra nice and sat down at a long table. We have several persons that endured the Second World War and they appreciate it when there is some special occasion (nursing staff).

Discussion

In exploring the food culture in this Finnish dementia care unit, there was much focus on the kind of traditional foods that were served. The nursing staff who had daily encounters with the residents could notice and reflect on the benefits of having Finnish food more clearly as the family members who did not make daily visits to the care unit. But, as family members they could contribute with information about a residents' personal food preferences, which also is important to consider in serving meals, as one can never take for granted that all traditional food is preferred by everyone. All interviewed nursing staff however agreed to that serving traditional Finnish meals were well-liked by the residents and beneficial from various aspects, first and foremost from health aspects, but also from psychological and cultural aspects. The focus on health aspects of traditional meals, is probably a natural reflection considering the characters of caring, i.e. to prevent disease and particularly in this study, malnutrition, and to give good care in order to maintain a good health status (Swenurse, 2017). The risk of developing malnutrition in persons with dementia is well-known and has been described in several studies (Di-Maria Galilli & Amella, 2005; Stockdell & Amella, 2008; World Alzheimer Report, 2014; Westergren, Unosson, Ohlsson, Lorefalt, & Hallberg, 2002), as well as strategies to prevent malnutrition (Alzheimer's Disease International, 2014). Some of these strategies were used in this care unit. By serving traditional Finnish food, the residents' appetite was stimulated, and they seemed to prefer that kind of food, because it was something that they were familiar with and liked. The meals were also served in a homelike atmosphere in the sense that the unit was small-scale, but also with decorations that reminded the Finnish residents of their home country, Finland. This is consistent with the studies by Chaudhury, Hung & Badger (2013), and McDaniel, Hunt, Hackes & Pope, (2001), which pointed to the importance of a positive homelike atmosphere when dining. Also, the findings of this study, indicated that even though the conversations during mealtimes were somewhat sparse, there were social interactions when the residents and nursing staff had the meal together. The conversations between the nursing staff and the residents were in the residents' native language and therefore understood by both, which could have contributed to a good food intake. From a health perspective those

¹ **Mämmi** is a traditional a Finnish Easter dessert and is made from water, rye flour and powdered rye malt, seasoned with dark molasses, salt and dried, powdered Seville orange peel. It is eaten cold with either cream and sugar, vanilla sauce or vanilla ice cream.

strategies seemed to have contributed to keep the residents in a good nutritional status and health according to the nursing staff, who claimed that there were no pressure sores, which can be one of the consequences of malnutrition.

Even though, there was much focus on food for nutritional and health reasons, other aspects, such as tastes, smells and appearance of traditional food were mentioned as triggers of memories in the Finnish residents with dementia. Memories of their home country and even memories strong enough to motivate the person with dementia to eat by themselves or behave in an adequate way at the dining table, when they did not do that otherwise. The study by Hanssen and Muene Kuven (2015), exploring Sami, Norwegian and African residents with dementia reported similar findings, that traditional food awakened memories in the residents, and they spoke words, that they did not normally do.

Other aspects of serving traditional food were related to culture and identity. Being in a Finnish-speaking dementia care unit in a Swedish care home one would think that language and communication should be good enough care, but the Finnish-speaking nursing staff went further. They made efforts in trying to keep some of the Finnish traditions alive, as they had realized and observed that by providing the residents with e.g. traditional food not only on normal weekdays, but also on festive and national holidays was a reminder of their home country bringing the residents back to their roots, cultural background and identity. This is consistent with earlier studies, showing that meals have an important role in shaping a cultural identity (Lam & Keller, 2015; Sidenvall, 1999). If dementia is seen as a state of homelessness (Norberg, Ternstedt & Lundman, 2017; Zingmark, Norberg & Sandman, 1993), due to the fragmentation of the effected person's personality, this homelessness needs to be countered on several levels; to the sense of self, the people in the environment and the objects or the social context in which they are cared for. In the Finnish unit of this study there were cultural features which could be viewed as an interface which helped the residents to relate to their roots and cultural background and in their kind of home-less state, enhance their sense of at-homeness.

Limitations

This study was explorative to its nature as there are not many studies conducted on meals and meal situations for immigrants with dementia. More studies on the subject are needed. A limitation of this study is that the residents' with dementia perspective is missing. The Finnish immigrants however were in an advanced stage in their condition and it would have been difficult interviewing them. Observations of persons with dementia can add to further aspects of the meal situations. As the aim of this study was to explore the perspectives of the nursing staff and the family members, it was considered enough to answer the research question.

Conclusions

In conclusion, the Finnish persons with dementia in this study were fortunate in being surrounded by Finnish cultural expressions, where they were being served traditional Finnish meals. There were also nursing staff willing and able to prepare it. Traditional foods were beneficial from several aspects, for nutritional and health reasons, as well as psychological and cultural reasons. As for an immigrant person with dementia experiencing a state of homelessness, traditional meals were a reminder of their cultural roots, identity and contributed to enhance their sense of at-homeness. Since this study showed that traditional food to immigrants with dementia was important from several different aspects, health and elder care need to consider the importance of the diet in order to maintain a good quality of care as well as an equal care.

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Caucasian Multiculturalism, as the Burden and the Opportunity and the Private Archive of Russian Empire's Georgian General

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Abstract

The Caucasus is considered as one of the difficult geopolitical regions. It includes Georgia, which differs from other Caucasian ethnics in religious-cultural context. Georgia, which has been strongly influenced by Persia and Ottoman Turkey for centuries, as well as by Europe, fully becomes a part of Russian Empire and gets under even stronger European influence. The 19th century Caucasus was characterized by multiculturalism that, in general, causes the atrophy of values and the marginalization of national components, as a result. The subject of our research is the private archive, namely, 700 letters of Grigol Orbeliani (1804-1883), Georgian poet, military person and public figure, the General of the Russian army. In this material, we can find the various concepts of self-identity. In this regard, it is significant to analyze what place was taken by Russian on the one hand and Eastern on the other hand phraseology and sayings in his mentality. How does Orbeliani understand and develop the phenomenon of "homeland"; what forms of tolerance does he reveal; what is his perception on Imperial, Caucasian and Georgian contexts, and so on. These very letters give us the opportunity to find not only Orbelianian contours of self-identity concept, but contributes to our attempts of marking human groups and societies' ethnic and religious identities as well.

Keywords: Grigol Orbeliani, Caucasian, Multiculturalism, Personal letters

Introduction

The scientific grant project under which this research is being carried out has given us an opportunity to use the corpus research method and look for the trends relevant to us in personal letters of this public figure. The epistolary legacy, not intended for publication and having only interpersonal communication function, often contains data different from official documents, especially if we take into account the fact that Grigol Orbeliani had an intense epistolary relationship with the governors of the Caucasus (Alexander Bariatinsky (1815-1879), Mikheil Vorontsov (1782-1956)), who provided the instructions during the Caucasian war, as well as viceroys and imams as the main actors of the Caucasian War. In his writings, two passions are seen - war and lyric, as well as two interests - his own homeland as a sentimental phenomenon and the Russian empire, in the service of which his good and bad are defined. The public image of the poet and the general without the contextual and meta-textual data of these letters is quite one-sided.

Methodology: As far as we had to work on some manuscripts, we mainly used a stage-stratal method of reading manuscripts. Besides, we used different methods and technologies used by neighboring fields of humanities: source studies, ethnography, literary criticism, culturology. For cross-cultural and discourse analysis we complemented these methods with comparative, inductive, deductive, and other universal ones.

Ranging from diplomatic relations to gastronomy, the entire Caucasian existence of the 19th century was imbued with multiculturalism, which generally leads to the atrophy of values and, consequently, stipulates for marginalization of national components. Those public figures, which helped create cultural and geostrategic variations in the region, were also marginalized.

Grigol Orbeliani's authority, stipulated by not only for his being Caucasian in the eyes of Caucasian mountain-dwellers, but also for his personal skills and values, often became a reliable tool for the officials of the Russian Empire. This ability of the General could be noticed a lot of times, for example in his relationship with Shamil's Naib - Haji Murat: during Grigol Orbeliani's visit in Avar Khanate, he convinced the Naib to come over to the Russian side on the condition that he would

be forgiven for the committed crimes to the government, but after he was dismissed from Avar Khanate, Haji Murat refused to negotiate because he did not trust other generals of Russia (Droeba, 1883).

Grigol Orbeliani objectively assessed the interests and uncompromising efforts of Caucasian leaders towards independence. He repeatedly describes the exemplary courage shown by the Caucasian mountain-dwellers (for example, how two dignified 20-22-year-old Ossetians put up resistance to 20-soldier troop of the Russian army, emphasizing that they did not even think of fleeing the place where they had accidentally encountered the troop). Despite his admiration, he, as a military man, describes the battles while subduing the Caucasian mountain-dwellers with great passion and wrath. One of his letters shows how the army threaded on the skewers, killed, destroyed, took away flags, made their opponents wail, and thus took the blood of Kakheti (Orbeliani, 1855). It should be noted that the main aim of those battles - a complete subordination of the Caucasus mountain-dwellers - was dictated by the Russian imperial view. However, in personal letters, where one expresses freely his aspirations, Orbeliani's other desire could be seen - the revenge for Kakheti (Georgia's historic province), often attacked by mountain-dwellers. Here, as in many cases, the general's interests and intentions are split, and his portrait is more brittle than while corresponding with the viceroys. As for correspondence with them, he expresses his sincere admiration for the cultural and infrastructural projects that the Caucasian viceroys laid the foundation for. Here are two excerpts from the letters written to Mikhail Vorontsov, the viceroy of the Caucasus:

"I am spiritually inspired by the letter of Your Excellency. It described the recent past, famed with great deeds, in vivid colors: the fierce battles, even the subdued Caucasus, which had never been subdued before, the established peace in your beloved Georgia, liberation of thousands of captive Christians, the most beautiful road in the country which was paved for approximately 8000 ft to the top, where once only the eagles flew, mountain passes, construction of the canal along numerous dessiatinas (1.09 hectares) to enliven the barren land, the railroad projects, and many more ... Let me express my deep gratitude to you, being a thousand versts (1.6 km) away from you, for the glory and for the prosperity and happiness of the greatest country. And why should not you be happy and proud of the things that happened due to your hands, the things that will live as long as the Caucasus lives?!" (Orbeliani, 1864).

Or: "The Caspian shore is now enjoying your glorious, forethought deeds: the headquarters are finished and look like the lovely, small towns where armies that had no shelter before live quietly; beginning with Shura (Temir-Khan-Shura) with its magnificent fountains, buildings, towers and a wonderful temple ... A beautiful church had been built in Dagestan; there are three beautiful stations between Shura and Derbent; and the trade is getting better and better " (Orbeliani, 1855).

These fragments perfectly illustrate the "New Caucasus" as a justifying argument for long and bloody Caucasian wars. Although this letter is written to the official, it cannot be thought that Grigol Orbeliani referred to the bureaucratic tribute here.

In a letter to Alexander Baryatinsky, Grigol Orbeliani regrets that "new individuals are emerging in the Caucasus who have not spent anything to pacify the Caucasus and to bring peace and order there; who did not work for the well-being of this country and who only wish to get closer to Russia; Therefore, these individuals do not possess memorials, that is, the power that would relate them to the Caucasus" (Orbeliani, 1861). It is clear that this is a letter of a person who worried for the present and the future of the Caucasus.

It is noteworthy that in the image of Grigol Orbeliani we get not only the portrait of a man living on the edge of several cultures, but also a portrait that seeks to portray the Caucasus as a monogenic ethnocultural and political entity amidst many cultural streams. The conflict, on the one hand, between Grigol Orbeliani's ethnic interests and personal values, and the official (job) order on the other hand, creates quite substantial contradictions, though unique opportunities emerge in this situation. Time and again, Grigol Orbeliani appeared to be an indirect demiurge of Caucasian geopolitics. The intense nature of his correspondence with the viceroys and several passages from these letters suggest that Grigol Orbeliani had an indirect influence on the conduct of human resources policy in the Caucasus. Once, he wrote to Alexander Baryatinsky: "Mushtaid died in Tbilisi ... Please do not renew this title in the future. Those who think that a Muslum with such a high ranking may be a devotee of the Christian authorities are ignorant. Can we demand from Metropolitan Isidore a sincere devotion to the Shah of Persia? There was no Mushtaid here even when Georgia was under Persian influence; why would we want him here now?" (Orbeliani, 1861). With such influence, the General used to change the ethnic and religious climate in the region, especially in Georgia.

In order to create a multicultural environment, any ethnic subject first experiences marginalization and then is faced by the need to give up some of self-sufficient elements. In the sources of our research, we encounter with the prominent examples of the marginalization of portraits. One letter of Grigol Orbeliani tells us about Shah Qibla-Alam's (Iran's Shah Naser al-Din Qajar (1848-1896)) arrival in Tbilisi in 1878, which he describes rhetorically: "Just imagine, the Khan is wearing our ethnic coat with 'pagoni' (epaulets). Is there any more russification than this?!" (Orbeliani, 1860). This fragment of the letter is interesting in many ways - in the words "our ethnic," the general implies Russian, and expresses dissatisfaction with irony, since personal sympathies overwhelmingly lead to protect the dignity of the Eastern ruler. It is noteworthy that dignity is frequently directly proportional to the protection of identity in this sense. This argument is questioned by one factor - there are cases where the marginal identity is not meant to diminish the quality of dignity but, rather, to bring it to higher standards. Much earlier, in 1866, when Grigol Orbeliani himself visited the same Shah of Persia, he considered the unusual strokes of his portrait worth to note: "the Khan is still a young man, 37 years old, good-looking, a famous cavalryman and gunman, he is learning French and magazines are read in this language, and thus he is distinguished with keen intelligence in his country" (Orbeliani, 1866). Unlike the previous sample, bringing in other ethnic and cultural streams here is a sign of progress and not just the author's implicit irony. The difference is that in the first case it brings the Russian element into the Shah's portrait, and in the second - the European.

"He longs to see Europe, and even tries to fulfill his dream, but it is difficult: it is not easy to get out of Persia for Khan" (Orbeliani, 1866) - This wish of the Shah, who ruled Persia for nearly five decades, is a sign of great courage and, apparently, this evokes compassion in the author of the letter.

The deep vacillation of the national element is indicated by the fragments of Orbeliani's letters in which he speaks of Shamil's son, Jamal ad-Din: "Shamil's unhappy son Jamal ad-Din is grieving for Russia; he cannot get used to the new way of life - the malodorous life of mountain-dwellers; they teach him the Koran and prayers and even circumcision was performed on him, which he still cannot recover from. He resolutely turned down the offer to become the head of predatory parties so that he could steal sheep from the poor locals and thus earn the name of a courageous man. Nevertheless, Shamil seems to love him very much. Once Shamil asked him why he was so miserable, he replied: "Why should I be joyful when my Emperor Nikolai died?" Shamil engrossed in thoughts and said: "Yes, we both have to venerate the memory of this great Padishah: he returned my child to me, and made you a man" (Orbeliani, 1855).

Orbeliani cites Shamil directly. If this is the case, we are faced with a strange reality: the overt confrontation with Oriental, Persian cultural and historical discourse, which was addressed by Jamal ad-Din by means of his father's assessment, is an immediate precondition for "making you a man". This is, of course, an acute statement and an extremely ambiguous stroke of the most ambitious portrait of a Caucasian who fought vigorously with the Russian Empire. As for Jamal ad-Din, in the sources cited in the National Center for Manuscripts of Georgia (in letters to Leonti Nikolai), he explicitly states that "if not for the Father, even the Devil himself would not make me stay in this place." In these letters, he insists on sending him a book of world history, grammar of the Russian language, French-Russian and Russian-French dictionaries, Ivan Krilov's fables and more ... That is why the North Caucasians considered him a Russian spy. This indicates a crisis of ethnic and cultural identity and a rare example of alienation of the Caucasian mountain-dweller.

If we called on the frequency of use of Western and Eastern toponyms, mentioned in correspondence with both friends and official persons (1865-1869), as one of Grigol Orbeliani's arguments identifying the geostrategic and cultural orientations, it would appear that the general had mentioned the European states and cities (for example, Florence, France, Prussia, Geneva, Warsaw, etc.) 75 times, and cities of Persia, Dagestan, Armenia and even Azerbaijan (Gubin, Kaitagh, Tabasaran, Tavriz, Echmiadzin, etc.) - 67 times. This was when the European orientation line would be inferior to the eastern line in terms of avowal.

The Georgian thinkers of the 19th century almost never considered Eastern countries as "an external space". For them, this was represented by Europe. In his personal letters, Grigol Orbeliani emphasized Europe as a cultural space distinct from the own identity, and he managed to show it in the light of household details.

Grigol Orbeliani perceives Europe as "the best place to lead practical life", "rational formation of the character", "bringing up a child", "intellectual and physical development" ... for him Europe had always been a symbol of tranquility and order. We encounter the following passage in one of the letters: "Thrift, order, and purity are the components of their (Germans') character; all of this must be added with bread and butter, coffee, a beer mug, a narghile, or a cigar, Hamburg newspapers - and a German is in paradise" (Orbeliani, 1861). The components of the "German Paradise" are desirable but not idyllic.

In this list, the author of the letter emphasizes practical life more, he not only avoids the high-value component but he does not see it. Europe is so natural for him - quiet, cozy, neutral ... Such is the portrait of a descriptive average European for him. The quotation is about a German butcher whose wife and children played the piano and danced French quadrille. Grigol Orbeliani does not consider himself a part of European identity, on the contrary, he always emphasizes (mostly humorously) his estrangement. In one letter, he writes: "Our women went to take the carbonated waters; Oh, what can we do with them? This is a European custom. We should not rebuke us – Asians, who cannot comprehend the height of their education" (Orbeliani, 1846). One more: "I got your book from Geneva, and on the 8th, Chilaev wrote to B. Nikolai that he had seen you in Paris. Hmmm! So, you began to wander in Europe, didn't you? Is it clear that you, somehow, are getting out of my tutorship? I protest this!" Also: "You went to the West and my fate took me to the East" (Orbeliani, 1846).

But neither is the Caucasus his native given. When he writes: "The Caucasus! I have had the honour to see this part too, and I do not regret it, though we suffered to get over the huge mountains in the cold and snow, without firewood and fire, walking day and night!" (Orbeliani, 1848) – these words prove that he was far from the Caucasus, the geographic and geopolitical and ethnocultural area. For him, it is the new, recognizable given.

Apart from the abovementioned, in terms of regional identification, one important point is worth noting: Grigol Orbeliani considers Europe as "Zagraniṣa" (abroad).

He frequently had to modify the sketches of the contradictory cultural strategies in the non-native geographic and ideological system. In spite of the charm already described above in the European environment, he insists in one of his private letters to his cousin that his son must be taught to speak Tatar and Persian (and not any European) languages ("He won't get by with English" - we read in the quotation), as it was a necessary challenge at that time. As it is seen, his relative followed his advice and Grigol Orbeliani wrote in the next letter: "I am happy that your son is learning Persian."

He advises another close relative to make his son "learn Russian and French, and, if possible, Persian, which will be very helpful."

Marginalization of thinking is a direct consequence of the lack of values and therefore strategies. Grigol Orbeliani's linguistic (that is, political and cultural) priorities are also somewhat contradictory. He has compiled a list of the languages needed for that era (in a more sophisticated way): Latin, French, German, Polish and Russian – 1848; French, German and Russian – 1848; French, German and Russian, and if you are willing - Arabic – 1848; Tatar and Persian, English – 1855.

In the first three earlier paragraphs, the addressee prefers European (French and German) and then Russian languages. Seven years later, these languages were replaced by Eastern languages: Tatar and Persian. This list of desirable languages is dictated by practical purpose – to lead life, to serve the lifestyle, and he has a completely different view for a more general purpose. He writes: "In my opinion, the system of teaching that followed Tiflis (Tbilisi system of teaching), that is, what was taught in Russian, would also be taught in French and thus a lot of time will be wasted. My point is that sciences should be taught in Russian, and literature and poetry - in foreign languages; It will be much better" (Orbeliani, 1864).

Despite Grigol Orbeliani's declarative attempt to portray the Caucasus as a monogenic space, in one of his letters (Orbeliani, 1852) in 1852, he spoke of numerous Caucasian and Persian merchandise taken from Nukhi. This segmentation indicates that in General's consciousness Caucasian is not identical to Russian.

Rarely, but we do find the passages in which multiculturalism is portrayed without contradictions. For example, "snacks, family-run lunches: fowl from sky, ice from the Caucasus, game from the woods, fish from the sea, were being served: Soup from Europe, Georgian barbecue, pilaf from Iran, cold lamb, citruses and others" (Orbeliani, 1853), - this multicultural gastronomic environment is one of the traveling details of Mikhail Vorontsov's visit to Zakatala in 1853. In spite of the great variety of people, places and events, all contradictions in gastronomic multiculturalism, all conflicts were overcome. The desired eclecticism and combination, of course, do not apply to all areas of Caucasian coexistence.

Grigol Orbeliani strives for eclectic circumstances with synthetic, cultural and religious signs (and his personal writings do possess this natural tone). He finds the key to solve problems in such givens. Let's say, among the cultural objects to be visited by the empire's representatives there is St. Nino's 'Zavedenie' (the establishment), the newly blessed Orthodox Church, the Armenian Church and the main Mosque, and even the theatre with Persian songs and others for the glorious ones.

Nevertheless, there are cases when Grigol Orbeliani appears to be overly direct and bold. This especially can be noticed in the letters sent to the viceroys - Alexander Baryatinsky and Mikhail Vorontsov. He writes to one of these addressees, M. Vorontsov, in 1855: "In my opinion, there is no Dagestan, no Chechnya; there is only an enemy and an army of empire who is supposed to resolve the bloody issue of the great fate of the Caucasus" (Orbeliani, 1852). The framework of multiculturalism is completely violated here, and the notion of "tolerance" is left aside; a new portrait of Grigol Orbeliani - a warrior for whom war is not only fun but also passion is brought to the fore. The passion which not only oppresses the light tolerant constructions, in general, towards human beings, but also the notions of the national identity; and, from the field of vision, he raises a fundamental issue – the counterbalanced empire and its army.

Among the effects of the projects planned and implemented by these addressees in the letters to the aforementioned addressees, one of the main benefits for the Caucasians is that "by teaching them labour they mitigate their morals and customs, they connect them to us by means of profitability of trade and thus prepare us for spiritual changes."

It is very difficult to determine, what other essential reasons there were for author to exclude "us" from the pronoun "them", why "we" became exclusive. What degree of identity he left us with? Any discussion of Europe, the Caucasus, Iran, broadly speaking, implies thoughts about Georgia as a geographical part of the Transcaucasia, a politically Russian empire-bound country, subject to the influence of two culturally global regions - the East and the West. The most important issue, however, is to find its own place in this region and to properly and timely evaluate the ever-changing geopolitical flows along this path.

In 1855, the General wrote to Mikhail Vorontsov about the Caucasian perception of the Russian-Turkish War: "the whole Caucasus as well as the entire world is looking with astonishment at the fierce struggle of our heroes in the Crimea; And the mountain-dwellers, who had known only Istanbul, Kizlar and Siberia, now talk about the English, the French and the Germans. So, the war has its good side too! Shamil is also keeping a greedy eye on the flow of the war, and, frustrated by the strength of the Sultanate of Turkey, he is not too keen to see the might of the Russian emperor" (Orbeliani, 1855) – It was Grigol Orbeliani, on the one hand, who emphasized the expansion of the Caucasian outlook and, on the other hand, the favorable geopolitical given brought by the war, that was advantageous for the Russian Empire.

In his personal correspondence with his close circle, Grigol Orbeliani talks extensively about his work stories, processes of the development in the Caucasus, and discusses these issues in several angles. There are times when he gets tired with all this and he passes on to personal stories. For example, in one letter he ceases abruptly the topics discussed at the beginning and moves on to another topic: "Let's finish with this and go back to the news: Babo had a daughter; Mamia Gurieli got married to Korkhmaz Melikov's daughter; I and Terezia were their foster-parents. Salome, that is baroness Saken, went to Kutaisi with the family..." Here, Grigol Orbeliani took off his uniform of the General of Empire; he has other stories to tell his friends, sometimes even to himself. A military man with such experience cannot hide his admiration for seeing the Bethany church and he advises his loved ones to visit it. He himself dedicates a lyrical masterpiece of high artistic value to a fresco seen in this temple of a woman, Georgian King.

Discussion: As we already saw, multicultural environment for Grigol Orbeliani, as well as for many other officials standing by his side is a big opportunity and big burden at the same time. They have opportunity, because national or ethnic interests of main actors of the period are somehow limited and balance of power creates some kind of stability and they receive freedom of action. But the authentic part of the environment can not feel this opportunity, this chance of action. It's still busy with retention of its own energy. Only someone else, the observer, can feel this. It is worth to mention that Grigol Orbeliani is not the authentic part of the environment. He is the observer, the analyst of environment and therefore takes part in modeling it. Very often he uses this space, freed up as a result of tension between other actors of events, as well as his own good knowledge of inner political reality of the Empire, unpredicted circumstances and does good deeds for himself and the wellbeing of his country. Good examples for this are his letters, in which he advises his closest circle to address heads of the empire with necessary projects (and names projects himself), because it's a good time now. He is a very pragmatic figure in this regard. He uses goodwill of the government for his goals. With his marginal nature, Orbeliani perfectly fits in given circumstances and easily fights rough passions inside him, like passionate protection of national identity, even though this is a part of his nature. With this kind of retreats, this kind of atrophy of values, he manages to arrange multiple infrastructural projects in Georgia (telegraph line, railway and etc) and helps carriers of many private figures.

One thing must be mentioned: despite of fact that Grigol Orbeliani initiated and brought to life many Georgian projects (publishing of old Georgian manuscripts, recovery of old Georgian chants, philanthropy...) up to this day his image is not

unconditionally positive in Georgian society. Even though his person was honored in life and after his death (his written legacy is still published, researches of his public and literature works are funded), trace of his dual life is still seen on the portrait of Grigol Orbeliani. Today we still hear the question: who was he – a traitor or a patriot. This question can be considered as anamnesis of Georgian society as well as the reflection of Georgian-Caucasian perspective.

Conclusion: The Caucasus, as a cultural and geopolitical area, is one of the main objects of Georgian thinking. The so-called Caucasus "Georgian perception", of course, is not unambiguous. The issue of the Caucasus is constantly accompanied by a kind of awe, delicacy, which is why it falls within the framework of strictly regulated political and cultural correctness. The circumstances and often unconscious conflicts reflected in Grigol Orbeliani's personal writings create a very narrow, specific, but important perspective for the dialogue of cultures. A combination of these sources offers a generalized portrait of a person working in difficult geopolitical environment. It is a portrait of a person with severe pressure and at the same time a unique opportunity.

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Restriction on the Authority to Represent in Turkish Joint Stock Companies Law

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Abstract

Turkish Joint Stock Corporations Law is based upon Swiss Law. Turkish Commercial Code of 2012 reflects a pure reception of the rules regarding the representation of the company from Swiss Law. However in 2014, Turkish Law has confronted the enforcement of Art. 371/7 TCC, which enables restrictions on the representation authority in terms of the material and monetary scope of the transaction. This study aims to bring a critical view of this regulation and to introduce a draft for a well-directed regulation with respect to restrictions related to power of representation.

Keywords: Joint stock corporation, representation, distinction between management and representation, internal regulations, delegation of representation authority.

Introduction

1. Fundamental Structure of the Regulations in Turkish Law Regarding Representation of Joint Stock Corporations

Primary sources of Turkish Joint Stock Corporations Law are Swiss Obligations Law and regulations of European Union (TCC's Preamble, General Part, par. 7). In Turkish Law, more specifically in Turkish Commercial Code published in TOG dated 14.02.2011, numbered 27846 and enacted in 2012, representation of the company is ruled under Art. 329-563 TCC and is formulated in accordance with corporate governance principles (TCC's Preamble, General Part, par. 9; further Tekinalp, 2008, pp. 635-636; Eminoglu, 2014, p. 57 ff.; Demir, 2016, p. 43). In this respect corporate management and representation of the company is subject to detailed rules (Art. 359-375 TCC).

Turkish Commercial Code is an inherent part of Turkish Civil Code No. 4721 (Art. 1/1 TCC). Both Turkish Civil Code and Turkish Code of Obligations is subject to reception from Swiss Law. Thus, the interaction between representation in terms of General Obligations Law and corporate representation is the same in Turkish Law compared to Swiss Law. In General Obligations Law, the representative acts on the name and on behalf of the represented person (direct representation) or acts on his/her own name but on behalf of the represented person (indirect representation) (Oguzman & Oz, 2011, p. 223). On the other part, in terms of the corporate representation, the representative is the representative body of the legal entity and enables the legal entity to exercise its legal capacity. Since the transaction effectuated by the representative body of the legal entity directly and solely rises its legal effects on the legal entity, representation in terms of General Obligations Law and corporate representation are distinct mechanisms.

In general, rules regarding representation in Obligations Law are equivalently applicable to corporate representation unless there is a specific rule and provided that the nature of corporate representation allows such an analogy (Oguzman & Oz, 2011, p. 223; Kirca, Sehirali Celik, & Manavgat, 2013, p. 624). For instance, rules regarding unauthorized representation are thoroughly applicable to corporate representation. On the contrary, rules regarding the requirement for specific mandate are not applicable to corporate representation, since the representatives of a joint stock company, whose powers of representation are not limited by scope, may effectuate any kind of transactions (Kirca et al., 2013, p. 625) which fall within the field of operation of the company. That particular interdependence between the field of operation (specified in the AoA) and the authorities of the representative will be detailed in Section 4 below.

Thus, the authority of representation covers all kind of transactions within the field of operation. As the activity of the joint stock company starts to intensify and becomes more complex, a detailed regulation regarding representation is needed. From a general perspective, unless otherwise agreed, TCC provides the Board of Directors with the authority of representation in the broadest way.

In cases where the structure of the joint-stock company requires a detailed representation system, in two cases, certain breakdowns are needed: delegation of the representation authority to third persons outside the board of directors and limitation of the representation authority of the legal representatives.

The aim of this study is to focus on "limitation of the representation authority in terms of subject and quantity" within the context of limitation of representation authority in joint stock companies stipulated by Turkish Law differently from Swiss Law which constitutes the primary source of Turkish Joint Stock Company Law. In order to examine the subject, first, provisions regarding representation in joint stock companies under Turkish Law will be examined and such examination shall also include the legal provisions of Swiss Law regarding the matter. In the second stage, the interaction between the representation authority and the ultra vires rule will be discussed. Following the said discussion, the ways of delegating and limiting the representation authority will be explained. In the last section, as a provision accepted only under Turkish Law yet unrecognized by Swiss Law, "limitation of representation authority in terms of subject and quantity" will be examined and certain specific legal issues arising from such rule will be discussed.

2. General Overview of Legal Provisions Regarding Representation In Turkish Joint Stock Companies Law

2.1. Provisions Regarding the Board of Directors' Representation Authority

Apart from the limitation of representation authority in terms of subject and quantity, representation in Turkish Joint Stock Company Law is regulated parallel to Swiss Joint Stock Company Law. At this stage, not all legal regulations related to the representation in joint stock companies will be a part of this study; only the general and specific rules which are directly related to our subject will be addressed.

First of all, Art. 365 TCC, under the section regarding the management and representation of the joint stock companies, stipulates the main principle regarding representation of the company: *(1) The board of directors manages and represents the company. Exceptions prescribed in law are preserved.*

The distinction between management and representation established through this rule in Turkish Law (Kirca et al., 2013, p. 600). In brief, management is related with making decisions regarding the functioning of the company and representation serves to implement transactions with third persons on behalf of the company. Powers of management and representation may be attached to the same persons or not. In any case, management and representation is independent from each other, whereas each of these functions is subject to a different regime (Nisim, 2000, pp. 31-47).

The way to use the representation authority is prescribed in Article 370 TCC: *(1) Unless a different arrangement is set in the AoA or the Board is composed of a sole member, power of representation shall be exercised by the Board of Directors with joint signatures of two members.*

This rule reflects the general principle related to representation and further to stipulating that such power belongs to the Board, it also states that the representation authority shall be effectuated with two signatures of any members (Bilgili & Demirkapi, 2013, p. 383). Whether a different regime shall be arranged in the AoA is up to the discretion of the founders or later of the shareholders of the Company, who shall arrange or form a general assembly resolution to amend the AoA.

The limits of the scope of representation is designed in Art. 371/1 TCC: *(1) Those who are authorized to represent the company may effectuate, on behalf of the company, any kind of transactions within the scope of the field of operation and shall use the trade name of the company. The company is entitled to require compensation for its loss and damages arising from transactions breaching laws or the AoA.*

Abovementioned rule, which is reviewed in detail by Yanli and Okutan Nilsson (2014, pp. 6-42), is only valid unless the power of representative authority is restricted in terms of subject and quantity in accordance with the article 371/7 of TCC. Unlike the mandate contract between individuals, the legal representatives of the company are the competent body for its representation, hence, even the transactions that require special authorization such as arbitration, waiver, settlement and acceptance under mandate contracts, are included in the scope of their power of representation (Isik, 2015, p. 32). It should be noted that, for mandate contracts, Art. 504/3 OR stipulates that, unless granted with a special authorization, the Mandatary is not entitled to initiate a lawsuit, enter into a settlement, refer to arbitration, declare bankruptcy, request suspension of bankruptcy, request concordat, draw up a promissory note, donate, enter into a surety, transfer real property or restrict it with any kind of transaction.

2.2. Provisions Regarding the Delegation of the Representation Authority

Main principle regarding the transfer of representation authority under Turkish Law is as follows:

II. Representation Authority

1. General Overview

Article 370- (2) Board of Directors may transfer the representation authority to one or more executive board members or to third persons as executive directors. At least one member of the board shall have the authority to represent the company.

Art. 370/2 TCC, preserves the rule stipulated by Art. 718/3 regarding the authorization of at least one member of the Board to represent the company. In Turkish Law, on condition that Art. 370/2 is respected, it is allowed to delegate authority to other board members or to third persons outside the board to represent the company.

Board of directors is solely and exclusively entitled to decide whether to delegate the representation authority (Yanlı, 2013, p. 448). In line with Art. 716a/4 OR, Art. 375 TCC included the appointment of representative authorities within the exclusive powers of the Board of Directors. Before the entry in force of abovementioned rule, in Turkish law practice, Board of Directors used to provide the third persons, who are not members of the Board, authority to represent the company on a continuous basis which were also exceeding the individual matters. Such malfunction has been resolved by Art. 375 TCC (Kirca et al., 2013, p. 631-632).

If the transfer of representation authority is also accompanied by a restriction of representation authority, Art. 371/7 envisages the implementation of a special procedure which will be reviewed in the following section.

2.3. Provisions Regarding the Limitation of the Representation Authority

As parallel to Swiss Law, under Turkish Law there are certain methods to limit the representation authority such as "limiting the power to the transactions regarding the headquarter or branch offices" or "requiring joint signatures of authorized signatories". Additionally, specific to Turkish Law, the option to limit the representation authority in terms of subject and quantity is also included (Art. 371/7 TCC).

In cases where representation authority is not limited or only limited to "the transactions regarding the headquarter or branch offices" or "joint signatures", Board of Directors' resolution regarding the appointment of representative authorities and the limitations of representation authority shall be registered to the trade registry office.

4. Registration and Announcement

Article 373- (1) The board of directors shall submit the notarized copy of the resolution indicating the persons authorized to represent and the forms of representation, to the trade registry for registration and announcement.

The signature circular issued by the notary public with reference to abovementioned registration process is used in order to certify the authority of the representatives for transaction security. In parallel to Art. 718a/2, these two restriction options are regulated by Art. 371/3 as follows:

2. Scope and limits

Article 371-(3) The restriction on the representation authority shall not be effective against third parties in good-faith; however, the restrictions which are registered and announced in relation to limiting the authority to the transactions regarding the headquarter or branch offices or to exercise of authority by joint signatures are valid.

The said provision which is stipulated in the first version of TCC is also preserved by the amendment made to the TCC by Law number 6552, which is published in TOG dated 11.09.2014, numbered 29116, however, the rule regarding the limitation of representation authority in terms of subject and quantity has been introduced for the first time under Turkish Law by Art. 371/7 of the TCC.

Article 371- (7) The Board of Directors, with the exception of certain representatives referred to above, may appoint non-representative members of the Board of Directors or persons bound to the company by a labor contract as commercial representatives with limited representative authority or other commercial assistants. Powers and duties of persons appointed in this manner shall be clearly stated in the internal directive issued in accordance with Art. 367. In such case, the registration and announcement of the internal directive shall be mandatory. Commercial assistants or other commercial representatives shall not be appointed with the internal directive. Commercial assistants or other commercial representatives authorized by this paragraph shall be registered in the Trade Registry and announced. The Board of Directors shall be liable jointly and severally for any damages caused by these persons towards the company or third persons.

Such legislation had been introduced due to issues arising from the implementation of Art. 371/3 TCC which is designed in parallel with Art. 718a/2 (Akdag Guney, 2010, p.186 and footnote 538). In Turkish law practice, board of directors' resolutions and signature circulars regarding the distribution of representation authorities used to contain material and monetary limitations as well as limitations regarding "headquarter or branch offices transactions" or "joint signatures" (Akdag Guney, 2010, p. 538; Kirca et al., 2013, p. 640). For instance, classification of representation authorities under specific groups such as A, B or C and authorizing group B representatives only for "transactions up to 100,000.00 TRY" and group C representatives only for "transactions regarding the customs operations" used to be a common practice. In line with the explicit provision of the law, it was accepted that limitations in terms of subject and quantity (material and monetary limitations) shall not be binding for third parties. A number of trade registry offices suggested that material and monetary limitations had no field of application within the new legal structure introduced by TCC and rejected the registration requests with regards to board resolutions containing material and monetary limitations. Art. 371/7 TCC is introduced and put into force to address the said problem.

Below, after reviewing the new rule with regards to the interaction between ultra vires rule and representation, we will be examining the legal regime introduced by Art. 371/7 TCC.

3. Interaction Between Ultra Vires Rule and the Representation Authority

Prohibition of carrying out transactions outside the scope and field of activity of the company (*ultra vires*) under Turkish Law is abandoned by TCC (Uzunalli, 2013, p. 32-33; Helvacı, 2001, p. 82-83; Oğuzman, Selici, & Oktay Özdemir, 2015, p. 262; Bahtiyar, 2019, p. 50 ff.) in the light of provisions regulating the legal personality and the capacity of the joint stock companies:

Article 125- (1) Commercial companies have legal personality.

(2) Commercial companies are entitled to enjoy all rights and undertake all obligations within the scope of Article 48 of Turkish Civil Code. Judicial exceptions regarding this matter are reserved.

However, the provisions of two separate articles concerning the scope of business must be taken into consideration together. Firstly, according to Art. 210/3 of TCC, in case that transactions outside the scope and field of the activity are carried out on a continuous basis, the company shall be subject to termination sanction.

H) Regulatory and Supervisory Authority of the Ministry of Customs and Trade

Article 210-... 3) The Ministry of Customs and Trade may initiate proceedings for termination against commercial companies engaged in transactions or in preparations to carry out such transactions that are contrary to public order or to their field of activity or against companies engaged in collusive works and activities within one year following the uncovering of such transactions or preparations. Legal provisions stipulated in specific laws are reserved.

The prevailing view among scholars is that Art. 201/3 of TCC is only applicable in cases where operations outside the scope and field of activity are carried out on a continuous basis (Uzunalli, 2013, p. 148). Thus, a distinction is made between the individual or continuous operation of transactions outside the scope of business activity. The consequence of the individual transactions carried out contrary to ultra-vires rule is regulated by Art. 371/2:

2. Scope and Limit

Article 371-... (2) The transactions, which are conducted with third parties outside the scope and field of activity by those who are authorized to represent, shall bind the company; unless it is proven that the third party was aware that the transaction is outside the scope and field of activity or they were capable of being aware given the circumstances. The announcement of the company's articles of association shall not serve as sufficient evidence alone to prove such knowledge of the third party.

As seen above, transactions carried out contrary to ultra vires rule are no longer considered related to qualification and legal personality issues under Turkish Law and they are now subject to consequences of representation without authorization.

In those periods where the ultra-vires rule had a strict application in Turkish Law, legal transactions executed contrary to ultra vires rule were legally deemed void which was posing a serious threat to the transaction security (Bahtiyar, 2001, p. 121; Uzunalli, 2013, pp. 12-15). Therefore, giving green light to transactions contrary to ultra vires rule by Art. 125 TCC while determining the legal capacity of rights and obligations of companies, is considered as a positive improvement by both scholars (Gucluturk, 2015, p. 272; Bilgili & Demirkapi, 2013, p. 53-54) and practitioners. However, Art. 210/3 of TCC which enables the Ministry of Trade to initiate proceedings for termination of the company in case of continuous transactions outside the scope and field of activity demonstrates that the legislator still attributes a value and function to the scope and field of activity of companies. With regards to individual transactions carried out contrary to ultra vires rule, the effect of such function is to bring along the consequences of unauthorized representation.

In our opinion, Art. 371/2 TCC is an accurate regulation, even though it contradicts with Art. 125 TCC. Undoubtedly, in the modern Company Law, the ultra-vires rule is gradually losing its effect (Bahtiyar, 2001, p. 123-124; Bilgili & Demirkapi, 2013, p. 53-54), and it preserves its importance only with regards to companies that are subject to the State supervision which require special authorizations for their establishment and any amendments to be made to their articles of association. However, joint stock companies that are not subject to any authorization also need protection against transactions outside the scope and field of activity. Although it might be suggested that such need is already satisfied with the provisions regarding the personal liability of board members, the preventive restriction imposed by the legislator within Art. 371/2 may serve to such purpose in a more effective way. However, several authors evaluate this norm as a "ruins" of ultra vires (Moroglu, 2005, p. 140; Kendigelen, 2012, p. 122; Bilgili & Demirkapi, 2013, p. 54).

In practice, the inconveniences caused by the said provision for the company may be overcome by elaborately designing the scope and field of activity in the articles of association. Likewise, any inconvenience for the counter-party of the legal transaction may be overcome by reviewing the relevant provisions of articles of association regarding the company's scope and field of activity prior to the execution of transaction. In the event that such transaction is carried outside the scope and field of operation without taking aforementioned measures, the unauthorized representation rules (Art. 46, 47 TCO) shall apply.

4. Delegation and Limitation of the Representation Authority

Unlike limited liability partnerships, in joint stock companies board of directors are entitled to appoint the representatives of the company. In practice, following its election by general assembly, board of directors shall convene and appoint the president and the vice-president and shall also take a resolution regarding the representation authorities. At least one board member must maintain the authority to represent the company (Art. 370/2 TCC). In cases where there is a sole director authorized to represent the company, the said member's authority to represent the company can only be restricted with requirement of joint signatures.

In cases where representation authority is delegated to specific members of the board instead of any two directors or delegated to third persons outside the board in accordance with Art. 365 TCC, provisions regarding transfer of the representation authority will apply. In all cases within the scope of the said situation, the representation authority is being taken away from board of directors and transferred to specific member(s) or to third persons outside the board (Pulasli, 2015, p. 1105). Transfer of representation authority is effectuated through a board resolution. With such a resolution, the legal regime of "representation of the company with the joint signatures of any two members of the board" is abandoned.

In the event that while being delegated, the representation authority is also restricted, this time a distinction must be made regarding the method to be followed. If the representation authority is being limited to “transactions of the headquarter or branch offices” or “requirement of joint signatures”, in this case both transfer and restriction may be effectuated through a single board resolution (Akdag Guney, 2017, p. 114; Sener, 2017, pp. 377-378). Whereas, in case of introducing material or monetary limitations to the representation authority, an internal directive must be prepared in compliance with Art. 371/7 TCC. This matter will be discussed in detail in Section 5.

The essence of the limitation of representation authority lies within economic reality. Various factors such as the scope of activity of the company (Kirca et al., 2013, p. 628), its complexity and the geographical extent of these activities require appointment of a large number of representatives on one hand and surveillance over these appointed representatives on the other. The fact that management and representation are separated (Akdag Guney, 2010, p. 168 ff.) does not constitute alone a sufficient guarantee in terms of controlling whether the representatives act in accordance with the resolutions of the managers.

If the representative is granted a significant liberty to act on its own initiative, the risk of financial indebtedness for the company becomes more severe. Since not every joint stock company is investing on effective reporting systems, such lack of reporting impedes also the functionality of internal audit (Ozkorkut, 2013, p. 29-30; Kayihan, 2011, p. 25 ff.). As we have already pointed out, the legal regime for the personal responsibility of the organs of the company (managing organs and representative organs) always steps in later and it does not promise effective results, yet again some scholars point out the relative preventive function of civil liability regime (Akdag Guney, 2010, p. 44; for the legal nature of the civil liability for board members please see Camoglu, 2010, p. 13 ff.). Therefore, the most effective solution to keep the use of such authority under control is to limit the representation authority along with its transfer.

Both Art. 718a OR and Art. 371/3 TCC stipulate that solely limitations of representation authority regarding “transactions regarding the headquarters or branch offices” or “requirement of joint signatures” may be claimed against third parties. In the first version of Turkish Commercial Code, no other regulations regarding the limitation of representation authority were included. However, the necessities in practice, impelled the legislator to regulate material and monetary limitations as well. Such limitations in terms of subject and quantity shall be implemented through a special procedure and by the virtue of their registration and announcement, they may be claimed against third parties to eliminate their good faith. To be more specific, in the event that a representative exceeds the scope of its authorization which was limited in terms of subject and quantity by an internal directive prepared in accordance with Art. 371/7 and duly registered and announced at the trade registry, the excess part of such transaction shall not be binding for the company.

5. Limitation of Representation Authority in Terms of Subject and Quantity and Issues Arising from Its Implementation

5.1. Criticism of Flaws in the Legal System

The legislator while drafting Art. 371/7 TCC, confused the concepts of “management with representation” on one hand and “joint stock company with commercial enterprise” on the other. Whereas TCC numbered 6102 is drafted by a legal committee composed of scholars and expert practitioners, the Law numbered 6552 which puts TCC into effect, has severe contradictions regarding the legal terms. Several authors have made similar criticism of the use of concept (Kirca, 2014, p. 37; Akdag Guney, 2014, pp. 1-2; Gucluturk, 2015, p. 277).

Firstly, the representative to be authorized along with several material and monetary limitations must be still considered as a representative body of the corporation. Therefore, it is definitely inappropriate to denominate the representatives with limited authorities as “commercial agent” or “other associates of the merchant”. Secondly, another incorrect approach is to suggest that limitation of the representation authority in terms of subject and quantity shall be effectuated through an internal directive to be prepared in accordance with Art. 367 TCC.

Art. 367 TCC regulates the delegation of management powers through a board resolution provided that there is an article permitting such delegation in the articles of association of the company (Pulasli, 2015, p. 1007; Dogan, 2011, p. 125; Altay, 2012, p. 170; Unal, 2014, p. 121). Transfer of management powers indicates a total or partial transfer of management authorities to certain board members or to third persons outside the board and from certain perspectives it is different from transfer of representation authorities.

Firstly, whereas a provision in the articles of association of the company that allows transfer of the management powers is compulsory to effectuate a transfer of management powers (Kirca et al., 2013, p. 599 ff.); such an article is not required for transfer of representation authority (Yanlı, 2013, p. 448; Kirca et al., 2013, p. 627; also see p. 600-601; Gucluturk, 2015, p. 274). We should note that Bahtiyar (2019, p. 234) criticizes the current regulation and points out the need for a new one, which would require a basic AoA clause for the delegation of representation powers and Tekinalp (2013, No. 12-75) claims that such clause is already *de lege lata* required. Moreover, management authorities may be transferred as a whole to third persons outside the board whereas transfer of representation authority cannot be completely transferred to third persons outside the board (Kayar, 2015, pp. 444-445). As a last point, the internal directive regarding the management authorities is not subject to registration and announcement at the trade registry (Altay, 2012, p. 174). However, material and monetary limitations on representation authority must be registered and announced. Once these differences are taken into consideration, the reference made to the internal directive regarding transfer of management powers is incorrect as to the internal directive to be prepared within the frame of Art. 371/7 TCC regarding the transfer of representation authority.

On the other hand, it is definitely unnecessary to emphasize that the said internal directive is not a means of appointment of commercial agents or associates of merchant since it is an internal directive concerning the limitation of representation authority in terms of subject and quantity.

Lastly, stipulation in Art. 371/7 TCC indicating that the board of directors shall be liable for any damages caused by representatives with limited authorities towards the company or third persons is of no significance. The legislator, at this point, seems to have abandoned the distinction between management and representation adopted by Art. 365 TCC in parallel with Swiss Law. However, as is known, whomever authorizes a representative to carry out a specific transaction, the same board member or director shall also be held directly and personally liable for any damages caused by the said transaction whereas other members of the board and directors shall only be held liable within the scope of their surveillance task. According to this, if a representative is granted authority to decide and perform a specific transaction at its own discretion, in case of any damages arising from such transaction the representative shall be directly held liable for the damages caused (Altay, 2012, p. 113, 195). However, if the said decision has been made by another director, the representatives shall only be held liable due to their warning duty arising from their managerial position either in board or in the company itself.

5.2. Our Suggestion Regarding A New Draft Article in Terms of Restriction of Representation Authority

In the light of perspective we pointed out above, the legal structure regarding the limitation of representation authority must be approached in a systematic way in Turkish Law and regulated by a new legal provision. In our opinion, characteristics and scope of such regulation should be explained as follows:

All limitations regarding the representation authority must be regulated within the frame of a unique legal provision, on a common ground.

An explicit provision of law must be introduced by the legislator in order to clarify whether registration and announcement of such limitations is sufficient to eliminate the good faith of third parties.

In case the representation authorities will be regulated by an internal directive, it must be drafted separately from the internal directive regarding the transfer of management authorities.

In the draft legislation to be prepared, a meticulous distinction between management and representation matters must be included.

Any attempt to regulate liability matters within the provisions of law must be avoided, since, the legal structure regarding the personal liability of board members and directors is already regulated in a detailed way in Art. 553 TCC ff. in compliance with Art. 752 ff. OR.

Within the lights of these principles, we present hereinbelow our draft law article regarding the limitation of representation authority. The said draft article is solely related to limitation of representation authorities and therefore during its entry into force, all other provisions regarding the representation must be preserved.

5.3. Draft Law Article- Limitation of Representation Authority

(1) The representation authority may be limited according to the following methods: Requirement of joint signature, limitation to transactions regarding the headquarter and branch offices, limitation in terms of subject and quantity.

(2) While introducing the limitation of the representation authority, only one, several or all of these methods may be adopted. In cases where there is a sole director authorized to represent the company, the said member's authority to represent the company may only be restricted by requirement of joint signatures.

(3) To regulate the representative positions which are to be created without any limitation to their authorities or through limitation of representation authority, an internal directive is to be prepared by the board of directors and it shall be registered and announced.

(4) In accordance with the internal directive, the board of directors shall determine the representatives that will be assigned in different representation positions and this decision shall also be registered and announced.

(5) The signature circular to be issued for the company shall include both the said internal directive (if there is any) and the board of directors' resolution regarding the appointment of a representative.

Conclusion

In the present study, we have examined Art. 371/7 TCC introduced in Turkish Law differently from Swiss Law with respect to limitation of the representation authority in terms of subject and quantity and the draft article that we suggest, is formulated within the scope of following principles:

All limitations regarding the representation authority must be regulated within the frame of a unique legal provision, on a common ground.

An explicit provision of law must be introduced by the legislator in order to clarify whether registration and announcement of such limitations is sufficient to eliminate the good faith of third parties.

In case the representation authorities shall be regulated by an internal directive, it must be drafted separately from the internal directive regarding the transfer of management authorities.

In the draft legislation to be prepared, a meticulous distinction between management and representation matters must be included.

Any attempt to regulate liability matters within the provisions of law must be avoided, since, the legal structure regarding the personal liability of board members and directors is already regulated in a detailed way in Art. 553 TCC ff. in compliance with Art. 752 ff. OR.

Abbreviations

AoA	Articles of Association
Art.	Article
Batider	Journal of Banking and Commercial Law
Ed.	Edition
IULR.	Istanbul University Law Review
No.	paragraph number
p.	page
par.	paragraph
TCC.	Turkish Commercial Code
TCO.	Turkish Code of Obligations
TOG.	Turkish Official Gazette
V.	volume

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¹ Except for the article of Osman Gazi Gucluturk, which has been written in English, other titles of the sources of Turkish Law have been specified in English language.

Technique Preparation of Woman's Xhoke: An Important Element of Albanian Folk Costumes

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Abstract

Folk costumes are an important aspect of the Albanian cultural heritage. Seeing the garment as one of the brightest manifestations of the material and spiritual Albanian culture, this paper through its structure undertakes to explore, document and discuss in detail the techniques and process of the xhoke preparation, as a very important element of folk costumes, both for the function and the aesthetic role it plays. Correlational research between textile material used (type and elaboration) and dress form (cutting and sewing process, and decoration techniques) in every xhoke, taken in this study, can show as similarities and differences between those used in the village and those used in the city. Xhokes, in the village dresses, appear varied as by form, which is also indicated by their cutting schemes as well as by the compositional scheme of decorations. They preserve the local aesthetic element very well, as well as the old craftsmanship of cloth making. Xhokes (xhybet), in the city dresses, appear with the same cutting scheme, which leads to their unified form. The compositional schemes of decoration on these xhokes are approximate, especially in those xhokes where their form is the same. In producing this popular costume it was very important the combination of the material with the cutting and sewing way, functionality and the final image created.

Keywords: xhoke (with sleeves or sleeveless jacket), folk costumes, technique preparation, textile materials, cutting schemes, sewing, decoration.

Introduction

Xhokes are an important element of the Albanian feminine folk dress, both for the function and the aesthetic role they play. *Xhokes* are upper garments, open at the front and usually worn above the shirt. Zojzi (1966, f. 4) argues that the *xhoke* was "the most characteristic and determining part of the Balkan peoples' dress". This role is also confirmed by the fact that it's used in almost every season of the year. They appear varied in terms of form, length and decoration within the characteristics of the respective dress and similar for the function both in the city's dress also in the village. Their length varies from under the waist to the knee, sometimes with sleeves and sometimes without them (Gjergji, 2005). Traditional town and village clothes express a different economic, social and cultural level, which are reflected in the materials used, in the style of decoration, and in the technology used for their confection. *Xhokes*, as an important part of these clothings, help us understand the specific characteristics of clothing realization by the artisans of the city and those realized within the household. The xhoke has been widely used in traditional dresses, no matter the age and gender of the user. It was used in men's clothing (outlining the simple cutting and decoration), as well as in women's dresses (where it appears more decorated). Xhokes are used at every moment of life, by young people and elders, but the most beautiful and rich ones appear in groom and bride outfits (Zojzi, 1966). The main analysis, related to women's xhokes, is mainly based on the cutting techniques used, but part of this analysis will also be the fabric used, the sewing method and the decoration. During the analysis of the village and town xhokes, known by the term xhybe, we will answer these questions:

What is the material used in realizing village and town xhokes?

How does the quality and width of the fabric used, impact the forms of the xhokes?

How does the handmade fabric used, influence in the immutability of the shape of the xhoke?

How does the manufactured fabric affect the development of new cutting patterns?

What are the cutting techniques used to create the shape of these xhokes?

Which group presents a wide variety of shapes, that of the village or town xhokes (xhybe)?

What are the similarities and differences in pattern cutting, material used and decoration?

Methodology

The paper "Technique Preparation of Woman's Xhoke" takes its journey starting from the investigation of various scientific studies, observations of the photographic materials and especially the detailed documentation of the clothing elements considered in this paper, which belong to the Textile Fund, at the Center of Albanological Studies. These clothing items date back from the 19th century and the beginning of the 20th century and belong to different regions of Albania.

Descriptive research is directed at making careful observations and detailed documentation of the xhoke as one of the most distinctive elements of Albanian folk dress.

The correlational research addresses the relationships between the type of fabric and the form of dressing (the cutting process, the sewing process and the varied ornamentation patterns) followed step-by-step at each xhoke taken under analyses.

Experimental research is carried out through:

Deconstructing the cutting process occupies the main position in this study as the most important part of dress preparation technique. The technical sketches and cutting schemes are based on measurements, observation and photographic documentation;

Discovering some hand sewing techniques, which show that sewing not only joins the cut pieces into one whole, but often assumes importance in form creation of clothes;

This paper attempts to discover and analyze a series of interesting facts on technique preparation of woman's xhoke such as: relationships between the fabric and the cutting shape; the similarities and peculiarities of cutting into similar elements of different costumes; the dependence of the cutting on the limited width of the fabric to achieve the desired shape; changing cutting techniques to xhokes made by city artisans and those produced in household conditions; development of cutting technique in the xhoke element.

Xhokes Used in Folk Costumes of the Village Women

The xhokes of the village clothing were mainly made with felt, which had a limited width ranging from 20 to 30 cm. This limited width also affected the cutting of the xhokes, which are made up of many pieces of felt. This woolen fabric was produced within the household and the clothing was made by women, or by craftsmen (xhoke-workers) who went from village to village where they found work (Gjergji, 2005). Their sewing was realized by hand with threads of wool, linen or cotton. Where parts come together, usually accompanied by strips of braids to reinforce and hide the sewing and simultaneously, decorating the xhoke. Mainly, they are under the natural color of wool, in other cases they are black or dark blue color, and rarely in red color.

The xhokes used in the villages under analyses are: Dollama used by the girls of Malesi e Madhe; Dollama (xhupja) of Mirdita women's dress, Short xhoke used in the province of Shpat (Elbasan), Dollama (sharkëla) of the Zagoria, Dollama (koreti) used in the villages of Zadrima, Guna with Rrëke of Myzeqe. As we can see, the names of these xhokes are varied and each variant is presented in different terms. Some of the names of this dress' elements are: gunë, zhgun, dollamë, dolloma, xhupetë, xhupe, cibun etc., (Zojzi, 1966) or the same xhoke was used with different names in different areas such as: jakucë, xhuli, xhëlli, xhupe, xhurdi, gujë, herkë etc., (Gjergji, 2005).

Dollama of the Girls of Malesia e Madhe (dress with xhubletë) (fig. 2, 3)

Felt, used in this *dollama*, is locally produced which is demonstrated by its quality, while the red, blue and green pieces of fabrics used for decoration are manufactured (fig. 4). The black strips, formed with braids, accompany each *dollama* sewing, to reinforce it, but at the same time to decorate it. The *dollama* decoration has a very harmonious compositional scheme

(fig. 2, 3). *Dollama* is 109 cm long. The cutting scheme clearly shows the use of many felt pieces, about 36 of them (fig. 1). The maximum width of the woven felt is 30 cm. As a result of this small width of the felt comes the use of a large number of pieces to achieve the desired shape. The *dollama* cutting scheme clearly shows old cutting techniques, such as: the straight shape (without waist); the presence of many pieces of felt and wisely use of them to create the desired form; lack of slope on the shoulder; missing the arch of the neck both in the back and in front; armhole is angular and not curved; the use of an additional piece of felt below the armpit, which allows the free movement of the arm; the sleeve is tight and, to get the shape of the arm, a triangular felt supplement is placed at the length of the sleeve.

Sewing (fig. 5) is made by hand and with the same technique we see in all the felt dresses. The thread used for joining felt parts as well as setting braids and general decoration is white linen. Also, the sewing technique is an important part of creating a *dollama* form. An example of this is precisely the placement on a sloping line of scales that are created on the cutting of the ribbons at the front (fig. 1). Like the village's *xhokes* in general, lining is not used here either.

3.2 Dollamë (xhupe) of Mirdita Women's Dress (fig. 7, 8)

This *dollama*, unlike the *dollama* of the girls of Malësia e Madhe, has no sleeves. Felt, used in this *dollama*, is produced locally, and reaches a maximum width of 30 cm.

Referring to the cutting scheme, *dollama* has a length of 95 cm (fig. 6). In this case we have a new cutting development compared to the above *dollama*, which we see: in the reduced number of felt pieces (only 9 pieces of felt); establishing the waist shape in this *dollama*; the creation of the arc in the neck area, but only in the back. These types of *xhokes* do not close at the front and point out the chest and the lower front part of the dress, creating a special aesthetic.

The embroidery on the waist (fig. 9) and back area are made on a piece of black and red felt with braids of cotton thread of many colors like: white, black, orange, pink, brown, green, blue, yellow, featuring twisted yarns forming linear shape and filling technique. These types of decorations were worked in "series" and placed on these *dollamas* after joining all of its component parts (even today, such decorative pieces of this outfit are sold in the fair markets). Black strips are also present in this *dollama* and play the same function. The decoration scheme is focused on the chest, the back and on the waist. Woolen thread is used for joining the pieces of felt, while for sewing the strap braids for decoration, is used cotton thread with different colors, according to the colors of the braids used (fig. 10). Also, in this *xhoke* lining is not used.

3.3 Short Xhoke, Used in the Province of Shpat (Elbasan) (fig. 12, 13)

The length of this *xhoke* is 75 cm, and it is made from tough felt, locally produced. This *xhoke* was worn above the shirt and the vest, and wrapped up in the body through belt (Shkurti, 2004). In this *xhoke*'s cutting scheme is noticeable: the use of felt strips to obtain the desired shape (fig. 11); waist is not reflected in the cutting scheme, but is created only by sewing on its inner side; we do not understand where the armhole is located. The armhole is formed in joining the front with the back side of the *xhoke*, leaving the armhole without sewing. This is an old way of realizing the armhole, which has been mainly used in shirts of folk clothing; missing the arch of the neck both in the back and front. The *xhoke* is decorated with a reddish-colored strip, only on the side edges, but does not accompany all the sewing parts (fig. 14). Like all felt *xhokes*, there is no liner, and the regular sewing technique used, shows that it was accomplished by craftsmen (*xhoke*-workers) (fig. 15). For this we refer to the study of Prof. Dr. Spiro Shkurti, who emphasizes that the dressing of this area "was worked within the household, except of the *xhoke*" (Shkurti, 2004).

3.4 Dollama (sharkëla) of the Zagoria Women's Dress (fig. 17, 18)

Sharkëla was worn above the long dress, and was realized in two colors: dark blue and black (Shkurti, 2004). Like other *xhokes*, *sharkëla* is made from felt locally produced with a width of 20-22 cm. *Sharkëla* has a length of 113 cm. The cutting scheme appears very interesting and advanced, compared to the *xhokes*' cutting schemes that we have analyzed above (fig. 16). Let's look at the new cutting elements: in the back and the side of it, is cut to the waist; shoulder slope; the neckline is curved, both in the back and front; the formation of the *pince* (dart) on the waist area on both sides is a very important innovation (such a practical solution shows the impact of the most advanced cutting method); the armhole is created by joining the curved front part with the corner back part.

Sharkëla is decorated with strips of braids, dominated by blue and reddish color, and somewhere green and yellow intertwined with gold thread. Braids are made of bright twisted cotton thread. The colors and the brightness of the threads contrast with the black felt. At the end of each strip, on the back, the free braids create fringes (fig. 18). Sewing is made of

cotton yarn, such as joining the felt parts with each other, and in sewing the braids on the felt (fig. 19). *Sharkëla* does not have lining either. The use of the cotton tape on the inside edge is a novelty in the aesthetics of sewing.

3.5 Koreti of Zadrime (fig. 21, 22)

Koreti of Zadrime is classified by researcher Andromaqi Gjergji in the group of *Xhoka* cut from the bottom part and this element is used only in brides costumes (Gjergji, 2005). *Koreti* is worn over the shirt and is composed of two main parts, the part of the vest and the bottom part with wrinkles in the back. In all parts of the cut edging it is associated with the beautification of manufactured straps in red and yellowish-brown colors. In *Koreti* that we have taken to analysis, the material used is felt which is locally produced. The part of the vest is totally made of red color felt. The lower part is divided in two parts, the front and the back part. The upper part is made of black felt, while the lower part is made of red fabric. The part of the vest is uncut at the shoulders and open at the collar below the waist (fig. 20, a). *Koreti* length which reaches to the knee and the front part is flat (fig. 20, a). The reverse side is formed with deep waves, that when opened they create nearly a half circle. The waves at the waist are formed with 28 pieces of felt of trapezoid shape, where a trapezoid of a width of 18 cm forms a pair (fig. 20, b). This way of creating waves is due to the limited width of the material (20 cm - 30 cm). This is a smart technical solution, in both sewing and cutting to get the desired result. Using the trapezoid for forming the wrinkles (waves) enables sewing them at the upper part of the dress (fig. 20, b). The red part below the waves consists of three pieces of manufactured fabric, with a width of 127 cm each. Sewing is carried out within the household, all with hand stitching, which seems quite clear on the inside part of the garment, as well as the placement of decorative braids sewing parts proves this, as a characteristic of all clothing in villages. On the inside part, the wrinkles are sewed with one another with a full thread to fix them and get the desired shape (fig. 23). *Koreti* does not have lining.

3.6 Guna with Rrëke of Myzeqe Women's Dress (fig. 25, 26)

The material used is felt produced under household conditions. Referring to the cutting scheme the reverse part is created by two half circles that make a full circle, but always put on the two sides by joining the back of a straight strip of felt (fig. 24). The back part is formed by three strips where the middle one is extended until the end of the *Guna*, joining from the waist down the both parts of the circle. A semi-circle is formed by 14 white felt strips. What we observe at the "*Guna with Rrëke*", in terms of form, is the similarity with the *xhokes* used in the cities, both in the circle and in the back parts. In these dresses, the circle cutting techniques are resolved through the lines that follow the shape of a half circle. The new cutting elements in this garment are: the use and ways of implementation of circle; shoulder slope; curved of the front part of the armhole; waist cutting on the back; the use of the pocket element. Sewing is done very carefully by craftsmen (*xhoke-workers*). All the straps are joined by reddish brown color strips of knitted wool, prepared by women themselves with twisted wool yarns (Mitrushi, 1976). These strips hide the seam in the upper part, but at the same time adorn the *guna* (fig. 27). The thread used for sewing is cotton. The distribution of these strips creates the idea of streams (diagonal lines that appear to flow) in the area of the circle.

Xhoke (Xhybe) Used in the Folk Costumes of the City Women

The *xhoke* was a common element in all outfits. The fabrics used for the production of these *xhokes*, were of a good quality, also the use of the gold thread embroidery was a distinctive feature of these coatings, and often these decorations covered almost the entire surface of the coating. Initially, the *xhokes* as other parts of the dresses, came readily from big city centers of the Orient, and were used by the rich strata of the city, but with the spread of this fashion, the other social strata in the city started to use them and these garments began to be produced by local craftsmen. "Gervers, (1982, p. 12) argues that "because of the Turkish expansion and occupation of the Balkans and a continuing Turkish presence even in the territories to the north, oriental fashions were as popular from the 14th to the early 20th century among the aristocracy and nobility as among the inhabitants of towns and villages". The increased demand from other strata of society, "around half of the eighteenth century", brought the need to use less costly materials, thus increasing the number of artisans in this sector. In general, *xhokes* were imitations coming from major city centers, along with them came also the accessories and clothes needed for their decoration. This "soft invasion" of Oriental fashion led to a kind of unification of dresses not only between religious divisions within ethnicity, but also a form of fashion unification within the cities of the Ottoman Empire. Gervers,

(1982, p. 17) argues that “the styles of jackets and coats, the most representative garments, often became symbols of national identity”. In Albania, as in other Balkan countries – “they remained part of royal garb and gala costume for state receptions until quite recently”. The *Xhokes* used in the City and taken into consideration are: *Pirpiri* of Leskovik Women Dress, *Xhoka (dollama)* of Pogradec Women Dress, *Xhybe* of the Catholic Women in Shkoder, *Xhybe* with sleeves used in Leskovik.

4.1 *Pirpiri* of Leskovik Women's Dress (fig. 31, 32)

The material used in this *xhoke* is manufactured fabric in blue color. This dress was worn above a long shirt or, in the case of the Muslim population, over the *tumans* (turkish trousers). We find similar models in the city of Përmet (Albanian Folk Costumes, 2001) and that of Gjirokastra (Albanian Folk Costumes, 1999). The *pirpiri* cutting scheme appears very different from the village *xhokes* cutting schemes we have discussed above, excluding the case of a *guna* with *rreke*. This similarity is related to the presence of the circle element, but realized in a completely different way (fig. 30). In the cutting scheme we observe the utilization of the entire width of the fabric, about 90 cm - 100 cm, for making half of the *pirpiria*. Add here also the fact that circle cutting requires a lot of fabric to be realized. In this way we can easily calculate the amount of fabric used for the *pirpiria*. If we take the width of the fabric about 100 cm, the length would be twice the length of the cutting scheme of the two main parts, i.e., 145 cm + 145 cm = 290 cm (i.e., about 300 cm). While the back was made with fabric fragments remained. Each side of the dress, apart from the side $\frac{1}{4}$ of the circle has also the part of the wrinkles, that is constitutes in the middle part and that joints the back part. Also the front of *pirpiri* is uncut with the circle cutting part in the back. Two additional fabric pieces join the back with the chest parts, thus taking part in creating the armpit arc. Such cutting details as: sloping shoulders, armpit arc in all constituent parts, the neck arch and collar, and the way of circle cutting, shows new forms of cutting, compared to those of the village *xhokes*. The decoration is made with braids and twisted cotton lines. Other color of the decoration creates a contrast with the blue color of the fabric. The compositional spreading of the decoration is very harmonious and strips of curved sides, frame the *xhoke* as in the front and back parts (fig. 31, 32). The side edges are decorated with wavy strips of braids. Both, the twisted thread and the braided one are sewed according to the pattern of decoration.

The sewing technique is accomplished with great skill, but very interesting is how the joining of parts is realized. By observing and analyzing the cutting scheme, we understand that the open part below the armpit is also the place where the front part is joined with the back, after first joining the three constituent parts of the back. On the inside part it is accompanied with the liner fabric, a craft technology characteristic of the dresses in the cities.

4.2 *Xhoka (dollama)* of Pogradec Women's Dress (fig. 34, 35)

The *Xhoke* of feminine dresses of Pogradec is listed in the cuttings of $\frac{1}{2}$ of the circle because it is composed of two parts from $\frac{1}{4}$ of the circle (fig. 33). The circle cutting pattern is focused on the back part, a main characteristic of the city's *xhokes*. The fabric used is red velvet. The ways of cutting create a chic style, something we see at the material used and at the embroidery (quite dominant). An interesting technical and aesthetic point of cutting, which emphasizes the elegance, is part of the waist, especially how the $\frac{1}{2}$ of the circle emphasizes its cutting along with the straps of braids. This is especially obvious at the part where the back part joins the front part, which comes down to down-belly part, emphasizing the waist lines and ends in the internal pocket (fig. 36). In terms of cutting, we have here a typology that generally accompanies all types of *xhokes* but with variations in the cutting and also in the embroidery and ornaments. In the scheme of cutting, we notice that the length of the circle cutting is kept the same (the radius of the circle) with more precision from the back side as well. For cutting, it is used the width of the fabric without distracting the development of the circle cutting from the front to the back. Although, in the front of the *xhoke*, there is no *pince* (dart), it moves on to the back part, which is indicated by the waist width at 10 cm, in the lower back. This gives plenty of charm and elegance to the feminine figure. The slope on the shoulders, the arch of the armpit and the arch of the neckline are part of this *xhoke*'s cutting scheme. In all parts of its bordure, the *xhoke* is framed with tape made with black braids and gold thread. Even embroidery is done with gold thread and black thread twisted. The embroidery part is known for its great finesse, visible in all *xhokes* used in the city (fig. 34, 35). The part of embroidery is accompanied with cardboard, on the inner side, which guarantees the quality of embroidery and stability. In front, in the chest part, buttons (*sumbulla*) are put on both sides (about 15 on each side) coated with gold thread and black thread. In the interior part, the *xhoke* is accompanied by an internal cotton line.

4.3 Xhybe of the Catholic Women in Shkoder (fig. 38)

The fabric used in this *xhybe* is red velvet drapery. In comparison with the other two *xhokes*, this is shorter and covered completely with decorations and stripes with black braids. *Xhybe's* length is around 66 cm, and dressed on the body emphasizes the bloated form of Turkish trousers.

Regarding the cutting scheme, it appears the same as the other two *xhokes*. The front part cut along with the $\frac{1}{4}$ circle, and both parts together form the $\frac{1}{2}$ circle (fig. 37). For cutting the $\frac{1}{2}$ circle, it is used the sufficient width of the fabric. Both cut parts are sewed in the down part and in the middle part thus creating the needed width to form the back part. Also, the shoulders, arch of the armpits and the arch of the neck are the same as those of the other two city *xhokes*.

In the three cutting schemes we notice that the front part is not disconnected at the waist and it is united with the part of the circle cutting. Sewing is accomplished with such a craftsmanship, that the *xhoke* seems to be molded into a single body. The liner fabric is also placed very carefully. The technique of decoration is a perfect realization and creates a very interesting texture relief (fig. 38). The relief decoration and the cardboard placed below the fabric, to keep the burden that creates decoration, make this *xhybe* appear as frozen. The pattern decoration consists in the small form of two leaves, which rhythmically spread across the surface of the *xhybe*. These small patterns were all worked in series and then placed through sewing over the *xhybe*. The side edges are decorated with wavy strips of braids.

4.4 Xhybe with Sleeves used in Leskovik (fig. 40, 41)

This *xhybe* with sleeves is made by the artisans of the city, like other *Xhokes*. This is observed: in the material used, which is black wool fabric; in the manner of cutting, typical for city *xhokes*, as well as in sewing and decorating. The length of *xhybe* is 113 cm, and the cutting scheme is similar to the other *xhoke's* scheme we analyzed, but it is more similar to the *pipiri* of Leskovik (fig. 39). Embroidery is made with braids, with gold thread and spread almost all over the *xhybe*, creating concentrations in certain areas and a beautiful contrast to the black color of the fabric.

The decoration patterns are floral and embroidered with great skill (fig. 40, 41).

Comparative overview and conclusions

In the cutting patterns analysis, the fabric used the way of embellishment and the way of sewing, the similarities and differences between the city and the village *xhokes* are clearly seen. In terms of similarities, they have to do with aesthetic of *xhoke's* function in different clothes. In both cases, as in the city and in the village, *xhokes* are a very visible element in clothing and play an important role in shaping their silhouette and in general they are quite fancy. Even decoration techniques have similarities, both from the use of braiding strips and the embroidery. One of the main differences is the material used for the realization of these *xhokes*, felt produced within the household for the village *xhokes* and the manufactured fabric for the city *xhokes*. In the cutting schemes, the difference between city and village *xhokes* is clear, as well as the various level of influence of civic fashion in the village *xhokes*. In order to make a comparison between them, we carefully observe the characteristics of the village and city *xhokes*.

The distinctive characteristics of the village xhokes:

The village *xhokes* consist of many pieces of felt, due to the narrow width of the felt sheet, about 20-30 cm. In general, the *xhokes* are sleeveless, but also with sleeves (as in the case of *dollama* of *Malesia e Madhe*). In the case of long sleeves, they are narrow and take the shape of the arm through a triangular extension placed on the sleeve length. Additional parts are used in the armpits. The armhole is formed by straight cutting lines and corners (noted as in the sleeveless *xhoke*, as well as those with sleeves). Most of them lack the slope of the shoulder. The length of the village *xhokes* varies in different clothing, they are long and short. In forms, they appear varied, including the forms in circle cutting. The village *xhokes* are mostly uncut in the waist, but we also have cut variants to the waist (as in the case of the *koreti* or in the case of the *kraholi* of *Xhubleta* (Nini, 2013). Furthermore, part of the pattern cutting scheme are also those cut on the back waist. Such examples are *Guna* of *Myzeqe*, very similar in shape to the city's *xhoke* and *Sharkëla* of *Zagoria*. There are two ways to sew the village *xhokes*. One is when the pieces are joined through the braids strip (fig. 28) and the other when the braids strip is not used (fig. 29). All the village *xhokes* have no liner.

The distinctive characteristics of the city's xhokes:

The manufactured fabric used in the city's *xhokes*, had a considerable width, which makes it possible to realize such sophisticated cutting, responding to the tastes of time, but giving the dress even a kind of elegance. The pattern cutting scheme is typical for civic *xhokes* in general, regardless of the regional origin it belongs to. The city *xhokes*, just like the ones in the village, are generally sleeveless, but also with sleeves (as in the case of *Leskovik xhybe*). The pattern sleeves are made without fabric additional pieces. The armhole, both in sleeveless and with sleeves *xhoke*, is with arch and very close to modern cutting. The sloping shoulders can be clearly observed in all the city *xhokes* cutting scheme. City *xhokes* are also cut only on the back waist. The differences from one scheme to the other are small details, such as: the addition of waves to the back part of the *Leskovik xhoke* (with sleeves or sleeveless), or tangential cutting in the part below the armpit that connects to the back side in the *xhoke* of Pogradec. But these details do not change the cutting scheme, which remains the same in all city *xhokes*.

As for sewing, it is more sophisticated than in the village outfits. On the inside, all seams are covered with liner and the area where the liner is joined with the side of *xhoke*, is sewed with great care. The purpose of the craftsman was to provide aesthetically pleasing outfits even on the inside, thus being closer to the modern concept, something that we don't see in the village *xhokes*. Also, the place where two parts are sewed together does not cover with braid strips intentionally as in the village *xhokes*, this is because:

First, the width of the fabric does not bring fragmentation of the dresses, as in the village outfits, due to the lack of fabric width (but not forgetting that in the garment of the village this thing is done with great wit) and

Secondly, the seam was made with a lot of refinement, as it was by hand, and by the sewing machine.

The decorative straps, in the city's *xhokes*, are mainly placed on the side edges and on the waistline. The embroidery is made with braids and various threads of gold, silk or cotton, according to the user's economic condition. In general, the decoration creates contrast to the color of the fabric used and the compositional scheme is unique to each type. The decorative rhythm harmoniously follows the cut, highlighting it in specific moments, such as on the waist. The patterns are floral and embroidered with care.

5.1 Circle cutting patterns comparative overview

In analyzing the *xhokes* of the city's dresses we saw that the cutting scheme is similar. The cutting technique, in the four cases, is $\frac{1}{2}$ of the circle. The circle is placed across the width of the fabric and uncut from the front part of the dress.

We have a totally different picture with the *xhoke* of the village. Every cutting scheme has a completely different situation and constitutes a separate technique. *Guna* with *Rreke* has the cutting technique of two semi-circles and each semi-circle is composed of 14 strips of felt. The circle cutting in the *Koreti* of Zadrima, is created by positioning the trapezoidal pieces in a very regular waiving. The part of circle in the *Kraholi* of *Xhubleta*, appears quite unique. Even though concentrated in the back part, and with regular waves, this part is a bit bigger than a full circle (Nini, 2013).

Conclusions

In the analysis of the cutting schemes of women's city *xhokes* we noted that

The city's *xhokes* are presented with the same cutting scheme, which leads to a unified form of them.

Compositional decoration schemes in city *xhokes* appear to be approximate, especially in those jackets where their shape is the same.

The circle cutting scheme is similar in city *xhokes*. The reasons for this result are:

Considerable latitude of the manufactured fabrics made it possible the simplification of the techniques used to create the circle cutting, making it more practical, and brought its mass application.

The first fashion station of that time that comes from major centers are cities and therefore we see the influence of oriental aesthetics, which is reflected much more in the *xhokes* used in the cities. We see this effect in the material used, cutting techniques of sewing and decoration.

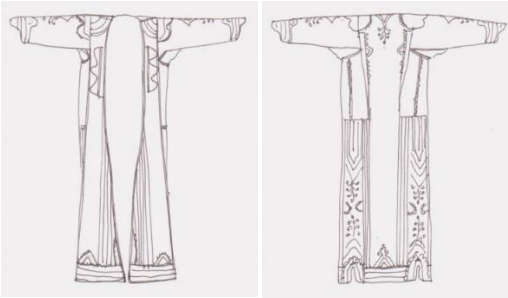


Figure 2. Technical sketch, Front view

Figure 3. Technical sketch, Back view



Figure 4. Decoration detail

Figure 5. Sewing detail

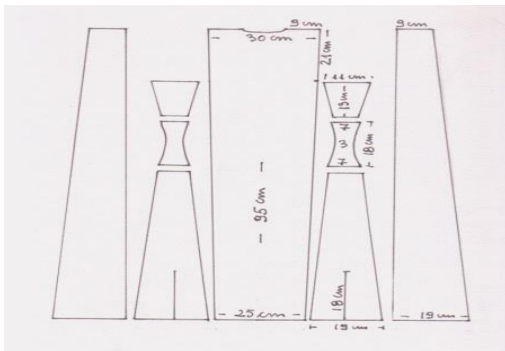


Figure 6. Cutting scheme, *Dollama* (xhupe) of Mirdita Women's Dress

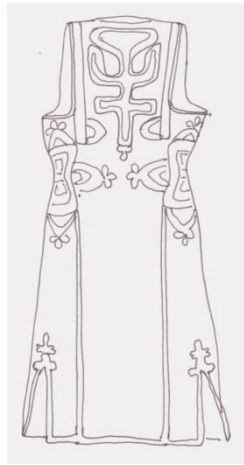


Figure 7. Technical sketch, Front view

Figure 8. Technical sketch, Back view



Figure 9. Decoration detail

Figure 10. Sewing detail

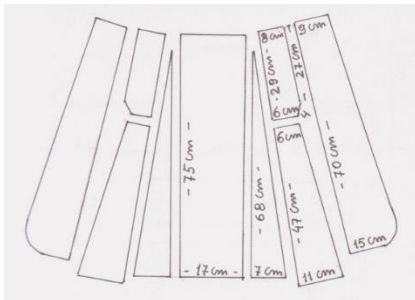


Figure 11. Cutting scheme, Short Xhoke, Used in the Province of Shpat (Elbasan)

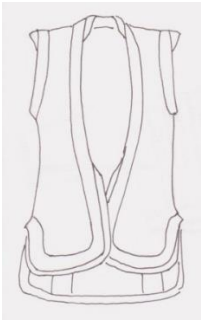


Figure 12. Technical sketch, Front view

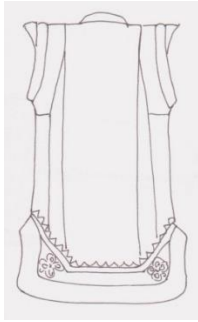


Figure 13. Technical sketch, Back view



Figure 14. Decoration detail



Figure 15. Sewing detail

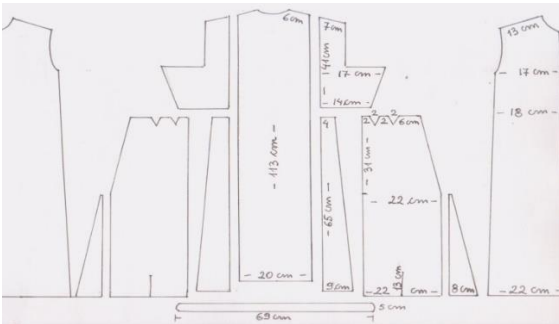


Figure 16. Cutting scheme, Dollama (sharkëla) of the Zagoria Women's Dress



Figure 17. Front view



Figure 18. Back view



Figure 19. Sewing detail

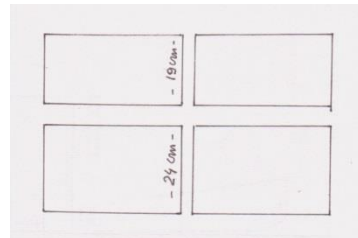
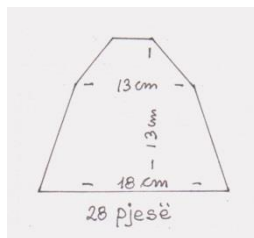
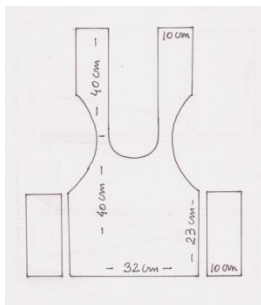


Figure 20. a, b, c. Cutting scheme, Koreti of Zadrira



Figure 21. Front view



Figure 22. Back view



Figure 23. Sewing detail, Trapezoid forming the wrinkles (waves)

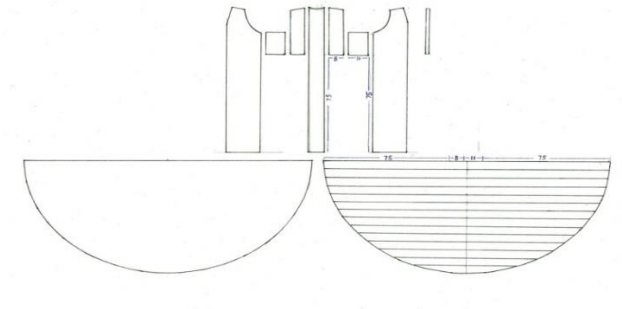


Figure 24. Cutting scheme, *Guna* with *Rréke* of Myzeqe Women's Dress



Figure 25. Front view



Figure 26. Back view



Figure 27. Decoration detail

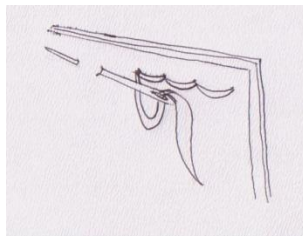
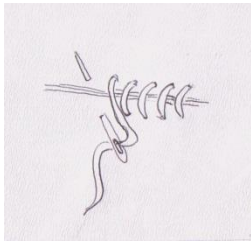


Figure 28. 29. Sewing techniques of village xhokes

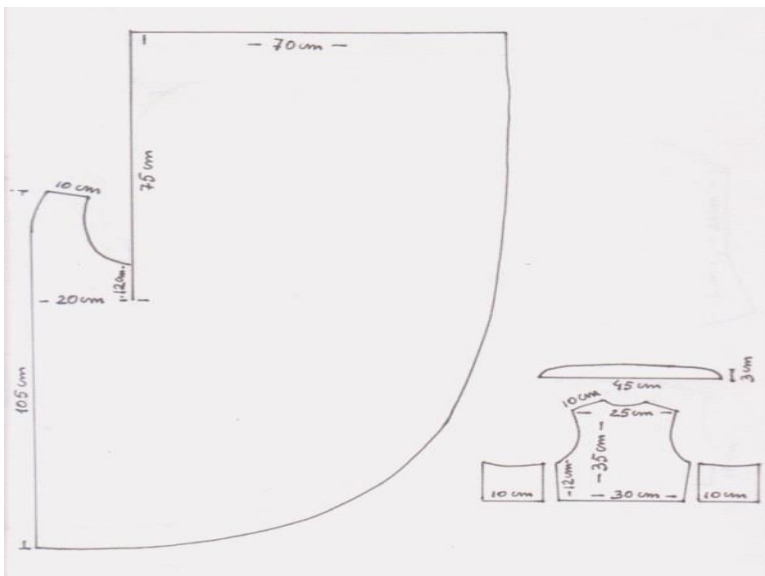


Figure 30. Cutting scheme, *Piripi* of Leskovik Women's Dress



Figure 31. Front view



Figure 32. Back view

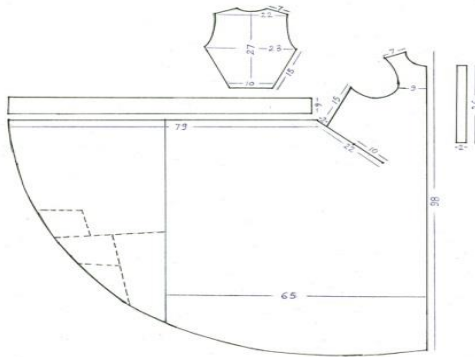


Figure 33. Cutting scheme, Xhoka (dollama) of Pogradec Women's Dress



Figure 34. Front view



Figure 35. Back view



Figure 36. Pocket on the belly part

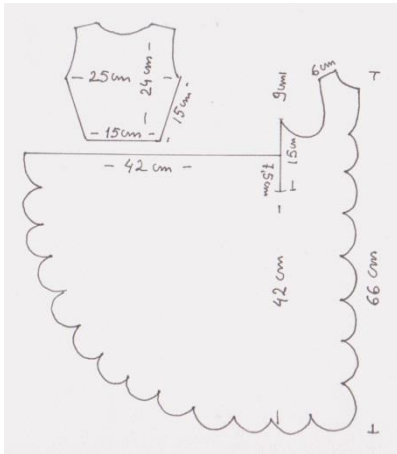


Figure 37. Cutting scheme, Xhybe of the Catholic Women in Shkoder



Figure 38. Xhybe of Shkoder

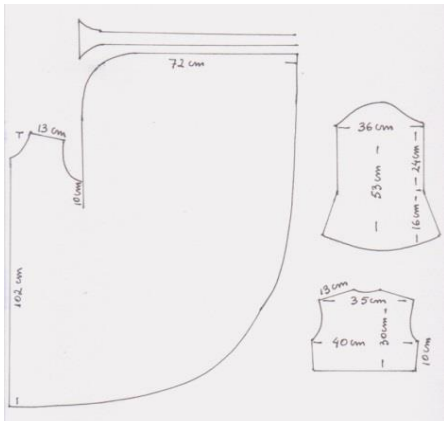


Figure 39. Cutting scheme, Xhybe with Sleeves used in Leskovik



Figure 40. Front view



Figure 41. Back view

The Impact of Syrian Refugee on Jordanian National Security

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Abstract

The protracted conflict in Syria and the deterioration in the security situation inside has brought about an unprecedented refugee crisis over the past six years, where it is estimated that over 5 million Syrian refugees have fled to neighboring countries by 2017. As one of the neighboring host communities for refugees, Jordan has entailed significant costs at the economic, social, political, and security levels. This study aims at assessing the impact of Syrian refugees on Jordan's security, as well as the potential threats and challenges generated by the escalation of the Syrian crisis on the kingdom. Forced immigrant implications for host communities are diverse. Therefore, it should be taken into consideration the host communities' economic, social, political, and infrastructure status when addressing those implications. The Syrian refugee crisis has placed financial, social, and institutional strains on Jordan as a host community. It is in the light of this that Syrian refugees might be considered as a threat to the socio-economic, political stability of the kingdom and most importantly internal and national security.

Keywords: Jordan, refugees, national security, political, economic, crisis

Introduction

The adoption of the 1951 refugee convention is considered one of the most significant achievements in the humanitarian field. It has clearly addressed the refugee problem as "a matter of concern to the international community and must be addressed in the context of international cooperation and burden-sharing".¹ As a country surrounded by intractable conflicts, Jordan has shared in bearing the burden on behalf of the international community as it has always been a safe haven for refugees and forced migrants throughout its history. In addition to receiving Palestinians since the exodus of 1948, Jordan has also hosted refugees from Lebanon during the 1975-1991 civil war, Iraq since the 1991 Gulf War and after the Anglo-American invasion in 2003, and most recently Syrian refugees since the escalation of the conflict since 2011.

The magnitude of the impact of Syrian refugees on Jordan as a host community has generated political, economic, social, as well as security challenges that demanded immediate and sufficient response regionally and globally.

A Jordanian census performed in November 2015 showed that there are about 1.4 million Syrian refugees residing in the country's different governorates, as of May 2017, there were 659,246 registered Syrian refugees in Jordan,² meaning that more than 50% of Syrian refugees in Jordan are unregistered.

The majority of the refugees in Jordan live in the local communities rather than refugee camps Total urban, per urban and rural population (518,044) consist of 79% of the Total Syrian refugees register with UNHCR, as shown by table 1.

¹ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137. available at: <http://www.refworld.org/docid/3be01b964.html> [accessed 16 March 2017]

² "UNHCR Syria Regional Refugee Response/ Jordan". UNHCR. May 1st 2017. Retrieved May 15, 2017.

Table (1) Registered Refugees by Region in Jordan as of May 2017

Region Gov emorate	Total Populations, Individuals	%
Amman	178,289	27%
Mafraq	158,928	24.1%
Irbid	136,048	20.6%
Zarqa	108,998	16.5%
Balqa	19,091	2.9%
Madaba	11,045	1.7%
Jarash	9,561	1.5%
Dispersed in Jordan	8,642	1.3%
Karak	8,574	1.3%
Ajlun	7,664	1.2%
Maan	7,426	1.1%
Aqaba	3,436	0.5%
Tafilah	1,544	0.2%
Total	659,246	

Source: UNHCR, The UN refugee Agency, Syrian Regional Refugee Response. Inter-agency information sharing portal, as of May 1, 2017.

The refugees whom live in camps –Zaatari, MargeebAlfhood, and Azraq, within Jordan total (141,202), consist of 21%, which had added a large strain on the country's infrastructure, particularly towns in northern Jordan adjacent to the Syrian border.¹ And table (2) shows the Syrian Refugees live in Camps.

Table (2) Registered Refugees by Camps in Jordan as of May 2017, Source: gathered information by the Author

Table (3) Budget Requirement for Sectors Affected by Refugees Crisis.

Refugee camp	Total Populations, Individuals
Zaatari	79.895
MrageebAlfhood	7.408
Azraq	54.184
Total	141.487

¹"Jordan Struggles Under a Wave of Syrian Refugees". *The New York Times*. *The New York Times*. 3 February 2016. Retrieved 8 April 2016.

SECTOR	2015	2016	2017	2018	2019	TOTAL
EDUCATION	257,903,446	249,638,101	336,784,742	431,085,479	416,670,088	1,184,540,309
ENERGY	134,006,100	107,400,000	69,030,000	71,190,000	54,780,000	195,000,000
ENVIRONMENT	7,300,000	2,900,000	3,800,000	5,445,000	1,910,000	11,155,000
Food security	297,096,664	266,471,701	209,867,233	211,022,295	216,345,314	637,234,842
HEALTH	233,524,046	183,354,762	191,222,849	168,973,511	146,267,059	506,463,419
JUSTICE	12,090,967	11,402,000	12,220,000	14,470,000	11,700,000	38,390,000
LIVELIHOOD			117,285,918	68,687,417	62,137,425	248,110,760
Local Governance and Municipal Services	81,707,458	69,163,402	72,974,453	66,354,204	55,075,988	194,404,645
SHELTER	85,493,000	32,157,984	34,543,250	29,903,750	27,400,000	91,847,000
SOCIAL PROTECTION	388,594,603	420,385,331	388,211,591	246,224,532	199,481,247	833,917,370
TRANSPORT	42,200,000	28,300,000	36,335,000	29,415,000	12,780,000	78,530,000
WASH	306,750,000	238,800,000	228,876,578	265,466,481	164,507,318	658,850,377
MANAGEMENT	1,304,000	1,420,000	620,000	810,000	640,000	2,070,000
Sub Total JRC Programmatic Response	1,846,970,284	1,611,393,281	1,701,771,614	1,609,047,669	1,369,694,439	4,680,513,722
Sub Total Direct Budget Support	948,776,676	1,045,384,053	1,148,871,817	1,289,698,275	1,162,739,596	2,961,764,748
Grand total	2,991,736,960	2,657,167,333	2,650,643,491	2,593,700,944	2,397,934,035	7,642,278,470

Sources: The Jordan Response Plan for the years 2014-2019 Gathered by the authors.

Problem Statement

Forced immigrant implications for host communities are diverse. Therefore, it should be taken into consideration the host communities' economic, social, political, and infrastructure status when addressing those implications. The Syrian refugee crisis has placed financial, social, and institutional strains on Jordan as a host community. It is in the light of this that Syrian refugees might be considered as a threat to the socio-economic, political stability of the kingdom and most importantly internal and national security.

Research Questions

The study answers the following question: What are the impacts and implications of Syrian refugees on Jordan's security and stability?

National Security Definition:

Security is generally defined as the freedom of any danger or threat. According to the Institute for Security and Open Methodologies (ISECOM) in the OSSTMM 3, security provides "a form of protection where a separation is created between the assets and the threat." These separations are generically called "controls," and often include changes to the asset or the threat.¹ So it is a state's ability to maintain its sovereignty and independence by identifying potential threats and

¹ISECOM - Open Source Security Testing Methodology Manual (OSSTMM). (2017). Isecom.org. Retrieved 4 April 2017, from <http://www.isecom.org/research/osstmm.html>

elements crucial to its survival.

A typical definition of security has been a source of debate especially from a realist view of security which considers the state as the main actor, and survival as its main objective, thus seen as a "derivative of power"¹ and simplifies the complex concept of security as almost a "synonym for power".² Therefore, the concept of security emphasizes the use of force and military power to counter external threats and ensure the survival of the state.

The concept of security has developed after the cold war, because potential threats were not only of traditional military kind, but also of economic, political, social, environmental nature.

Samuel Makinda defines security as "the preservation of the norms, rules, institutions and values of society"³ He states that all the institutions, principles and structures associated with society, including its people are to be protected from "military and non-military threats".⁴

The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) expanded the definition of security calls for a wide range of security areas:⁵

1. Economic: creation of employment and measures against poverty.
2. Food: measures against hunger and famine.
3. Health: measures against disease, unsafe food, malnutrition and lack of access to basic health care.
4. Environmental: measures against environmental degradation, resource depletion, natural disasters and pollution.
5. Personal: measures against physical violence, crime, terrorism, domestic violence and child labor.
6. Community: measures against inter-ethnic, religious and other identity tensions.
7. Political: measures against political repression and human rights abuses.

Joseph J Romm, states that the phrase "national security" was not commonly used until World War II, and 1947 National Security Act, which established the National Security Council.⁶

Arnold Wolfers noted that national security remains an ambiguous symbol since it can mean different things to different people, and there is no universally agreed upon definition of the term.⁷

Harold Brown, U.S. Secretary of Defense from 1977 to 1981 in the Carter administration defined national security as the ability to preserve the nation's physical integrity and territory; to maintain its economic relations with the rest of the world on reasonable terms; to preserve its nature, institution, and governance from disruption from outside; and to control its borders.⁸

Barry Buzan classifies sectors of security analysis as follows: military security, political security which is the organizational stability of states, systems of government and ideologies that give them legitimacy.

Economic security meaning access to the resources, finance and markets necessary to maintain adequate levels of welfare and state power. Societal security is concerned with sustainability, within satisfactory levels conditions of evolution of traditional patterns of language, culture, customs, religious and national identity, and environmental security.⁹

¹Buzan B, *People, States and Fear: An Agenda for International Security Studies in the Post- Cold War Era*, Lynne Rienner Publishers, 1983,8

² Ibid

³Makinda, Samuel M. *Sovereignty and Global Security*, *Security Dialogue*, 1998, Sage Publications, Vol. 29(3) 29: 281-292.

⁴ Ibid

⁵ Human Security Unit, United Nations Office for the Coordination of Humanitarian Affairs, *Human Security in Theory and Practice* (http://hdr.undp.org/en/media/HS_Handbook_2009.pdf)

⁶Romm, J. (1993). *Defining national security: The Nonmilitary Aspects* (1st ed.). New York: Council on Foreign Relations Press.

⁷Wolfers, A. (1952). "National Security" as an Ambiguous Symbol. *Political Science Quarterly*, 67(4), 481.

<http://dx.doi.org/10.2307/2145138>

⁸Brown, Harold (1983) *Thinking about national security: defense and foreign policy in a dangerous world*. As quoted in *Watson, Cynthia Ann* (2008). U.S. national security: a reference handbook. *Contemporary world issues* (2 (revised) ed.). ABC-CLIO. p. 281. ISBN 978-1-59884-041-4. Retrieved 5 September 2017.

⁹Buzan B, *Security: A new Framework for Analysis*, Lynne Rienner Publishers, USA, 1998,8

According to a new report by the United Nations Higher Commission for Refugees (UNHCR), Jordan is the second largest refugee-hosting country in the world when compared to the size of its population.¹ The massive impact of Syrian refugees on the kingdom can only be understood within the framework earlier proposed by Buzan. The five sectors of politics, economy, military, society and environment will be examined to assess those five sectors as components of Jordan's national and internal security.

There is no doubt that Jordan has faced significant external and internal threats to its national security. A country with poor resources and directly influenced by the push and pull factors of regional politics and players due to its location. Surrounded by Israel, Syria, Iraq, and Saudi Arabia, Jordan struggles in maintaining stability and security. It is both a blessing and a curse for Jordan to share the burden of the Arab-Israeli spillover, the waves of refugees from Iraq and Syria and refugees from different Arab states. However, those pressing issues attracted foreign aid and support for Jordan, boosting its role as a key player in the region and maximizing its security. But Jordan today faces more challenges than ever, and unless an adequate immediate response is provided, its national security can be subject to more serious threats, especially after the Syrian refugee influx.

Socio-Economic Impacts of Refugees

Hosting a large number of Syrian refugees has added to the negative economic effects and put public services under pressure, the camps has further aggravated the kingdom's already poor infrastructure and scarce resources. As Jordanians increasingly feel the impact on their daily lives, and security concerns grows, the increase in unemployment rates, as well the rightful access for all citizens to quality public services, education and health facilities Jordanians have found themselves confronted with additional competition from Syrians in local job markets, with a dangerous increase in child labor, which added pressure on local wages and caused food, fuel, rent and in some cases, water price inflation.

The Syrian refugees have flooded the local labor market and affected the chances of the local residents, especially the lower classes, where most workers are unskilled, to earn a respectable living. These refugees intensify the competition for jobs, and prompt both higher rents and lower wages than what was previously paid to Jordanian employees. Social cohesion between Syrians and host communities has deteriorated and the Syrian crisis become progressively politicized (EUI 02/2015).

One of the challenges that face Jordan as a host community for Syrian refugees is responding to their needs which place an enormous pressure on the kingdom's poor infrastructure, economic, institutional and natural resources. This sudden increase in the population means more demand and competition for access to public utilities, schooling, health services, infrastructure and jobs.

Also, the quality and availability of education and health care have declined as overburdened facilities have struggled to cope with the significant increase in numbers of students and patients. Schools are overcrowded, even though a double-shift system has been introduced in which Jordanians are taught in the mornings and Syrians in the afternoons. People wait a very long time before receiving medical attention. Local water shortages have also increased. Municipalities lack sufficient capacity and funding to deliver and maintain essential services for the tens of thousands of new residents, the arrival of whom has created a need to build new roads, expand the electricity infrastructure and collect much more waste.⁹

Another reason for Jordan's burgeoning trade deficit is the closing of trade routes between Jordan and Syria. Syria is an essential trade route for Jordan for imports and exports. Closing this trade route impacts negatively on many trade agreements between Jordan and countries in the region, and hence on Jordan's economy, and is forcing the Jordanian government to seek commercial alternatives.

The cost of hosting refugees with scarce international aid impacts the kingdom's services sectors, like education, health, water, energy and housing. Increasing pressure on public finances and affecting the quality of northern governorates could exacerbate vulnerabilities for the poorest segments of the Jordanian population, specially the competition in the job market and the high level of unemployment among Jordanian youth.

¹Jordan second largest refugee host worldwide — UNHCR. (2017). *Jordan Times*. Retrieved 5 April 2017, from <http://jordantimes.com/news/local/jordan-second-largest-refugee-host-worldwide-%E2%80%9494-unhcr>

Since the outbreak of the crisis, Jordan coordinated with UNHCR to deal with the Syrian Refugee situation, the first waves of Syrian refugees were welcomed and hosted by Jordanian families in bordering towns, especially Ramtha. But with the increase in the influxes, Syrians were seen occupying public parks and spaces. In the meantime, Al Za'atari Camp was established in Mafraq.¹

Perhaps one of the challenging stages for both refugees and the host country is employment and social integration. While hopes remain for some refugees to return to their homes after the end of the conflict, the Syrian blood shed scenario is unlikely to reach an end. Support from international organizations at the beginning of the conflict was sufficient, but now since the highest percentage of refugees live outside camps, they need to find jobs and a stable income. This in return fuels frustration and anger among Jordanian youth who suffer from unemployment and face competition from Syrian labor that is willing to work for a modest wage.

The impacts of the refugee presence in a host country can be both positive and negative.² It all depends on factors related to the state's economy, policy, demography, geography and so on. A refugee situation can benefit and harm the host country altogether. For this reason, Jordan released the Jordan Response Plan Document to create balance between supply and demands of refugee and vulnerable Jordanian community needs.

Generally speaking, the refugee presence in hosting countries may impact ethnic balance of hosting areas, or lead to social conflict, and hinder the deliverance of social services. It has been a misconception that Syrian refugees seem to benefit from access to resources that may not be available for the host community members. This is only because the host community itself lacks the same resources as the refugees, especially in northern governorates which represent the largest refugee receiving community.

One of the social challenges facing Jordan's economy is poverty. The presence of Syrian refugees would force the government to double its efforts in combating this phenomenon. The competition on financial resources which were directed towards vulnerable Jordanian communities and the popular sympathy with the Syrian issue led many to extend their support to the Syrians at the expense of Jordanians. It is strongly believed that it has had an impact on efforts made by civil society organizations and individuals in combating poverty.³

¹Al Wazani, K. A., (2014). *The Socio-Economic Implications of Syrian Refugees on Jordan: A Cost-Benefit Framework*. KAS -Konrad-Adenauer-Stiftung. Retrieved from <http://www.alnap.org/resource/20075>

²United Nations High Commissioner for Refugees. 2004. *Economic and Social Impacts of Massive Refugee Populations on Host Developing Countries, as well as other Countries*. Standing Committee. UNHCR, EC/54/SC/CRP.5.

³Al Wazani, K. A., (2014). *The Socio-Economic Implications of Syrian Refugees on Jordan: A Cost-Benefit Framework*. KAS -Konrad-Adenauer-Stiftung. Retrieved from <http://www.alnap.org/resource/20075>

Table (4) Financial Requirement for the Protection Sectors

FINANCIAL REQUIREMENTS FOR THE SOCIAL PROTECTION SECTOR					
SOCIAL PROTECTION OVERALL OBJECTIVE TO PROVIDE ALL VULNERABLE GROUPS AFFECTED BY THE CRISIS WITH ACCESS TO IMPROVED SOCIAL PROTECTION SERVICES AND LEGAL PROTECTION FRAMEWORKS IN ALL GOVERNORATES AFFECTED BY THE SYRIA CRISIS.		2017	2018	2019	TOTAL
		388,211,591	246,224,532	199,481,247	833,917,371
SPECIFIC OBJECTIVE 1	STRENGTHENED AND EXPANDED NATIONAL AND SUB-NATIONAL PROTECTION SYSTEMS TO MEET THE INTERNATIONAL PROTECTION AND/OR SOCIAL PROTECTION NEEDS OF VULNERABLE GROUPS IN THE GOVERNORATES MOST AFFECTED BY THE SYRIA CRISIS	203,857,543	114,263,313	90,567,994	408,688,851
SPECIFIC OBJECTIVE 2	TO EXPAND NAF, MOSD, ZAKAT FUND AND OTHER CASH AND IN-KIND ASSISTANCE PROGRAMMES – INCLUDING CASH ASSISTANCE 'GRADUATION' AND SOCIAL PROTECTION PLATFORM PROGRAMMES - TO REACH INCREASED NUMBERS OF VULNERABLE JORDANIANS IN COMMUNITIES AFFECTED BY THE SYRIA CRISIS	16,329,048	19,330,548	21,531,648	57,191,244
SPECIFIC OBJECTIVE 3	IMPROVED SOCIAL PROTECTION AND POVERTY ALLEVIATION MECHANISMS FOR VULNERABLE PEOPLE AFFECTED BY THE CRISIS IN ORDER TO ENSURE THAT BASIC HOUSEHOLD NEEDS ARE MET	7,925,000	7,925,000	7,925,000	23,775,000
SPECIFIC OBJECTIVE 4	TO PROVIDE LIFE-SAVING BASIC NEEDS ASSISTANCE TO SYRIAN REFUGEE HOUSEHOLDS AND VULNERABLE FAMILIES AFFECTED BY THE CRISIS INSIDE THE CAMPS AND IN NON-CAMP SETTINGS.	160,100,000	104,705,671	79,456,605	344,262,276

Sources: The Jordan Response Plan for the years 2014-2019 Gathered by the authors.

Direct Budget Support

The JRP 2017–19 plan seeks to address the needs and vulnerabilities of Syrian refugees and Jordanian people, communities and institutions affected by the crisis through the above mentioned 12 sectors. However, income losses and budgetary costs which burden the Jordanian economy cannot be addressed through the implementation of the intervention. The table below shows the major sectors that require direct budget support to compensate for the additional costs and losses resulting from the Syria crisis.

Table (5)_Direct Budget Support

	2017	2018	2019
1 SUBSIDY			
1.1 FOOD (WHEAT, BARLEY AND BRAN)	33,343,783	37,403,337	41,908,648
1.2 ELECTRICITY	179,500,000	184,900,000	190,700,000
1.3 WATER	25,000,000	25,000,000	25,000,000
SUBTOTAL	237,843,783	247,303,337	257,608,648
2 SECURITY			
2.1 MILITARY	218,563,759	236,541,426	257,552,312
2.2 CIVIL DEFENSE	39,639,432	42,077,081	45,909,843
2.3 GENDARMERIE	41,148,069	43,896,630	48,043,412
2.4 POLICE	127,611,817	134,059,095	143,977,838
SUBTOTAL	426,963,078	456,574,232	495,483,404
3 INCOME LOSS			
3.1 LABOUR PERMIT FEES	49,718,900	40,368,020	29,614,508
3.2 TRANSPORT	40,057,500	42,060,357	44,163,394
3.3 AVIATION	21,315,000	22,380,750	23,499,788
SUBTOTAL	111,091,400	104,809,127	97,277,690
4 ACCELERATED INFRASTRUCTURE DEPRECIATION			
SUBTOTAL	172,973,615	175,966,579	177,869,855
TOTAL	948,871,877	984,653,275	1,028,239,596

Sources: The Jordan Response Plan for the years 2017-2019 Gathered by the authors.

Political and Security Impacts

In some cases, refugees may not have a significant impact on the host community's political or security situation. However, in Jordan's case, while the kingdom is a part of a coalition that targets terrorist groups and combats extremist radical ideologies, a threat to its internal and external security is likely to occur. Since Jordan maintained an open border policy to Syrian refugees fleeing the war. According to Salehyan the influx of refugees from neighboring countries can destabilize neighboring countries in certain cases. Refugee flows may cause international disputes between sending and receiving countries. First by constituting a negative externality borne by receiving states, and these states may launch military actions to block their borders, threaten and even invade the sending state to prevent further flows. Second, the sending states may violate the sovereign territory of the receiving state in order to target political and/or ethnic rivals that have fled across the border. Moreover, such conflicts are more difficult to resolve through bargaining because promises to end refugee-producing human rights violations and attacks against dissidents are not credible¹

While such an impact was not clearly visible in the Syrian refugee case in Jordan. Fear of attacks at the Syrian-Jordanian borders urges the kingdom to maximize its border security and abandon the open border policy to avoid incidents similar

¹Salehyan, I. (2007). *The Externalities of Civil Strife: Refugees as a Source of International Conflict* (1st ed.). Retrieved from <https://www.cas.unt.edu/~idean/RefugeesWar.pdf>

to Al-Rukban camp bombing in January 2017.¹

The War Against ISIS

The Islamic State, also known as Daesh, Isis, or ISIL, emerged in 2013 as an extension of Al Qaeda. Since then, ISIS has conquered significant parts of Syria and Iraq, declared a Caliphate in 2014 and became notorious for extreme savagery and brutality.

Since joining the U.S. led international coalition against Isis, Jordan has become increasingly involved in the fight against the Islamic state and terrorism targeting the kingdom. However, the release of a video in February 2015 showing captured Jordanian pilot Moath Al-Kasabeh being burned alive, further fueled the Jordanian public against Isis. The people demanded "revenge"

And in response, the Jordanian government executed two convicted terrorists and carried out a series of air strikes in Syria in the days following the release of the video.²

As Jordan seeks to secure its borders against Isis, the kingdom has concerns regarding the threat Isis poses as an ideology and a terrorist group. The fear of smuggling terrorists among Syrian refugees crossing the borders or taking advantage of Jordan's fragile economy and domestic instability as well as spreading extremist jihadi ideology in the name of Islam. Jordan had faced terrorism before Isis in 2005, when members of Al-Qaida carried out deadly suicide attacks in Amman, killing 57 people.³ The danger Isis poses to Jordan is not military wise. The Jordanian Army is well trained and can defend the external threat. However, the real danger comes from the ideological fear that is trans-boundary. In one of his published articles in *AlGhad* newspaper Mohammed Abu Rumman, wrote "the real danger of [ISIS] is not external, it is internal."⁴ Radical ideology often targets middle class, camp residents living in remote areas far from the capital. What Jordan needs right now is countering extremist thought by adopting effective approaches even when dealing with returned Jordanian jihadis from Syria.

Local Governance and Municipal Services

The local governance and municipal services plan of the JRP seeks to enhance the capacity and responsiveness of local administrations through a resilience-based approach that assists municipalities in coping with and recovering from the impact of the Syrian crisis. It also focuses on service delivery performance, solid waste management, investment in infrastructure, social cohesion, and cross-sector cooperation.

The JRP plan pays special attention to the most affected areas in the kingdom, mostly northern governorates which are likely to be tension-prone areas. Social cohesion interventions mobilize activities that foster tolerance, co-existence and cooperation. The procurement of solid waste machinery and equipment will be employed to handle additional waste production. Rapid planning and coordination on the other hand will speed up the recovery of affected areas, while the construction of sanitary cells will serve only as an emergency response. The plan encourages financial independence of municipalities; therefore, it aims at improving the performance of existing revenue collection to increase the overall revenue flow, and eventually introducing alternative approaches.

Capacity building interventions will help municipalities and the wider local administration structure in Jordan in planning and responding to the needs of citizens and refugees, with a special focus on gender, youth and persons with disabilities. Finally, participatory approaches to planning and budgeting as well as better information management and coordination

¹Jordan soldiers killed in Syria border bomb attack. (2017). *Aljazeera.com*. Retrieved 5 April 2017, from <http://www.aljazeera.com/news/2016/06/jordan-soldiers-killed-syria-border-bomb-attack-160621064610938.html>.

²Greg Botelho & Jomana Karadsheh, "Jordan unleashes wrath on ISIS: 'This is just the beginning,'" *CNN*, February 6, 2015, <http://edition.cnn.com/2015/02/05/world/isis-jordan/>

³Suha Ma'ayeh, "How Jordan Got Pulled Into the Fight Against ISIS," *Time*, February 26, 2015, <http://time.com/3721793/jordan-fight-against-isis>.

⁴Abu Rumman, Mohammed, 2016 *Baqaa attack: The Dragon Is inside alaraby*. Retrieved 5 April 2017, from <https://www.alaraby.co.uk/opinion/2016/6/12/%D9%87%D8%AC%D9%88%D9%85-%D8%A7%D9%84%D8%A8%D9%82%D8%B9%D8%A9-%D8%A7%D9%84%D8%AA%D9%86%D9%8A%D9%86-%D9%81%D9%8A-%D8%A7%D9%84%D8%AF%D8%A7%D8%AE%D9%84-1/6>

are essential for fostering efficient local government responses.¹

Education Challenges

Since the 1980's Jordanian government has invested heavily in the education system, enabling it to perform well in comparison with other middle-income countries and the Middle East and North Africa region. However, the Syria refugees having a profound impact on the education sector by flow of Syrian refugees into Jordanian cities and villages, in particular on public schooling.

The Syria crisis continues to have a profound impact on Jordan's education sector, and in particular on public schooling. During the school year 2015/2016, there were 236,304 school-aged Syrian boys and girls registered as refugees.

Out of 659,246 Syrian refugees in Jordan, some 236,304 are school-aged children (117,306 boys; 118,998 girls).² By the end of the 2015/2016 school year, 145,458 Syrian refugee children were enrolled in public schools in camps and host communities, an increase of 16,104 students (12 percent) compared to the previous academic year.³ With an increase of 875 per cent compared to the 2011/2012 year.⁴ In the school year 2014/2015 Syrian students are enrolled in public schools 226,486 school-aged Syrian boys and girls registered as refugees, including 129,354⁵ who were enrolled in public schools in camps and host communities. The number of Syrian students during the year 2011 7,337, compared with 44,022 in 2012 and, 111,589 by the end of 2013 whereas Jordanian students numbered 1.7 million, in 6,355 schools.

Meanwhile, around 170,000 Syrian refugee children have been enrolled in public schools for the school year 2016/2017.⁶ A total of around 90,846 Syrian children registered with UNHCR remain out of formal education, a figure that substantially increases to 118,840 children when calculations are based on the 2015 Census data.⁷ Many refugees' households cannot cover the cost of education due to their increasingly fragile financial situation, with children living in northern and eastern regions being particularly affected.

Around 47 percent of schools are crowded (as of 2015/2016), up from 36.6 percent in 2012/2013.⁸ As part of efforts to improve quality of education, an intensive planning exercise was conducted at school camps to decongest classrooms, the result of which was a 50 percent decrease in the teacher-student ratio by the start of 2015/2016 school year. In order to create an educational opportunity for Syrian Children into public schools, double shift were introduced in 98 schooled year in 2013-2014, in addition to another 102 schools in the year 2016-2017. Also, there is a plan to added four school complexes in camps to accommodate refugee children.

Table (6) Syrian Refugees enrolled in public educations

School year	Total
2011	7,337
2012	44,022
2013/2014	111,589
2015/2016	145,458
2016/2017	170,000
2017/2018	200,000

Sources: Ministry of Education Statistics the years 2011-2018.

¹ Ibid

² UNHCR, Sept. 2016. (data.unhcr.org)

³ Ministry of Education, Sept. 2016.

⁴ According to MOE data, 16,713 Syrian refugees were enrolled in public schools in the school year 2011/2012

⁵ MOE enrolment data for school year 2014/2015, November 2014.

⁶ Ministry of Education, Sept. 2016

⁷ Department of Statistics, 2015 Census

⁸ Ministry of Education, Sept. 2016

The Syrian crisis created a burden on the treasury of the Hashemite Kingdom of Jordan, by carrying a large part of the education expenses. As the number of Syrian students in the public schools increased reaching approximately 130 thousand Syrian students during the 2015-2016 academic year, where the numbers of students in the classrooms increased in an unprecedented manner, reaching more than seventy students per classroom in some cases. This state was accompanied by a shortage of educational staff, both teachers and administrators. To solve this problem, the Ministry of Education started applying two shifts (a morning and evening shifts) in more than a 100 public schools, which put pressure in the general infrastructure of the sector (The Ministry of Education, 2016).

The burdens of the education sector has been assessed in the 2016 Syrian asylum crisis plan which had been prepared by the Ministry of Planning and International Cooperation for a total of \$249,638,101 or a total of approximately two hundred and five million dollars (Ministry of Planning and International Cooperation, 2016). As for the higher education, the Syrian students represent (% 16.4) of the total number of foreign students in the Jordanian universities, which makes the approximate total of Syrian students in the Jordanian universities 6670 students, and the number of foreign students 40598 student. The majority of these students enroll in medical and engineering majors, in addition to that these refugee students after graduating from the universities constitutes another source of unemployment in the Jordanian market, which is already suffering from increasing unemployment, and especially for the female refugee population (Ministry of Planning and International Cooperation, 2016).

Most of the Syrian students who are in school suffer from financial hardships as refugees, and are looking for sources to finance their studies, there are some organizations which provide some scholarships for the Syrian students. This has led relief organization such as the UNHCR to play an important role in mobilizing international support in addition to coordinating the relief efforts and assistance to meet the refugee needs (Al-Khasawneh, 2016). Another problem had emerged, the issue of certificates, during this year more than 250 Syrian high school degrees and 50 university degrees were forged, which pushed the Ministry of Education and Scientific Research to request all Jordanian Universities to provide them with the Syrian High school documents in addition to the Bachelor degree certificates in the Jordanian universities, which the students were accepted upon, in order to ascertain their validity, as it became clear that there are some websites found on the social media which tempt Syrian refugees, sending them false high school certificates as well as forged university degrees (Ministry of Higher Education, 2016). The following table shows the number of registered Syrian students in the Kingdom's schools (a comparison between the years 2013/2014, 2014/2015 and 2015/2016).

Energy Challenges

Jordan is one of the world's most energy insecure countries. Jordan imports more than 97 percent of its energy from international markets at international prices, energy imports accounted for 13 percent of gross domestic product (GDP) in 2015.¹ Energy imports for the year 2016, increased to 18 percent of gross domestic (GDP).

The need for fuel increased after Egyptian gas was cut off, following the revolution of 25 January 2011; this prompted power plants to return to the use of heavy fuel and diesel to generate electricity, which was becoming increasingly necessary as a result of the high population growth caused by the Syrians refugees in Jordan. This raised the electric loads in Jordan to record levels that reached 2800 megawatts, compared with the normal load, which did not exceed 2500 MW before the Syrian refugees.²

During the period 2011- 2015, the total accumulative governmental subsidies for petroleum and electricity products reached USD 7.1 billion.³ The total residential electricity consumption rose significantly from 5548 gigawatts (GWh) in 2011 to 6,938 GWh in 2015. The consumption of liquefied petroleum gas (LPG) increased from 370,000 tons in 2011 to 420,000 tons in 2015. As per the latest statistics, electricity consumption in the northern governorates (those mostly affected by the Syria crisis) showed an additional increase of 2.3 percent compared to other governorates in Jordan.⁴

¹ Ministry of Energy and Mineral Resources, Provisional Data September 2016

² Ministry of Energy and Mineral Resources, Provisional Data September 2016

³ Ministry of Energy and Mineral Resources, Provisional Data September 2016

⁴ Ibid.,

The sudden influx of population growth due the increasing number of refugees has led to an increasing demand on the energy sector. The Syria crisis has exacerbated long-standing structural challenges in the energy sector in terms of supply, demand and management. Securing a sustainable energy pathway for Jordan is more critical today than ever.¹

Over 80% of refugees are settling in rural and urban areas of Jordan, contributing to an increase of total residential electricity consumption from 5548 GWh in 2011 to 6,938 GWh in 2015.² Consumption of light petroleum gas (LPG) has increased from 370,000 in 2011 to 420,000 tonnes in 2015.³ Latest available statistics show that electricity consumption in the northern governorates, where most of the refugee population lives, have increased by 2.3% compared to other governorates in Jordan.⁴

The greatest difficulty Jordan has faced since 2009 is with the supply of energy, and the situation has worsened in the last seven years, with the constant influx of Syrian refugees who have spread throughout Jordan, to the point that their numbers exceeded the numbers of native citizens in some places, not to mention the refugee camps that have been established on the outskirts of some cities. Syrian refugees now constitute nearly Fourteen percent of the population of Jordan.⁵

According to the Jordanian Ministry of Energy and Mineral Resources, the cost of imported energy amounted to approximately 4.08 billion JOD (about 17 percent of GDP), at a time when the ministry estimates that the demand for oil and gas is going to increase by 5.5 percent by 2020, that is, about 12.5 million metric tons in oil equivalent, an increase of 50 percent over last year see table below.

Demand for electricity is expected to increase by 6.4 percent by 2020, to 28 giga watts, an increase of 75 percent from last year.

Sector assistance in camps is focused on delivering adequate energy to every household for the purposes of cooking and refrigerating food, lighting and heating homes, lighting streets, charging electronics, and washing clothes. In urban areas, interventions should focus on utilizing safe RE&EE technologies at the household level.⁶

¹Jordan Response Plan: for the Syrian Crisis, 2016-2018, Ministry of Planning and International Cooperation.

²Provisional Data provided by Ministry of Energy and Mineral Resources, September 2016.

³Provisional Data provided by Ministry of Energy and Mineral Resources, September 2016.

⁴Provisional Data provided by Ministry of Energy and Mineral Resources, September 2016.

⁵The Department of Statistics

⁶*The Jordan Response Plan 2017-2019*. (2017)(1st ed.). Retrieved from <https://static1.squarespace.com/static/522c2552e4b0d3c39cd1e00/t/58b815e64402436b7461a3e1/1488459280006/JRP+17-19+Full+Plan+%28march+2+-+web%29.pdf>

Table (7)

ENERGY	SECTOR OVERALL OBJECTIVE TO ACCELERATE AND SCALE UP EFFICIENT AND EFFECTIVE RESPONSES TO JORDAN'S GROWING ENERGY DEMANDS IN A SUSTAINABLE MANNER THAT ALLEVIATE INCREMENTAL DEMAND PRESSURES FROM THE SYRIA CRISIS	2017	2018	2019	TOTAL
		69,030,000	71,190,000	54,780,000	195,000,000
SPECIFIC OBJECTIVE 1	INTRODUCE AND PROMOTE INNOVATIVE RENEWABLE ENERGY AND ENERGY EFFICIENT (RE&EE) TECHNOLOGIES TO REDUCE THE PRESSURE ON THE GRID AND SUPPORT THE INCREASED ELECTRICITY NEEDS	28,500,000	37,800,000	23,700,000	90,000,000
RES 1.1	INCREASE RE&EE SOLUTIONS TO SATISFY INCREASING DEMANDS ON ELECTRICITY SUSTAINABLY	28,500,000	7,800,000	23,700,000	90,000,000
SPECIFIC OBJECTIVE 2	PROVIDE REFUGEES AND HOST COMMUNITIES WITH ACCESS TO AN ADEQUATE, SAFE AND SUSTAINABLE SUPPLY OF ENERGY FOR EVERY HOUSEHOLD	40,530,000	33,390,000	31,080,000	105,000,000
REF 2.1	IMPROVED ENERGY GRID AND INFRASTRUCTURE FOR SAFE AND SECURE ENERGY SUPPLY	40,530,000	33,390,000	31,080,000	105,000,000

Source: The Jordan Response Plane for the Syria Crisis 2017-2019

Health Challenges

Jordanian health services have also been under a great deal of pressure, as those services are provided by privet and public sector, in hospitals and health centers across the kingdom, to all Syrian refugees who enter its territories. The demand for health services from Syrian refugees in Jordan continues to place acute pressure on the national health system, posing risks to the population's health status and social stability.

Meeting the basic living needs of Jordan's citizens and the new population has become increasingly difficult for a country already poor in resources. The Government of Jordan and the Jordanian people are committed to assisting Syrians and others Refugees. The Ministry Of Health (MOH) has spent an at least US\$15 million on care to refugees between January and April, 2013, but every year Jordan government spent every year more than 200 million dollar a year. During the same period, only \$5 million was provided in direct support to the MOH by UN agencies.¹

The Ministry of Health has deployed its personnel in camps and other areas where Syrians are concentrated, so that it may deal on a first hand basis with the diseases appearing among the refugees, by taking all the necessary measures for the prevention of communicable diseases.

About 80% of Syrian refugees are residing among host Jordanian communities. Only 21% of the Syrian refugees reside in camps, which started in early 2012; the largest camp is Zaateri, with an estimated population of (80,000).In the camps, UNHCR and other partners, with the support of the Jordanian Ministry of Health (MOH), provide health and humanitarian support. However, for the larger proportion of refugees outside the camps, not all needs can be adequately addressed. The Jordanian MOH provides full access to health services for the Syrians outside camps along with the local Jordanian population. Additionally, some non-governmental organizations and private sector practitioners also deliver services to Syrian refugees outside the camps.

For example, During the year of 2013 the Ministry of Health have revealed the emergence of 24 diseases: such as 1748 cases of chronic diarrhea, 642 of hepatitis A, 529 of scabies, 491 of chicken pox, 86 of measles, 102 of tuberculosis, 80 of cutaneous leishmaniasis, 77 of female sterility, 26 of non-epidemic meningitis, 23 of typhoid and paratyphoid, and 19 of hepatitis B. Syrian refugees using Ministry of Health Hospitals by the year 2013 (80097) Syrian Refugees admitted to

MOH Hospitals, 9168, where as the Syrian Refugees who required surgeries at MOH Hospitals, 2646. Also, Syrian refugees using MOH health centers (132432) see table below.

The Syrian refugee crisis and the health situation in Jordan after 2011

The influx of Syrian refugees into the Jordanian territory and their stay in camps which had been especially established for them, in addition to the inadequate availability of health supplies led to the spread of many epidemics and conic and non-chronic diseases. Consequently , the health sector in the Kingdom provided all preventative health services for the refugees, in addition to providing awareness and all of the services provided by the Ministry of Health to the Jordanian citizen without any discrimination (Government of Jordan and the United Nation,2013), in addition to that all of the treatment services were provided to the Syrian refugee patients free of charge until the month of November 2014, for the high cost of treatment led to the change in the mechanism of dealing with them, where they were treated like uninsured Jordanians, which provides them with 80% subsidized health services and some services were still provided free of charge such as: MCH services, Thalassemia patients and vaccination (Ministry of planning and International Cooperation, 2016).

The Syrian refugee patients are treated in the hospitals and health centers of the Ministry of Health as uninsured Jordanians, and are charged directly, as for the Syrian refugee patients who are suffering from mental illnesses, alcohol and drug addiction, drug poisoning, snake or scorpion sting, AIDS, chronic blood diseases, Septic thalassemia, sickle cell anemia, genetic immunodeficiency, immunodeficiency, cystic fibrosis, and the diseases of children under 6 are treated the treatments of the capable Jordanian. In addition to that the Jordanian government took a series of measures to improve the Syrian refugees treatment in the health sector, some of which (Government of Jordan and United Nation, 2013):

Raising the capabilities of those working with the Syrian refugees through training them and providing therapeutic and counseling guides.

coordinating with the international organizations to provide treatment and material assistance

Helping with forming mobile field teams as to reach all of the refugees in all areas.

Assisting and coordinating with other governmental and non-governmental bodies to provide necessary assistance such as civil status, for the purpose of obtaining birth certificates or logistical help such as providing aids to persons with special needs.

Providing all elements of first aid, which includes: vaccination in accordance to the national immunization program in addition to the implementation of vaccination campaigns of their own, because of their non-compliance with the program in their countries since the crisis, in addition to that providing epidemiological services and follow up, treatment of contagious diseases and the prevention of those diseases, monitoring treating the diseasing prevalent among them, discovering and wiping out the congregations for some diseases such as tuberculosis and the other diseases, furthermore the full supervision of school health in their schools, environmental supervision and the monitoring of drinking water and sewage, providing all publications and family planning methods , the follow-up of Women's and children's health work, and finally conducting various educational and health awareness workshops in the various activities aimed at them. The following table shows the health situation and the health services provided to Syrian refugees for 2015-2016, within and outside of the camps.

Table (9)

Checkups and the surgical procedures for the Syrian refugees during the period between 2015-2016	Within camps			Outside of the camps		
	Checkups	Surgical procedures	Total	Checkups	Surgical procedures	Total
2015	677,243	1,717	678,960	286,891	3,760	290,651
2016	428,293	1,467	429,760	131,630	2,112	133,742
Total	1,105,536	3,184	1,108,720	418,521	5,872	424,393

Source: The health situation outside of camps until 31/6/2016, and the health situation within camps until 30/9/2016.

Moreover, Services are overstretched. For example, the Mafraq Government Hospital—the closest hospital to Zaateri camp—has 16 neonatal incubators: two of these incubators are used by Jordanians, two by other internationals, and 12 by Syrian refugees. There has also been a huge increase in surgical care demand. Surgical operations for Syrian refugees done in MOH facilities have increased rapidly (from 105 operations in January, to 622 in March 2013).

This is aggravated by high healthcare expenditure and the prevalence of non-communicable diseases (NCDs) among refugees. Similar trends for admission of Syrians to MOH facilities has been observed, reflecting the rapid influx of refugees into the country. Surgical and trauma care needs include amputations, burn care, acute surgical conditions (eg, accidents, falls) that affect those exposed to conflict, as well as treatment for weapons-related wounds, disabled, war-wounded, and older refugees also present significant challenges, particularly as war-related injuries require costly surgical treatment and lengthy rehabilitation. More than half of Syrian households suffer from severe or high health vulnerability,¹ while around one-third of Jordanian children under below five years of age are anaemic, and vitamin A and iron supplementation is alarmingly low among this age group.² Low tetanus toxoid vaccination coverage among women of reproductive age (TT1 65 percent overall and TT2 coverage 20 percent) poses serious public health risks and concerns regarding protection of women and their newborn infants from tetanus.³ Meanwhile, the humanitarian situation at the north-eastern border is of increasing concern.

Jordan remains at risk of infectious disease outbreaks, including polio, measles, H1N1 and Middle East respiratory syndrome corona virus (MERS-CoV). Around one third of the Jordanian population do not have access to universal health insurance coverage.⁴

Furthermore, according to Ministry of Health officials in Jordan, there have been 13 cases of mumps, 13 of food poisoning, 8 of nonpulmonary tuberculosis, 7 of H1N1 flu, two of typhus, two of acute flaccid paralysis, two of brucellosis (Maltese fever), one of whooping cough, one of rubella (German measles), one of alopecia (hair loss) and one case of gonorrhoea.

As a result of the increase of the Jordan Populations became clear that there is a need for an additional 2,886 hospital beds and 22 comprehensive medical centers in Jordan, with 69 per cent of additional hospital bed capacity and 83 per cent of additional comprehensive health centre capacity required to meet the need of the demand by the Jordanian people and refugees health system. There are shortages of human resources for health, particularly in nursing and medical specialties, with variable availability across the country. The MOH identified a need for an additional for the year of 2016 1,022 doctors and 866 nurses in Jordan.⁵

Conclusions

Jordan faced challenges in security, economic, social and Energy and Educations aspects before refugees crisis, but with the existence of the refugees in Jordan this has increased the challenges and problems faced by Jordan and has a negative impact on the mentioned aspects before. It is clear that the Syrian crisis and refugees have had an effect Jordan.

The humanitarian spill-over of the crisis in Syria has resulted in severe burdens for the host countries especially these countries have limited resources. The international community to step up to the challenge and be more active and forthcoming in burden sharing.

The truth is that the international support to the governments and the host communities has been minimal in relation to the needs. Due to the protracted character of this crisis, this support needs to massively increase.

International community have to move beyond short-term humanitarian responses for Syrian refugees and start to address the immediate to long-term, structural, economic and development impact this crisis is having on the countries hosting them as well. What is happening in Syria will have profound implications for neighboring states for years to come. The Jordanian

¹UNHCR Jordan. Vulnerability Assessment Framework. Baseline Survey Report. 41 percent of Syrians are part of households with severe health vulnerability and 15 percent are part of highly vulnerable households

²Preliminary Findings Interagency Nutrition Survey Amongst Syrian Refugees in Jordan 2014

³MOH/UNICEF. EPI Coverage Survey, 2015-2016

⁴Jordanian children under six years have free access regardless of their insurance status

⁵ Jordan Response Plan: for the Syrian crisis, Ministry of Planning and International Cooperation.

fears the situation will get even worse. International community must large-scale commitments incorporating humanitarian and emergency development support. This would include the involvement of international financial institutions.

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The Right to free and fair elections: an analysis of the approach of the American Law Doctrine on ballot secrecy

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Abstract

This article offers a description of the concept free and fair election being the most fundamental principle defining credible elections is that **they must reflect the free expression of the will of the people**. Human rights treaties and international law doctrine have established that in order to hold democratic elections, states should assure their transparency, accountability and most of all must be inclusive by giving any citizen the equal opportunities to participate and be elected in the elections. These broad principles are strengthened by several electoral process-related responsibilities, as well as several key rights and freedoms, each of which derive from public international law. The paper aim in the second part to analyse the article of the US constitution that provide for the criteria of free and fair elections and more specifically the principle of ballot secrecy. Furthermore, the article will analyse the caselaw of the Supreme Court of US regarding the right to vote and elections and the interpretation of this Court in the application of the legislation.

Keywords: free elections, fair elections, secret ballot

Introduction

The Principle of Fair and Free Elections

Elections is the process where the citizens that have gained the right to vote, choose an individual or party to hold a formal office in for regional or local government or represent them in parliament. International law provides that elections, procedurally shall be held according to domestic law, but respecting the norms and standards of international law, that is free expression of will of people. However, the terms "free" and "fair" used to define the standards upon which elections should be legitimate are very difficult to measure and define because it can change meaning according to the countries in question, because it contains subjectivity. The main aim of the electoral process is that should present the will of the people and to that concern it should be safeguarded, giving the feeling to citizens that are being involved. Scholars have supported the transparency of voting process and, based on the Universal Declaration of Human Rights this process is open to public knowledge and scrutiny. The obligation for a transparent process supports the freedom of expression in elections because its freedom to request and receive information vital to the election process. Another important part of free and fair elections is the right of a secret ballot, because the citizens should be protected from intimidation suppressed over them by parties and by the community to which they belong (Valelly, 2016).

Free elections involve two aspects: the free formation of the will of the elector and the free expression of that will. Only an effective and equal possibility of information guarantees the free will of the voter and this can only occur in a context in which fundamental freedoms and human rights are guaranteed to all citizens. Among the fundamental freedoms, there are some that are so strongly connected with electoral rights that we can consider them essential prerequisites such as freedom of opinion, freedom of expression and information, freedom of assembly and freedom of association that are recognized by the Universal Declaration of Human Rights, articles 19 and 20 (United Nations, 1948). The first of these freedoms is that of opinion because it would make no sense to speak of democratic elections or popular will if the freedom to have a political opinion without interference or restrictions were not absolutely recognized.

The right to freedom of expression and information includes not only the freedom to express one's political views but also the right to seek and receive information. In the electoral field, this implies that public authorities must maintain absolute neutrality towards candidates, but also that positive obligations arise against them (Venice Commission, 2002), such as

the duty to regularly submit candidacies to citizens' suffrage, allow voters to know the lists and candidates, make this information accessible, guarantee equal opportunities for the electoral campaign and freedom for the media.

Freedom of assembly must always be guaranteed that it is peaceful. Citizens must, in fact, have the opportunity to come together peacefully to discuss and develop their political programs without unjustified administrative or bureaucratic impediments. Freedom of association obviously also includes the right to form and be part of political organizations. This freedom, like the others just mentioned, can be limited only in cases provided for by law and which are necessary "in a democratic society, in the interest of national security, public security, public order, or to protect health and public morals or the rights and freedom of citizens" (United Nations, 1948).

The free expression of the will of the voter then implies that the vote is expressed in compliance with the established procedure, and without intimidation, violence, interference or fear of retaliation. Therefore, the public authorities are obliged to prevent and sanction such practices and to prepare simple electoral procedures. The concept of free elections also includes the possibility for third party observers, be they national or international, and for the representatives of candidates and parties to observe all phases of the electoral process.

Fair and impartial elections mean, first of all, that equal conditions of participation must be offered to all participants in the electoral process, candidates, parties or political organizations. Anyone wishing to apply must be given the opportunity to do so in accordance with the law, and to compete based on equal conditions and absolute impartiality on the part of public authorities. This equal opportunity must be guaranteed above all to the possibility of access and usage of media without facing any discrimination. Legislation and its implementation must allow unhindered access to all candidates and political parties on an equal basis. A similar equal opportunity must be recognized for voters: in a truly democratic system, both public and private media have a responsibility to ensure sufficient, balanced and impartial information so as to allow voters to be able to make a choice truly informed, which is the basis of a correct formation of their vote usage (OSCE/ODIHR, 2012).

Fair and free election principle could not be applied without the universal suffrage of the vote that provides for the recognition of the right of active and passive electorate. The universal suffrage is perhaps the principle that is indicated in the most obvious manner by international instruments. Article 25 of the International Covenant on Civil and Political Rights of 1966 states that "Every citizen has the right ..., without any of the discrimination mentioned in Article 2 and without unreasonable restrictions ... to vote and be elected ..." (United Nations Human Rights, 1966)

Even if article 3 of the additional protocol of the ECHR does not recall it, the principle of universal suffrage is also clearly considered by the European Court of Human Rights as a basic principle. The court defines that the right to vote is not a privilege but is instead a right that a democratic state must guarantee in the most inclusive way possible (European Court of Human Rights, 2005). To ensure universal suffrage it is obviously necessary that the voters be registered and that there are, therefore, one or more electoral lists. The inclusion of a person on this list ensures the possession of the requirements and the absence of causes of limitation and therefore allows the voter to exercise their right to vote. The registration process must be transparent, accurate and inclusive, in order to protect against tampering and to enjoy the trust of voters. The principle of universal suffrage is not only guaranteed through adequate legislation, but it is also necessary that each holder of the right has the effective and concrete opportunity to exercise it without any discrimination.

States in order to ensure fair and free elections should assure the secrecy of the vote according to international law standards. The function of secret ballot is to be found in the need for the vote to be expressed freely, without coercion and without the danger of retaliation for the voter, but also in the right of the voter to vote in private and, in this way, not to acquaint others with their political views.

The following part of the article explores the principle of the secret vote in the American law doctrine and analyses the US Supreme Court judgements.

The principle of secret ballot and the right to vote in the American doctrine

The Constitution of the United States of America does not contemplate in its articles the principle of secret ballot as a fortification of freedom for the electors. The only explicit references to the protection of the secret ballot can be found in the amendments to the US Constitution, in particular, in the twelve amendment whereas it is stated that "The electors shall meet in their respective states and vote by ballot for President and Vice-President" (United States Senate, 1804)

All other voting rights are provided for in Fifteenth Amendment of the US Constitution and, are devoted to combating racial, sexual and social discrimination without any other reference to secret voting (United States Senate, 1804) The empirical data provided by the text of Constitution agrees with the most accredited legal doctrine which highlights how, at the federal level in the US there is no constitutional protection of the principle of secret ballot as an perfect element of freedom of electors. On the other hand, at state level, except for only two states that of Texas, Oregon and Iowa, in all other state constitutions, secret ballot is provided for and constitutionally protected in order to preserve the legitimacy of the electoral process. Moreover, this is also supported by the historiographic analysis of the usage of secret ballot, it appeared that the most common way of exercising the vote in the new continent was certainly not the secret ballot, which was adopted only in 1888 following the introduction of the Australian secret ballot (Evans, 1918). In fact, the vote was expressed hands-free or viva-voce voting by those entitled who were called before the magistrates so that they could openly and freely answer the question and provided their personal details (J.Dinkin, 1982). This system did not seem to interact negatively with the freedom of the individual voter, on the contrary the constitutional coverage of the right to freely cast the vote found its possibility of choice in the first amendment, the Freedom of Speech, because the speakerphone or open vote was actually one of the forms of expression of the freedom of expression of thought. Fraud schemes could be circumvented with the aid of the paper ballot, or with putting into writing of all the data relating to the electoral proceedings (Evans, 1918). Thus, the paper ballot system was gradually adopted in all States, and the first state to use it was New York.

These data are the demonstration, according to Justice Scalia, that American democracy operates differently, because "The different voting methods simply reflected different views about how democracy should function" (US Supreme Court, 2010). It is no coincidence that the voice of the vote was perceived in the United States as an index of the courage of the voters, because "in Virginia and the other states in close affiliation with her this oral expression was vaunted as the privilege of the free-born voter, to show the faith that was in him by an outspoken announcement of his candidate" (Schouler, 1897). Thus, open voting was a privilege for American citizens who had full freedom and a hallmark of the proper functioning of US democracy. However, the flaws in the hands-free system soon emerged mainly following the discovery of the electoral abuses committed by political parties. In fact, the paper ballot system for congressional elections in all States, introduced with the Federal Elections Act of 1871, allowed political parties to freely print and distribute ballot papers to voters, especially in States where there were no particular rules on format, colour and spelling of the ballot paper. The ballot papers distributed by the various parties were so easily recognizable ex post, because each party adopted a type of press that made the affiliation of that card immediately attributable to the party that distributed it (Schouler, 1897). For example, the New York Democratic Party imprinted a particular perfume on the ballots, which it would then distribute among the voters, in order to monitor what the election result would be and, evidently, check for whom their voters voted. Other parties used bright colours for the ballot papers to be immediately recognizable, still others directly printed the ballot with the name of their candidate. The polling station thus became an "open auction place", where votes were bought or won by coercion; in fact, as often happened, employers threatened their employees or those politically engaged prevented other workers, subservient to the will of their employers, from going to vote; other voters, however, went directly to the polling station to find a buyer for their vote (The Supreme Court of US, 1992).

From the countless episodes of electoral fraud and abuse, the conviction took hold that it was necessary to introduce an electoral system that guaranteed the secrecy of the vote. In this transition phase, the role of political parties was decisive, because American citizens became voters simply by being registered on party electoral lists. This led to an inequality of the power of the major political parties in the management of electoral procedures, such as to exert its influence even on the phase of introduction of the secret ballot. In fact, the mass parties opposed the introduction of the secret ballot because they would not have been able to direct the electoral trend, while the smaller parties and the reforming elite advocated the introduction of the secret ballot, not so much to free the voters from forms of "intimidation and deference in the social hierarchy, as much as by parties and by the obligations imposed by the community to which they belong (Valely, 2016). Furthermore, the Upper-class reformers argued that through the secrecy of the vote the voter would be made more independent from blind party membership, because "political preferences were a private matter and not the stuff of communal ritual". In reality, according to James Bryce, the secret ballot became a tool in the hands of the upper-class to drastically reduce the real possibility for the voters of the most ignorant classes to participate in the vote (Toke S.Aidt, Peter S.Jensen, 2016)109. Thus, remedies were adopted against electoral abuses such as the secret ballot, along the lines of the Australian model which provided for the use of a single state card, and identification systems of the individual voter or the progressive numbering of the ballot papers, without implementing the protection of the secrecy of the vote at the constitutional level (Maurer School of Law, 1941).

The historical reconstruction of the origins of the secret vote in the United States is sufficient for Scalia to affirm that the natural expression of the vote is the obvious one: "that would have been utterly implausible, since the inhabitants of the Colonies, the States, and the United States had found public voting entirely compatible with the freedom of speech for several centuries" (US Supreme Court, 2010). From this reconstruction it emerges that the nature of the right to vote in the US Constitution public.

In fact, in the concurring opinion on the *Doe v. Reed* case, Justice Scalia argues that, with reference to the exercise of voting during a referendum procedure, the individual is entitled to exercise a public function or rather that of legislating like Congress in the ordinary exercise of its functions. Given that it is an perfect principle of American democracy, protected in article 1, section 5 of the US Constitution (United States Senate, 1804), that public power, including legislative power, must be expressed publicly. Based on that, the voter, in exercising legislative power through direct democracy tools, must also express the own vote transparently. This mode of expression would be the most direct and natural consequence of the principles of publicity and transparency on which the Founding Fathers created the American democratic and constitutional system. However, episodes of fraud, abuse and coercion against voters have led states to adopt rules and procedures based on the secrecy of voting as a remedy for pathological situations encountered during electoral procedures (US Supreme Court, 2010).

Based on these findings, the question that arises from the interpretation is whether these firm and clear statements of Justice Scalia, with reference to the vote expressed in referendum procedures, are generally extendable to all cases of exercise of the right to vote by electors. Especially in the referendum the elector legislates with his own vote, because it produces legal effects on a state law. In this case it is believed that, through the vote in representative elections, the elector exercises a public power which has consequent legal effects, such as the election of their representatives called to exercise legislative power, in the name and on behalf of their constituents (United States Senate, 1804). It is certainly even more evident when the voters are called to exercise their constitutional right to petition the Government for a redress of grievances enshrined in the First Amendment of the Federal Constitution, but this does not exclude its validity for the exercise of the right to vote in the general sense. The historical reconstruction of the hands-free system in the United States and the introduction of the secret ballot in urgency to support this theory, which therefore did not distort the original sense of publicizing the concept of the right to vote as modelled by the Founding Fathers (Douglas, 2008). There is no point in any criticism of the doctrine that considers the right to vote in the USA as an individual right, obtainable from the fact that alternative forms of voting are allowed, yielding in terms of protection of secrecy, such as voting by correspondence and voting by proxy. The right to vote would thus be a negative freedom because the state does not care to protect its secrecy (Fishkin, 2011).

The theory of publicity of the right to vote, accepts that the admissibility of alternative forms of voting has its legal basis precisely in the public nature of the vote, which does not lead to the lack of neglected protection of the secrecy of the vote. The circumstance related to procedural rules that are applied in order to protect the freedom of the vote, including the secret ballot, are not the result of the constitutionalist elaboration of the right to vote, but arose from the need to stem the pathological phenomena of electoral systems (Strom, 1990).

2. The jurisprudential interpretation of the Supreme Court of the US on secret ballot and the right to anonymity

From the analysis of the jurisprudence of the US Federal Supreme Court, it occurs that the secret ballot system is intertwined with the right to remain anonymous. In fact, historically it is customary to place both legal institutions under the constitutional coverage of the First Amendment, because they are both the result of expression of the Freedom of Speech of US citizens. In particular, it is in the *McIntyre v. Ohio Elections Commission* that for the first time the red thread connecting the right to remain anonymous and the secret ballot is created (Strickland, 2001). In fact, in the Court's opinion, authored by Justice Stevens, it is solemnly stated that respect for the tradition of anonymity in the political debate finds its maximum example precisely in the secret ballot system, as "it is perhaps the best represented" and is "the hard won right to vote one's conscience without fear of retaliation". In this important ruling the Supreme Court thus affirmed the existence within the Constitution of the right to anonymity, of which the anonymous vote would represent an expression, given that the anonymous vote was already used by Lincoln in 1837 and admitted for the first time in 1868 on the occasion of the approval of the Fourteenth Amendment (Strickland, 2001). In this case, Ms McIntyre had distributed leaflets without giving evidence of her identity on paper to express her opposing view on proposed school district tax levy, during a public meeting, at Blendon Middle School in Westerville, in Ohio. According to the Supreme Court, the American public debate and the constitutional system have always allowed, especially in the political field, to enjoy anonymity as an expedient to support

political campaigns. The most striking example is represented from The Federalist Paper, signed by its famous authors, not with their real names, but with the pseudonym "Publius" (Adair, 1944). This shows for the judges that, under US Constitution, anonymous pamphleteering is not a pernicious fraudulent practice, but an honourable tradition of advocacy and dissent and that the right to anonymity in the political debate is the minority's weapon to fight the tyranny of the majority, because it protects every citizen from retaliation which he may suffer for his own political opinions (Strasser, 1950).

However, the reconstruction carried out in the Court's opinion does not convince the Justice Scalia whom has presented a dissenting opinion, that it is believed to be the basis for changing jurisprudential orientation in the judgment of the Doe v. Reed. According to Justice Scalia, the historical data that demonstrate the tolerance of the American democratic system towards anonymity are certainly not proof of the existence of a consecrated constitutional law: besides having no ruling at the level of the constitutional sources, it never had a approval from constitutional jurisprudence (US Supreme Court, 1913). The only traces of the existence of this right can be found in a more jurisprudence, which, however, would not deserve a continuation, because they expressly refer to freedom of the press, without any reference to the individual's right to anonymity connected to free and democratic elections in the case of Burson v. Freeman (US Supreme Court, 1992).

On the other hand, the non-existence of the right to anonymity is relevant precisely in relation to the interest of the States in guaranteeing "the integrity of their election process". In fact, the anonymous vote was never recognized expressly because the need to guarantee the integrity and transparency of the electoral process does not allow for restrictions on the part of other rights (National Academies of Sciences, Engineering, and Medicine, 2018). As proof of this, it should be noted that the admissibility of the restriction of the same freedom of the press for which anonymity is tolerated, finds its limit precisely in the need to guarantee the integrity of the electoral process. This would make it clear, according to Scalia, that in reality there is not a right to anonymity, in cases where it is admitted or tolerated, but rather an exemption to protect the person who could with reasonable probability, suffer retaliation from the Government or political parties, as stated in Buckley v. Valeo (US Supreme Court, 1976). Therefore, if the main purpose of maintaining anonymity in political debates is not to suffer negative consequences from the exercise of the manifestation of one's own thought, it must restrain when it influences the political process, making it opaquer. The prohibition of anonymous campaigns, with some exceptions, effectively guarantees the integrity of free and democratic elections; this entails the logical consequence that there is no right to anonymity and for our purposes, an anonymous vote is constitutionally sanctioned according to the dissenting opinion of Justice Scalia.

However, the opinion of the Court of the McIntyre judgment has led scholars, for a decade, to consider the right to anonymity as a constitutional right arising from the First Amendment of the US Constitution, whenever there is a reasonable likelihood of retaliation or abuse in against those who exercise this right. This is repeated in Buckley v. Valeo case, where minor parties are allowed not to comply with the disclosure obligations imposed for the collection of funds during electoral campaigns, only if this involves a reasonable probability of retaliation and reprisals against its supporters, clearly violating the First Amendment. The same principle is stated earlier in McConnell v. Federal Election Commission and, in Citizens United, if members of organized interest groups are subject to pressure or threats. In accordance with a precedent of this magnitude, the applicants in Doe v. Reed strongly supported the unconstitutionality of the Washington State Public Records Act (PRA), which granted anyone to access the petitions and, therefore, to scroll and possibly disclose the identification data of the voters signing a given petition (name, surname, address, telephone number). The applicants claimed the unconstitutionality of the PRA because the petitioners' right to anonymity was not guaranteed, as established by the previous constitutional jurisprudence in relation to the First Amendment. In fact, the applicants pointed out that the ease of access to the identifying information of the petitioners could lead to easy episodes of retaliation against the latter, in order to influence and, in certain cases, to divert the referendum result, should the matter of the petition be very heartfelt. The applicants' request did not convince the majority of the Supreme Court Justices, who agreed to reject the sue for the PRA's unconstitutionality. In fact, according to the judges, States are allowed to implement the security measures of the electoral processes in order to guarantee the integrity of the same, which is not limited to the mere contrast of electoral fraud, but extends "to promoting transparency and accountability in the electoral process", because "the State argue is essential to the proper functioning of to democracy" (US Supreme Court, 2010). In particular, the publication of petitioners' data is useful for circumventing fraud, to correct any errors in the data of subscribers, to prevent voters who are not registered in the electoral lists from signing petitions that otherwise would never reach the quorum to be submitted. to the electoral test, and, finally, to educate citizens about the democratic process (US Supreme Court, 2008). In this regard, it is interesting what stated in the concurring opinion written by Justices Sotomayor, Stevens and Ginsburg, who highlighted that the democratic process is by its nature devoted to publicity and transparency, as indeed the judge Scalia demonstrated for the

right to vote (US Supreme Court , 2010). Therefore, guaranteeing the publicity of data referable to an electoral process enables the electorate to make informed decisions and give proper weight to different speakers and messages (US Supreme Court, 2010), especially if voters are called to participate in the democratic process to exercise directly legislative power (US Supreme Court , 2010).

From this resume of the jurisprudence of the Supreme Court it is clear that there is no right to secret vote in the constitutional system of the United States, because it is the US Constitution itself that has been voted to the full transparency of the electoral process, given that states are allowed to provide for remedies, such as secret ballots, to protect the integrity of electoral processes, since "...nothing prevented the States from moving to the secret ballot. But there is no constitutional basis for this Court to impose that course upon the States." as specified in the concurring opinion of Justice Scalia in *Doe v. Reed* case.

3. The State Constitutions and the protection of the secret ballot as a security element of the electoral processes

Despite the failure to provide for the principle of the secrecy of the vote in the US Constitution, the States have provided in their respective Constitutions for the protection of that principle, recognizing its constitutional significance. In almost all States we find the legal formula according to which "The vote shall be secret", with the exception of the Constitution of Texas and Iowa, where no protection of the secrecy of the vote is mentioned, and in the case of Oregon that has provided in the constitution clauses the open vote, barring the possibility for the state legislator to provide otherwise (National Academies of Sciences, Engineering, and Medicine, 2018).

However, the gaps of the provision of the principle of secret ballot in the US Constitution and the remission to the States of the legislative competence in the field of electoral procedures have resulted in the poor protection of this principle by both states legislations and the jurisprudential interpretations¹³². A case in point is provided by the California Supreme Court, the which, in *Peterson v. City of San Diego*, argued that voting by mail responds to the need "to guarantee the right of voters to act in secret" and, therefore, does not violate the principle of secrecy of the vote, but implements voter participation in the democratic process (Jac C. Heckelman, Andrew J. Yates, 2002). Furthermore, the Supreme Court of California itself, in *Wilks v. Mouton*, admitted that "the legislative framework on voting by mail does not prohibit the voter from allowing third parties to be present while the ballot paper is being filled in[, but this is not enough, in the absence of concrete evidence, to consider illegitimate constitutionally the vote by correspondence with respect to the constitutional principle of the secrecy of the vote (Supreme Court of California, 1986).

The landmark decision of the US Supreme Court regarding the constitutionality of two provisions of the Voting Rights Act of 1965 in the *Shelby County v. Holder* recognizes ample room of manoeuvre to the States in their regulations of electoral procedures, giving good hope that States will move towards greater protection of secret ballot, and therefore, of the integrity of the electoral process (US Supreme Court, 2013). More specifically, the US Supreme Court declared that Section 4 and Section 5 of the Voting Rights Act of 1965 are unconstitutional, in the part in which they provided that the state and local bodies of States could change the regulation of electoral processes, only after obtaining of a successful preclearance from part of the federal authorities. The rationale for this provision lay in the need to put an end to the countless cases of racial discrimination that occurred during the electoral phases, from registration on the electoral lists, up to the moment of voting, thus implementing the Fourteenth and Fifteenth amendments provided for Section 2 of this Act, under which "standard, practice, or procedure ... imposed or applied ... to deny or abridge the right of any citizen of the United States to vote on account of race or colour" were prohibited. This provision had a duration of five years from its entry into force, because its adoption was justified by the contingency conditions dictated by the period of racial segregation, especially in the Southern States. This provision was reiterated several times by Congress, again with the coverage formula, provided for in Section 4, with which the law established which entities were covered jurisdictions of the same Act, including the states or political subdivisions that preserved evidence or mechanisms, the satisfaction of which constituted a prerequisite for the voting and, moreover, which had low percentages of registered voters or low turnout (Christopher S. Elmendorf, Douglas M. Spencer, 2015).

Such a provision evidently conflicted with the federal legislative system because Congress was allowed a strong interference in the legislative power of the States in electoral matters, due to them by virtue of the 10th amendment, which enjoy "broad powers to determine the conditions under which the right of suffrage may be exercised", considering however that the Federal Government maintains a controlling role over federal elections pursuant to art. 1, Section 4, of the Federal Constitution (*Arizona v. Inter Tribal Council of Arizona*). However, for the majority of the Justices of the Court, if this

prediction held up in terms of constitutionality for about 50 years, since the contingency of the fight against racial discrimination was still tangible, it would no longer be justifiable in today's American society, where great strides have been made in terms of equality of citizens, especially in the voting phase, as demonstrated by the record presented by Congress when the Act was re-approved in 2006 (Fannie Lou Hammer, Rosa Parks, Coretta Scott, 2010). Following the aforementioned ruling, it is believed that the States are now facing a new challenge: that of deciding to effectively implement the protection of the right to vote and, the principle of secret ballot, which almost all the States have foreseen in the Constitution as an unfailing principle of the vote. The recognition of the autonomy of states in electoral matters could have the positive effect of bringing the regulation of the electoral procedure back to the centre of the political debate in order to guarantee a fair vote and greater security for the entire electoral system. This is possible thanks to a synergy of intent between States and Congress, which, in compliance with the Fifteenth amendment and the Election Clause, can redesign the preclearance system on the basis of the current conditions of the right to vote (Overton, 2013). It is noted that an amendment has been presented, still under discussion in the House of Representatives and the Senate, called The Voting Rights Amendment Act (Issacharoff, 2013).

4. The "voting before the Election day" in the United States

In the United States, the lack of provision in the US Constitution of the principle of the protection of secret ballot has certainly allowed the experimentation and consolidation of different voting practices, which facilitated the expression of the vote. Probably the most fitting example to demonstrate what is gaining ground is the voting by mail or voting by mail which was first introduced in the USA for the military on mission as early as 1865 (US Federal Voting Assistance Program, 2018). The practice of voting by mail had the purpose of facilitating the exercise of the vote for those entitled who were unable to vote for reasons of service; subsequently, the extension of this opportunity was also envisaged for all those who were able to produce plausible justifications, such as health reasons or work impediments. Today we talk about early voting as a possibility of voting before the election day. The possibility of extending early voting to an ever-larger slice of the US population was a definitive "silent revolution" (US Supreme Court, 1953). In fact, almost 1/3 of the voters, equal to double the number of voters in 2000, during the 2012 elections, took advantage of early voting (Persily, 2014). The trend is to facilitate electoral operations by expanding the period dedicated to the exercise of voting, in order to implement wider voter participation. It seems that the early voting tool has responded well to this need, enough to receive the bipartisan approval of political parties (Persily, 2014).

Early voting has known various models: in the Western States predominates the use of both vote by mail and absentee voting, with the exception of the State of Washington and Oregon¹⁶⁵, where voting is only by mail, while in others 27 states and in the District of Columbia absentee voting predominates, and in the southern states in person early voting is more widespread (Belt, 2016). For example, in Arizona and California a voter can apply to be registered as an absentee voter, so that they can vote permanently by early voting in the absentee voting formula. To these two models of early voting, a third is added, defined as "hybrid", because voters are allowed to ask to vote by correspondence at a county office, at an office set up for early voting or at a polling station on the day of the elections (Pozen, 2008). Still other states provide for an in person absentee voting system, for which the voter can vote by correspondence and personally use ballot before election day at an electoral venue, so that it will be counted together with the other votes received by correspondence (Pildes, 2020).

The early voting system, however, has faced strong critics: first of all it does not guarantee equal levels of information on candidates during election campaigns, thus being able to result in evident discrimination (Issacharoff, 1992). The "hybrid" early voting, in the formula of in person absentee voting, aggravates the electoral procedures because it requires more staff from both the electoral authority and the committees responsible for monitoring the seats (Issacharoff, 1992). The system of voting by correspondence, both for absentee voting and for vote by mail, presents major flaws in terms of regularity of the procedures. First of all, it may happen that the ballot papers may be lost, both in the delivery phase to the voters and in the postponement phase by the voters; moreover, it has often happened that the ballot papers voted on arrived too late at the electoral authorities, when the counting activities had already started, with the evident loss of votes of final election results. Finally, postal voting is often paper-based, making it more difficult for people with disabilities, such as the visually impaired, to exercise the right to vote (Quan Li, Michael J. Pomantell, and Scot Schraufnagel, 2018).

Conclusion

One of the elements that makes the fair elections is the possibility that the legislation and election system should give all citizens the possibility of choosing when and how to vote. The early voting system in order to be improved should be extended generally to all those entitled to vote, because the possibility of choosing when and how to vote is the way to protect diversity in an equal way, since enabling voters to cast a ballot at time convenient to them, not to the election authority.

States in order to ensure fair and free elections should assure the secrecy of the vote according to international law standards. The function of secret ballot is to be found in the need for the vote to be expressed freely, without coercion and without the danger of retaliation for the voter, but also in the right of the voter to vote in private and, in this way, not to acquaint others with their political views.

Regarding the usage of voting before the voting day, it's a way to rediscover the solemnity of the moment of voting that citizens had lost during the voting in a single day. Early voting triggered a greater propensity to vote among American voters, because above all the "absentee voting has continued to grow in popularity with voters and elections officials alike" and it's a challenge for the future of voting in the US.

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