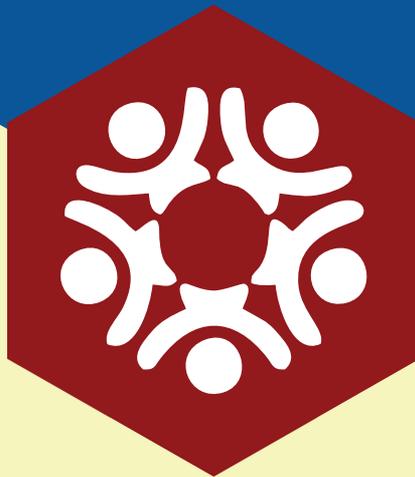




საერთაშორისო სტუდენტური სამეცნიერო კონფერენცია

International Students' Scientific Conference



ევროინტეგრაციის აქტუალური საკითხები

Actual Issues of European Integration

November 17, 2018

Tbilisi



საერთაშორისო სტუდენტური სამეცნიერო კონფერენცია
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კრებული შედგენილია „ევროინტეგრაციის აქტუალური საკითხები“ დევიზით გამართულ საერთაშორისო სტუდენტთა სამეცნიერო კონფერენციაზე წარმოდგენილი საუკეთესო ნაშრომებით.

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WELCOME ADDRESSES

Dear conference participants!

European integration currently serves as one of the crucial challenges for our country, implying multiple spheres, especially economic and law. European integration along with other factors is one of the vital prerequisites for the enhancement of the country's innovative potential.

Introducing and sharing our foreign colleagues' experience, as well as acquainting international and Georgian researchers' scientific papers, bears enormous importance. We expect innovative and creative ideas from you as a key factor on the way to our country's EU integration as well as rapid development.

I do believe that this conference will be not only interesting in terms of its content and objectives, but also the acquired knowledge will boost the conference participants, interested parties, field specialists and public or private organizations on the way of developing their own capabilities.

I would like to express gratitude to our official partner Friedrich-Ebert-Stiftung foundation in Georgia and Georgian Institute of Public Affairs for the partnership and fruitful cooperation throughout the conference. Also, thank to the editorial board, academic personnel and organizing group for their active involvement and participation in the conference.

Good Luck!

Dr. David Cherkezishvili
Rector, East European University

Welcome, everyone, to the International Students' Scientific Conference on Euro Integration. I extend a warm welcome to all of our participants and our invited guests.

The ongoing process of Euro integration is a strategic choice for Georgia, determined by the way of our country's historical and cultural development and state interests. Therefore, all institutions in the country are actively engaged in this process. In this light, it bears tremendous importance to discuss and evaluate the prospects of Euro Integration and the process itself within the academic and scientific society. Research-based evaluation and decision-making makes this process more valuable.

GIPA is actively involved in public discussions over a broad range of social, political and cultural issues which are immensely important for Georgia in terms of different ways of teaching, raising awareness, organizing conferences or establishing platforms for debate.

Organizing this international student conference enhances the academic potential of PhD students and young researchers and supports them to be engaged and actively involved within the broader international academic society.

Organizing this international students' scientific conference on the Actual Issues of European Integration serves as another step forward in this direction as the participation of PhD students and researchers in discussions centered around and focused on Euro integration contribute to a greater awareness and a better understanding of all of the related issues.

We would like to express our gratitude to the East European University for this fruitful and productive cooperation as well as our official partner for this conference, the Friedrich-Ebert-Stiftung Foundation in Georgia, and it is our sincere hope that our cooperation will continue to contribute to the important process of European integration of our country.

Prof. Dr. Maka Ioseliani

Rector, Georgian Institute of Public Affairs

International Students' Scientific Conference "Actual Issues of European Integration" organized by East European University (EEU) and Georgian Institute of Public Affairs (GIPA), as well as supported by Friedrich Ebert Stiftung (FES) foundation, is foresees for doctoral students as well as young researchers, working on European Integration vitally crucial issues. Georgian participants will present scientific papers on EU integration capabilities, and international colleagues considering their own countries' experience will share conference attendees research outcomes for overcoming those issues.

It's also noteworthy that conference sections will be led by Georgian and foreign scientists and the opponents of the presents of the scientific papers will be representatives of the relevant entities.

Conference will boost Georgian researchers to build up international scientific linkages and their further scientific activities as well.

Prof. Dr. Shalva Machavariani

*Vice-rector in Science Affairs, East European University
Head of Conference organizing Committee*



STANDARD CONTRACT TERMS AND CONSUMER RIGHTS, CHALLENGE TO EUROPEAN INTEGRATION



Ketevan Zakareishvili

East European University, Ph.D. Student

Introduction

The legal status of consumer is one of the most pressing issues in the modern world. International society is agreed that one of the indicators of state development and legal culture is protection of consumer's interests. Although different legal families have different attitude about the issue, a common consensus is that a consumer must be protected from the influence of the state or private sector when he gets in consumer relations for personal interests.

Under the modern market economy, it is indisputable that the country's priority should be a private business promotion and investments attraction, however, there is no doubt that the main responsibility of the state is to take care of citizens of their own country and to ensure the dignity of the rights granted by the Constitution. It is unacceptable that the scales are always on the one side and the consumer's rights remain beyond the regulation. The state should load the moderator's role and provide the legal right balance in the legislation.

In Georgia, the situation is not so successful. In recent years, especially liberal economic policies was reflected in consumers rights as well. However, the current processes - EU relations, the association agreement¹ and visa-free regime introduction, has become increasingly relevant to the necessity of settling the issue and step by step it was reflected in national strategic documents².

In general, consumer relations are not only private, but also it takes a place in public law as well. However, the latter mainly offers imperative provisions to regulate the relations between

¹ ASSOCIATION AGREEMENT between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, available:

<http://www.mfa.gov.ge/%E1%83%94%E1%83%95%E1%83%A0%E1%83%9D%E1%83%9E%E1%83%A3%E1%83%9A%E1%83%98-%E1%83%93%E1%83%90-%E1%83%94%E1%83%95%E1%83%A0%E1%83%9D-%E1%83%90%E1%83%A2%E1%83%9A%E1%83%90%E1%83%9C%E1%83%A2%E1%83%98%E1%83%99%E1%83%A3%E1%83%A0%E1%83%98-%E1%83%98%E1%83%9C%E1%83%A2%E1%83%94%E1%83%92%E1%83%A0%E1%83%90%E1%83%AA%E1%83%98%E1%83%90/Association-Agreement.aspx>

² Georgia Action Plan for the implementation of Deep and Comprehensive Trade Area Agreement (DCFTA) 2014 - 2017, which provides for the development of competition in Georgia and the institutionalization of the relevant legislative framework. P. 27 available: http://procurement.gov.ge/getattachment/ELibrary/StrategyActionPlan/DCFTA_action_plan_GEO.pdf.aspx

the state and the consumer, where the vertical line and power of public law is dominated. While the main force of private law is the principles of equality, freedom and autonomy. Furthermore, based on the Civil Code of Georgia, the consumer is considered a weak party, which is particularly visible in standard terms of the contract.³

So, I would like to pay attention to the place of customers in the private law system, where one of the fundamental issues is how provides standard contract terms regulating provisions for the protection of consumers rights and on the contrary, if it is a big threat to the background, that there is no special regulatory normative act in the country, that could determine consumers rights even by general principles.

There is briefly analyzed the provisions of standard contract terms of the Civil Code of Georgia, the impact of European Directives and other international uniform rules on them and the perspectives of the draft law on consumers rights, initiated in the Parliament of Georgia, in this article. Also, there are provided recommendations on the situation improvement.

1. Consumer Law in Georgia

1.1. Impact of standard contract terms on the legal status of consumers

The Consumer law is less developed in Georgia that is directly related to the lack of legislative base. Current regulations have only a general character and there is no defining act of consumer rights and obligations. In addition to the Civil Code of Georgia,⁴ there are statutory acts regulating various spheres that determine consumers as participants of specific legal relations and define rights as well as specific situations.

Paragraph 2 of Article 30 of the Constitution of Georgia⁵ establishes that "... the rights of consumers are protected by law." Consequently, the Supreme Law of the State created a guarantee for the protection of consumers' rights and ordered the legislator to act on the basis of the relevant normative act. However, the law adopted in 1996, that more or less included consumer protection rights, was declared invalid in 2012 and yet there is not occurred a new normative act that determines this issue.

The principles of freedom and private autonomy give a consumer opportunity to choose counterparty, to participate in the negotiations and determine the terms of conditions before signing contract. But, when there are standard contract terms, the authority is limited and the consumer has right only to accept the proposed conditions or not. On the one hand, the regulations set out in the Standard Terms of the Agreement serve the purpose of protecting consumers, that is particularly exemplary in terms of invalidation of standard contract terms. However, preventive measures that really prevent the invalidation of the terms of the contract are provided only as general norms and allow for greater interpretation.

In this context, it is crucial to interact with individually agreed terms and preliminarily defined provisions, in the light of the fact that standard providers can be both entrepreneur and consumer⁶, and organizational legal form of the parties themselves.

³ The point is cited: Bzekelava E. "Consumers' Rights According to Civil Code of Georgia" – 50th anniversary edition of L.Chanturia. D. Batonisvilis Institute of Law. TB. 2013

⁴ Available:<https://matsne.gov.ge/ka/document/view/31702?publication=98>

⁵ Available:<https://matsne.gov.ge/ka/document/view/30346?publication=35>

⁶ A. Aladashvili. Comment of the Civil Code of Georgia, Electronic Version. P. 3. Available:<http://www.gccc.ge/%E1%83%AC%E1%83%98%E1%83%92%E1%83%9C%E1%83%98>



The Civil Code of Georgia clearly states that “the terms agreed by the Parties shall be preferred to the Standard Conditions”⁷, that is due to the fact that the individually agreed condition expresses the common will of the parties and the standard provision is included in the contract in advance. The same approach suggests the principles of European Contract Law⁸ and the principles and definitions and the framework models of European private law, (so-called DCFR)⁹.

Therefore the paramount importance may be the nature of the condition itself, as the will of the parties is the main issue to determine the content of the contract. However, in spite of the standard conditions, the common intent of the parties may still exist, in a situation where the party, which has not participated in compiling the text of the agreement, possesses sufficient knowledge and agrees with this provision¹⁰. In a sufficient knowledge, it is possible to consider special knowledge that does not have a wide range of consumers, but a particular person in specific relations.¹¹ It is therefore crucial that the party’s status may also be an ordinary physical person or entrepreneur who understands the nature of the particular relationship in which the provider has entered.

The classic German approach sets a clear boundary between standard conditions of contract and individually agreed terms. Normally, the agreed conditions are not subject to discussion. But the problem is complicated when it comes to standard contracts. However, the German legislation does not distinguish between the approach to B2C and B2B contracts despite standard conditions, which has once been the subject of criticism. This is contrary to the US legislation’s approach that does not differentiate between individually agreed terms and standard provisions. The Uniform Commercial Code¹² determines the principle of honesty and good faith, for the validity of the terms of the contract, regardless of what kind of conditions we are dealing with. However, the more stringent requirements of the principle of honesty and good faith in relation to the standard conditions apply to the negotiated provisions.

If the contractor is a natural person or an entrepreneur, may be of decisive importance as to the real content of the same condition. For example, In DCFR Principles in contrast to the Civil Code of Georgia, there are a number of provisions in which the legal regulation is characterized by the organizational-legal form of the parties. For example, the document states that the control mechanism is much tougher in terms of contracts where a person is a natural person and not an entrepreneur. (The DCFR contains controls which deal with similar problems in contracts between businesses, through the controls are of a more restricted kind than the consumer contracts)¹³.

⁷ Part 3 of Article 342 of the Civil Code of Georgia; available: <https://matsne.gov.ge/ka/document/view/31702>

⁸ The principles of European Contract Law (prepared by the Commission on European Contract Law 1999 text in English) – Article 5:104 „Preference to Negotiated Terms” – “Terms which have been individually negotiated take preference over those which are not”.

⁹ Principles, Definitions and Model Rules of European Private Law - Draft Common Frame of Reference DCFR – Article 8:104: Preference for negotiated terms: “Terms which have been individually negotiated take preference over those which have not”.

¹⁰ von Bar C. Zimmermann R. Grundregeln des Europäischen Vertragsrechts, Teile I und II (Studienaufgabe), München, 2002, 342. Cited by: V. Bachiashvili, Understanding the principles of the European Contract Law and the expediency of its implementation in the Georgian legislation, Law Journal N 1, 2013 p.9

¹¹ von Bar C. Zimmermann R. Grundregeln des Europäischen Vertragsrechts, Teile I und II (Studienaufgabe), München, 2002, 342. Cited by: V. Bachiashvili, Understanding the principles of the European Contract Law and the expediency of its implementation in the Georgian legislation, Law Journal N 1, 2013 p. 9

¹² The Uniform Commercial (Trading) Code, Available: https://www.michigan.gov/documents/entireuccbook_18831_7.pdf; <https://www.law.cornell.edu/ucc/1/1-201>

¹³ Principles, Definitions and Model Rules of European Private Law - Draft Common Frame of Reference DCFR, p.52 the last sentence

Often the protection takes the form of recommending that, in a contract between a business and a consumer, it could not be possible for the parties to derogate from particular rules to the detriment of the consumer.¹⁴ If a test of conservation in consumer contracts (as well as during contractual agreements between individuals) passes on transparency of conditions and the good faith, the legal relationship between entrepreneurs is offered as a party protection mechanism, to join trade traditions.¹⁵

The proof of the necessity of equal protection of physical persons and entrepreneurs (Some argue that small businesses on “non repeat players” of any kind may be equally in need of protection) is Article 9: 404, which envisages a case when a physical person is on both sides of the contract. However, the control test passes on the principles of good faith and justice, in order to achieve the purpose of this particular article.

A good example is the Article 9: 402, which deals with the obligation of transparency of the conditions set out without an individual agreement. Specifically: the offer or is bound by the obligation to establish the condition for the customer in a clear language.¹⁶ Otherwise, the issue of fairness will arise when the proposer is not obliged to do so if the other party is an entrepreneur. Consequently, the degree of transparency depends on who are the parties: individuals or entrepreneurs.

Consequently, the main goal of international legislative regulation is to: protect every member of a legal relationship, despite a natural person, or an entrepreneur. Although Georgian legislation regulates the standard terms of the contract, protects only consumers (as prohibits the use of the advantage by the issuer), often there are cases, when the standard provision of the contract, in spite of proved to be individually negotiated, would be invalid, based on the applicable law. Right here arise a kind of dispute: a result of invalidation should be applied to a contractor entrepreneur or if the issue should be resolved according to the regulations of standard contract terms. However, the most reasonable in the assessment will be defined - the provision of which the question of invalidation is offered as a standard condition or is individually agreed. In the first case, if actually happened, the conditions of annulment defined in regulations 347-348 articles of the Civil Code, will apply only to natural persons. While, if the provisions will be invalid whether the standard or individual negotiations result legal guarantees should also apply to the entrepreneurial contracts.

As we can see, the issue is relatively simple when a consumer contract is offered between the customer and the provider - the customer takes goods or services for their own purposes. But otherwise the issue occurs when the customer receives the proposal from the offer for commercial purpose and comes with the third party itself as a seller or supplier (dual use contracts). In this case, the German legislation made positive changes based on the EU Directives found that, the contract is to be taken into account by the private legal interest. If the case comes to the Court, the Customer has asserted that he has purchased goods (services) from private legal interest (in case of demand), and in this case the role of the seller with the third party does not change the purpose of the contract and does not exceed the private law.

¹⁴ DCFR, p. 70 the first sentence

¹⁵ DCFR, p. 70, the last sentence. Also 9:103; and 9:405: Meaning of “unfair” in contracts between business: “A term in a contract between businesses is unfair for the purposes of this Section only if it is a term forming part of standard terms supplied by one party and of such a nature that its use grossly deviates from good commercial practice, contrary to good faith and fair dealing.”

¹⁶ DCFR 9:402: Duty of transparency in terms not individually negotiated:” (1) A person who supplies terms which have not been individually negotiated has a duty to ensure that they are drafted and communicated in plain, intelligible language. (2) In a contract between a business and a consumer a term which has been supplied by the business in breach of the duty of transparency imposed by paragraph (1) may on that ground alone be considered unfair”.



1.2. A Draft law of Georgia on “Consumers’ Rights Protection”

Against the backdrop of unhealthy competition and improper conditions on the market today, it is difficult for consumers to prove their own interests, especially while dealing with standard conditions of contract. That is the necessity of existence of the law. Besides the adoption and improvement of legislation on consumer protection, one of the obligations aimed at converting Georgian legislation with the EU Acts, envisaged by Article 347 of the Association Agreement between the EU and Georgia,¹⁷ is the only way to solve the problems in practice.

The above-mentioned was the reason, why the draft law of on protection of Consumer Rights was submitted to the Parliament of Georgia but it has not been accepted yet and the hearing has been delayed for an uncertain period of time.

The explanatory note of the project itself states that “... protection of consumer rights is a fundamental and priority issue for the legislation of developed countries. In Georgia, the situation has not improved in recent years. Deregulation of the consumer sphere has resulted in the unlikely legal condition of the consumer relationship with the weak side of the customer. Consequently, it is necessary to create guarantees for consumer protection and ensure the independent normative act in the consumer field to enable users to exercise their rights effectively. The goal of the state is to support this process”

The main essence of the draft law is the following: “Regulates the civil legal relations between consumers and traders; The general principles of the protection of physical persons, which are in contractual relations with the merchant for the use of its products for personal use; Regulates security policies, protection of economic interests, consumer education and stakeholders’ public policy.”

Despite the fact that the proposed project offers regulatory rules for specific relationships, the general norm envisages regulation of legal results in case of unfair provisions of the standard contract terms. In particular: “The conditions of the agreement, that is not the result of the individual agreement between parties (unilateral pre-defined by the merchant, so that the consumer did not have an opportunity to influence them), should be considered as unfair, as is contrary to the principles of good faith and causes unjustified imbalance to the detriment of users rights and obligations.”

In addition, according the project the burden of proof that the terms of the contract were the subject of individual negotiations, is on the merchant, that is a step forward and responds to international standards. And what is the most important, the rules of the interpretation is in favour to the consumer “Vague conditions of the contract are defined in favor of the user”¹⁸ that directly reiterates the spirit of civil code of Georgia.¹⁸

It is noteworthy that according to the project, the user is defined as “a natural person who is offered or who acquires goods or services for personal use, not for its entrepreneurial or other professional activities.” However, it is not explained who is considered a trader, only legal Person or business or natural person having a commercial purpose? A wide range of interpretations allow us to consider the terms of the contract unfair and fair as a serious defect in the project. It is true that the law can not take into account all the details, but to define the fundamental issues, even in terms, is necessary for the purpose of law itself.

¹⁷ It is also important that Chapter 13 of the Association Agreement “Consumer Policy”, which obliges Georgia to establish a high standard of protection for consumers and make it compatible with the European system.

¹⁸ Article 345 of Civil Code of Georgia, Available: <https://matsne.gov.ge/ka/document/view/31702?publication=98>

The positive side of the project can be regarded as the fact that, unlike the old law, this one does not envisage citizenship issues. In particular, the issue of citizenship of a natural person until 2012, was only applicable to citizens of Georgia, so foreign citizens and stateless persons were at risk, even at the legislative level, that is not characteristic for any EU member¹⁹. In addition, when the law defines the citizen - automatically removes the legal entities from legal protection, while entities were practically free to the consumer relations, as the users. That was also considered a defect of the law.

The cost of transaction was one of the most important issue while considering and analysing consumer relations. Because when the dispute took a place this circumstance could be a decisive factor that determined the relationship was under private or public legislation. However, the adoption of a draft law has been delayed indefinitely, which is likely related to the fact that within the framework of the Association Agreement, The Georgian legislation has been defined as the term for approximation with the EU Act of 5 years and the comments of the Government of Georgia provide the opportunity to make such a conclusion on the draft law.

2. International Uniform Rules and EU Directives about Consumer

(General Overview)

Before proceeding directly to the analysis of international acts regulating the legal status of consumers, it is reasonable to define who is behind the term “consumer” - only a natural person or a legal entity with a commercial or non-profit objective?

The broadest definition of the consumer suggests Article 2 of the Convention on International Trade Agreements that establishes that a consumer is a natural person who buys goods for personal, family or economic purposes. This definition is also common in countries of custom law. The EU Directive on Consumer Rights Protection²⁰ establishes that the consumer is a natural person who acts beyond his professional and commercial goals. The fact is that the definition of these two international acts is different, but it is also undoubtedly one goal. On the other hand “Unidroit” Principles²¹ do not offer consumers’ definition at all and focuses on a commercial agreement that is a factor that allows for multilateral interpretation.

As for the 1993 5 April frame 93/13/EEC directive,²² the second article, like other international acts, explains the customer as the only natural person behind the trade and professional goals. Consequently, it is logical that the same person can become a consumer for the purposes of the Directive if he enters the contractual relationship with his entrepreneurial and professional activities and on the other hand he will immediately lose the consumers status if is to signs the contract for the purpose of winning as an entrepreneurial entity. The status of the consumer is also lost, where there is no need for the protection of this status - when both parties are natural persons and operate for consumer purpose.

¹⁹ E. Bzekelava “Consumers’ Rights According to Civil Code of Georgia” - 50th anniversary edition of L.Chanturia. D. Institute of Law. TB. 2013 p. 68

²⁰ Council Directive 2011/83 art.2(1) on consumer rights; available: <https://eur-lex.europa.eu/legal-content/EN/TX-T/?uri=CELEX%3A32011L0083>

²¹ Unidroit Principles of International Commercial Contracts, International Institute for The Unification of Private law, 2016, Available:<https://www.unidroit.org/instruments/commercial-contracts/unidroit-principles-2016>

²² Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, http://europa.eu/legislation_summaries/consumers/protection_of_consumers/l32017_en.htm;
<http://uk.practicallaw.com/3-508-2471?source=relatedcontent>



In this context it is important that the Directive does not prohibit member States to disseminate its regulations on those legal entities that do not follow the entrepreneurial activities. On the contrary, the aim of the Directive is to encourage members to create a higher standard of regulation and legislative guarantees if they are ready for it. The main purpose of the Directive is to impose minimum standards for implementation of national legislation to member states.²³ It should also be noted that “a natural person who is an entrepreneur at the same time, may require the protection provided by the Directive only if the transaction concerned is carried out beyond its activities or profession. However, Article 2 of the Directive, which contains the general characteristics of consumer activity, does not provide for exceptions to any activity related to entrepreneurial or professional activities. “At the same time, when there are standard terms of contract, a small enterprise can be considered as a consumer.”²⁴

In general, the directive's main goal is to provide a balance between the Contracting Parties because, in terms of the specifics of consumer relations, consumers are always a weak party and it is difficult to protect their rights. Especially during the standard terms of the contract - in case the contractor determines the terms of the contract, which uniquely serves the latter.

Although the directive is one of the most successful step to harmonization contract law among EU members, it is based on German „Standard Terms Act“²⁵ established in 1976 year. However, the basic principles are not foreign for our national legislative as it is similar to German legislation, and Georgian civil code determines provisions about standard contract terms and more or less reflects international requirements, it is not still perfect. Furthermore, besides legislative regulations, the enforcement mechanism is quite weak, even in the court context. The regulations also allow interpretations of themselves, and the ordinary consumers can hardly restore their rights, due to bureaucracy and artificial barriers in the court.

It is also interesting that the 1999/44 / EC Directive on “Some Aspects of Selling Consumer Goods and Related Guarantees for Relationship Agreement”,²⁶ which regulates the relations only with the Contract Agreements and determines that legal relations under its jurisdiction are only when the buyer's gets property from the active seller with professional purpose, i.e. B2C type transaction when one side is an entrepreneurial entity and another-ordinary customer. Exceptions can be issued by the directive between two individuals in the C2C- transactions, when if the seller is acting through an entrepreneur's intermediary and information that the seller is not an entrepreneur, is not known to the buyer.

As we can see, international directives and conventions, despite minor differences, have a general purpose to protect a consumer from the inadequate legal and economic risks that may

²³ For example Austrian and Czech policy, where the consumer can be a legal person if it acquires goods or services for non-entrepreneurial purposes. Also, in Greece and Spain, if the legal entity acts for the final recipient. In France it is spread The concept of “non-professional” consumer protection from its strong and large companies regardless of whether the person is physical or legal. (Tamar Lakerbaia, “The right to withdraw the requested right on the conclusion of the contract”), TSU, Law Journal of the Faculty of Law (N1 (2014), p. 100)

²⁴ For example, the Law of England and the Netherlands provides such an approach and therefore considers the enterprise that has employees. In the case of England with no more than nine persons, and less than fifty in the Netherlands. (Tamar Lakerbaia, “The right to withdraw the requested right on the conclusion of the contract”), TSU, Law Journal of the Faculty of Law (N1 (2014), p. 36)

²⁵ Gesetz zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen (AGB Gesetz) <http://www.gesetzesweb.de/AGB.html>; https://www.jstor.org/stable/840058?seq=1#page_scan_tab_contents

²⁶ Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, available: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31999L0044>

be confirmed by user while providing offered services. However, it should be emphasized that the risk involves only the risks arising from the imbalance of forces in the commodity market and depending on the relationship between strong and weak parties of contract.

Conclusion

As noted above, the EU Directives and Framework Conventions provide recommendations and discredit States to develop a higher standard of consumer protection than it is offered by international acts. That is why each state must determine where the margin between on the one hand, the freedom of private business, and on the other the consumer's rights is.

As Georgia signed the association Agreement with EU and took the obligation to make own legislation closer to European standards, although the amendments and initiated projects that will improve the consumer sphere in general are not yet perfect.

Although the Civil Code is scattered by a number of norms that concern the rights and obligations of consumers, there is no uniform systematic normative act, that including even general principles will regulate this issue. The draft law on "Protection of Consumers' Rights" gives anticipation that the legislative vacuum, that has been causing serious problems in practice for years, will be exhausted. Therefore one of the main threats for consumers may be the regulatory norms of the standard provisions of the Civil Code, regardless of their purpose - the weakness of the contract.

Based on the Institute of Standard terms of contract itself, the fact is that the principles of freedom of the contract and private autonomy are quite narrowed and the consumer makes no offer and has no any possibilities to influence on the terms of the contract. His right is restricted only by either signing the contract or not. In this case the only protective mechanism is the provisions of the invalidation of the standard terms of the contract, including the violation of the requirements of good faith principle. However, the latter does not serve to create a legal guarantee that is necessary to create smooth and stable consumer relations. Moreover, the interest of the consumer may not necessarily be to cancel the contract.

Therefore, first of all, it is necessary to improve the legislative base and introduce new regulations that will be dictated by international standards. It is necessary to determine clearly who will be considered as consumers and how appropriate it is to narrow the circle to the physical person; Also to define the scope of the rights and obligations not just as it is in the legislative acts regulating various fields, but to adopt one thematic normative act, where the general rules governing consumer relations are completely outlined.

It is also not less important to determine whether it is appropriate regulations about standard contract terms to regulate issues about consumers who may want to maintain the force of the contract that has been signed on time, but it is obviously not against the background of its disgraceful interests. In this context, it is advisable to establish the relationship between individually agreed and predetermined conditions concerning the consumers, which is most likely to be made by the relevant modifications in the Civil Code.

In addition, together with the legislative framework, it is crucial to establish an efficient enforcement mechanism that will create and strengthen the Consumer Protection Inspectorate on the one hand and, on the other hand, strengthen the effective judicial proceedings in the court.

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Standard Contract Terms and Consumer Rights, Challenge to European Integration

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ABSTRACT

Purpose – To outline consumers place in private law system, where one of the fundamental issues is how provide regulations about standard contract terms protection of consumers rights or on the contrary, if it is threat for them, as Georgia has a number of obligations according to the EU Association Agreement, especially to fulfil this field of private law.

Structure/ Methodology – It is analysed regulations of Civil code of Georgia about standard terms of contract, the impact of the EU Directives and Unified Rules on them and the perspectives of the draft law on “Consumers rights protection”.

Conclusion – There is a serious lack of legislative base and no effective enforcement mechanism, at the same time.

Research limitations – Lack of court practice, on the rights of consumers in the context of standard terms of contract.

Originality/Value – The main problems in the legislative sphere and practice are analyzed and recommendations are developed.



ELECTRONIC CONTRACTUAL RELATIONSHIPS ACTUALITY OF THE ISSUE



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Introduction

We must admit that the computer is among the greatest achievements of civilization. Access to the Internet fully revolutionized the information technology industry at all. Today they are used in many directions, including e-mails, social networking, internet banking, e-commerce or other directions. Obviously, law couldn't be distanced from abovementioned statement, so it became necessary to keep the foot for modernity, which led to the creation of fundamentals for replacement of traditional paper-based contracts with its digital analog and nowadays, it is not mandatory to match in time and location for arising the contractual relationships. The mentioned process is getting more and more active in the whole world and among them in Georgia as well and according to today's observation is not hard to predict that the process will be irreversible in the future. Even nowadays it's hard to meet a person who has never used the internet for arising electronic contractual relationships (e-contracts). Registration of e-mail, creating social networking account, purchase of a variety of products from a lot of online stores, and many more are possible through the e-contract. Clicking on the specific button on the web - with this simple act, we can arise plenty of legal relationship with anyone in front of internet connected screen and this is an absolutely the same what we are doing by exchanging signed papers with each other. However, the definition of a traditional contract is still too far from its digital analog, as the scope of the use of the e-contract is even broader than the traditional contract area. However, the definition of e-contract (also referred to as the "cyber Agreement") is not yet established.

This situation was probably mostly stimulating for e-commerce which made it possible for people to establish contractual relationship from any point of the world. Precisely, one of the representatives of this platform is world's richest man (Jeff Bezos – founder and owner of amazon.com). He is followed by other giants of this industry like ebay.com, alibaba.com and many others. However, online purchase is not the only contractual relationship that can be made by e-contracts. Agreements concluded in this way may also be found in the service sector (upwork.com, fiver.com), renting (real estate airbnb.com, booking.com), car (rentalcars.com), transportation / transfer field (fedex.com, DHL.com, TNT.com, makemytrip.com, cheapflights.com), in loan relationships (so called "online loans"), speedycash.com, avant.com and many more. The

last mentioned, loan sector in modern Georgian reality is the most common case for the use of e-contracts and its representatives like (vivus.ge, crediton.ge, ccloan.ge, eloan.ge, kimbi.ge, solva.ge – and so on) grow at lightning speed.

The main question around the issue is how fully paper-based and ink-signed contracts can be replaced with its electronic analog? Should the same criteria be adapted to test the authenticity of the e-contract, which is used for its traditional form? How offer and accept are ensured? How the will of the parties are backed up? In all, many questions should be answered for lawyers, when it comes digitization of arising contractual relationships.

Today, the legal sources, where we can look for regulations of these issues, are two normative acts: 1. Civil Code of Georgia and 2. Law of Georgia on electronic document and electronic reliable services. In the first case the issue is settled only at the level of principles and with regard to the e-contracts, it has never been changed. In the second case, the issue is only technically arranged, and the norms are less relevant to the contents of the agreement.

Obviously, along with the increase of the e-way generated contractual relationships, the necessity for the judicial interpretations of specific issues is increasing more and more and it is not far from the stage when we are forced to make legal explanations for the characteristics of the e-contracts. The Georgian judicial practice on this issue is very little and very general. We need to analyze the features of the e-contract including the status, the forms, content, reliability, signature forms and many other forms of manifestation of acceptance and offer to start building fundamentals for legal implementing of e-contracts in our everyday routine. The place will be devoted for analyzing the conventions, similarities and differences in traditional way, discussing the possibilities of the so-called “smart contracts” and confirmation of its authentication by Blockchain system methods, which is already used by the Ministry of Justice of Georgia to verify the extract of real estate properties.

Actuality and scientific novelty of the issue

The quantity and content diversity of the e-contracts shows the importance of the issue. According to bussinessinsider.com, approximately half a million products are sold on Amazon solely. If not the possibility to arise the contractual relationship digitally, the process couldn't be developed naturally. Electronic contracts are the least researched field in Georgia and at the same time its research becomes more and more necessary. The point that, the Internet allows parties to establish a contractual relationship digitally, should not be understood that they have full legislative freedoms and any such treaty will be deemed to be lawful.

As we see nowadays e-contracts are new challenge in Georgian legislative system. There's no established legal practice for now, so it's a must to get acquainted to EU and other foreign practice to clarify issues whether an e-contract is valid, should it comply with certain formalities, are electronic signatures admissible as evidence of intent and agreement, which law applies to an electronic contract (if it is between international parties) and so on. Thus, there are lot to answer, when it comes to e-contract validation and execution.

Formalities of E-contracts

Generally, contracts can take any number of forms. They can be oral, written, deed (for example approved by notary), registered in competent state organization, etc. Certain contracts, however, require a specific form, and will not be legal (though they may be equitable) if they fail to



comply with the formalities. For example, transfer of real estate or power of attorney and many other legal documents must match formalities to be valid for legal force. Other contracts are required to be in writing. So what form must an electronic contract take? The answer depends on the nature of the contract. If writing is a requirement, do documents which are stored digitally on a computer hard drive comply? “‘Writing’ includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form and expressions referring to writing are construed accordingly.”¹ Since words stored digitally on a computer may be reproduced on a monitor or printed onto paper, it would appear that computer storage is covered by this definition. Nevertheless, individual cases may still have to be interpreted by lawyers or decided by the courts.

Recognition of E-contracts

The law already recognizes contracts formed using facsimile, telex and other similar technology. An agreement between parties is legally valid if it satisfies the requirements of the law regarding its formation, i.e. that the parties intended to create a contract primarily. This intention is evidenced by their compliance with 3 classical cornerstones i.e. offer, acceptance and consideration. One of the early steps in the formation of a contract lies in arriving at an agreement between the contracting parties by means of an offer and acceptance. Advertisement on website may or may not constitute an offer as offer and invitation to treat are two distinct concepts. Being an offer to unspecified person, it is probably an invitation to treat, unless a contrary intention is clearly expressed. The test is of intention whether by supplying the information, the person intends to be legally bound or not. When consumers respond through an e-mail or by filling in an online form, built into the web page, they make an Offer. The seller can accept this offer either by express confirmation or by conduct.

Unequivocal unconditional communication of acceptance is required to be made in terms of the offer, to create a valid e-contract. The critical issue is when acceptance takes effect, to determine where and when the contract comes into existence. The general receipt rule is that acceptance is effective when received. For contracting no conclusive rule is settled. The applicable rule of communication depends upon reasonable certainty of the message being received. When parties connect directly, without a server, they will be aware of failure or partial receipt of a message. Such party realizing the fault must request re-transmission, as acceptance is only effective when received. When there is a common server, the actual point of receipt of the acceptance is crucial in deciding the jurisdiction in which the e-contract is concluded. If the server is trusted, the postal rule² may apply, if however, the server is not trusted or there is uncertainty concerning the e-mail's route, it is best not to apply the postal rule. When arrival at the server is presumed insufficient, the ‘receipt at the mail box’ rule is preferred.

Electronic Signatures

Since a traditional ink signature isn't possible on an electronic contract, people use several different ways to indicate their electronic signatures, including typing the signer's name into the signature area, pasting in a scanned version of the signer's signature, clicking an “I accept” button, or using cryptographic “scrambling” technology.

¹ Schedule 1, Interpretation Act 1978, UK.

² <http://www.duhaime.org/LegalDictionary/P/PostalRule.aspx>

Though lots of people use the term “digital signature” for any of these methods, it’s becoming standard to reserve the term “digital signature” for cryptographic signature methods and to use “electronic signature” for other paperless signature methods.

The broad category of electronic signatures (eSignatures) encompasses many types of electronic signatures. The category includes digital signatures, which are a specific technology implementation of electronic signatures. Both digital signatures and other eSignature solutions allow you to sign documents and authenticate the signer. However, there are differences in purpose, technical implementation, geographical use, and legal and cultural acceptance of digital signatures versus other types of eSignatures.³

Cryptography is the science of securing information. It is most commonly associated with systems that scramble information and then unscramble it. Security experts currently favor the cryptographic signature method known as Public Key Infrastructure (PKI)⁴ as the most secure and reliable method of signing contracts online.

PKI uses an algorithm to encrypt online documents so that they will be accessible only to authorized parties. The parties have “keys” to read and sign the document, thus ensuring that no one else will be able to sign fraudulently. Abroad, for example in US and UK many online services offer PKI encrypted digital signature systems that function much like we use PINs for our bank cards.

Opting out of Electronic Contracts

While paper has become unnecessary in many situations, still businesses have right to continue to use paper where desired. Consumers may prefer paper to opt out of using electronic contracts.

Prior to obtaining a consumer’s consent for electronic contracts, foreign practice shows that, business must provide a notice indicating whether paper contracts are available and informing consumers that if they give their consent to use electronic documents, they can later change their mind and request a paper agreement instead.⁵

So, in the era of e-contracts consumers aren’t forced to accept only electronic documents from businesses, law gives possibility to make free choice for those who opt for paper.

Contracts That Must Be on Paper

According to British Statute of Frauds, to protect consumers from potential abuses, electronic versions of the following documents are invalid and unenforceable, so they definitely should be on paper signed with ink:

- Contracts for the sale of an interest in land,
- Contracts for the sale of goods for \$500 or more,
- Contracts in consideration of marriage,
- Contracts that cannot be performed within one year of the contract being made,
- Contracts of suretyship,
- Contracts where an estate executor agrees to pay estate debts from his personal funds.

³ <https://www.docuSign.com/how-it-works/electronic-signature/digital-signature/digital-signature-faq>

⁴ <https://www.entrustdatacard.com/pages/what-is-pki>

⁵ <https://hynumlaw.com/article/electronic-signatures-and-contracts-doing-business-online>



Unlike foreign practice, Georgian legislation doesn't establish boundaries which type of contract should be paper printed and ink signed and which can be signed electronically, but while it needs to have printed and ink-signed contract for buy/sell/rent real estate or notary approved loan and mortgage contracts, it's seems to be restricted the field of using e-contracts for everyday life, notwithstanding local legislation doesn't contain any restrictions regarding e-way formed contracts.

Competency of the parties

The word 'person' includes both natural as well as legal person, but computers do not fit in either of the two categories.

In E-Contracts, the verification of the identity or capacity of the contracting party is difficult. The complex nature of electronic contracts makes it impossible for the person entering into a contract to know if the other contracting party is competent or not, The parties to a contract being at a distance and the absence of face to face interaction makes it almost impossible for one party to ascertain the competence of the other party. The common illustration of the problem posed by this complexity of the communication is that, of minors ordering goods or masquerading as adults, contracts unknown to the merchant may be entered into with minors. Minors are incompetent to contract except for necessities.

Hence, the electronic merchants will not be able to recover any monies when they enter into transactions with minors and the contract is subsequently found to be void whilst minors may be able to recover the purchase price from the vendor. In response to these difficulties online merchants have taken precautionary measures like including conditions as to capacity in the terms of the offer, which must then be affirmed by the accentor to be true and correct, before the offer can be accepted.

Generally, contracts made by mistake are not enforceable because they lack the requisite intention to enter into legally binding agreement. The principles or law pertaining to mistake vitiating consent of the contracting parties are:

- where both the parties are under a mistake as to a matter of fact essential to an agreement, the agreement is void
- where only one of the parties to a contract is under a mistake as to a matter of fact, contract is not voidable

If these rules are applied to E-Contracts, then several situations will not be covered. These rules if applied rigidly may also prove sometimes oppressive for one party and windfall for the other.

Usually in online contracts, especially when there is no active real-time interaction between the contracting parties, e.g. between a website and the customer who buys through such a site, the click through procedure ensures free and genuine consent. Considering the complexities involved in online transactions where the likelihood of the occurrence of mistakes is very high, the plea of non-est factum i.e. absence of consent, can be made available as provided in general principles of contract. A party to an online contract may not be permitted to avoid the contract on the plea of mistake - a misrepresentation or an omission to look into the terms and conditions will not bail a party out of his contractual obligations. Another facet of mistake of fact can be, as regards mistake as to a person. In e-contracts, chances of misrepresentation are very high and the mistakes as to person can occur frequently. Often in online trading the identity of parties is never certain and therefore contract concluded under the mistake of identity would therefore be void.

Advantages and disadvantages of e-contract comparing with traditional contract

Lots of provisions were carried out in this paper which can be considered as benefits or vice versa, bad sides of e-contracts, but still it would be expedient to make those principles more visible in this chapter.

E-commerce provides multiple benefits to the consumers in form of availability of goods at lower cost, wider choice and saves time. People can buy goods with a click of mouse button without moving out of their house or office. Similarly, online services such as banking, ticketing (including airlines, railways), bill payments, hotel booking etc. have been of tremendous benefit for the customers. Online businesses like financial services, travel, entertainment, and groceries are all likely to grow. E-commerce evolved in various means of relationship within the business processes. It can be in the form of electronic advertising, electronic payment system, electronic marketing, electronic customer support service and electronic order and delivery. Taking into consideration all the above advantages of E-contracts it can be concluded that they are far more beneficial than traditional contracts and definitely plays a very important role in today's world which is absolutely fast moving, as it is the need of the hour.

One of the key features only available with e-contracting is an electronic verification option, which gives an opportunity to review the final terms of the contract before the consumer actually starts signing. Also, customers appreciate the speed and efficiency of electronic contracting. For many, e-contracting is a breath of fresh air—a sign that business isn't stuck in the Stone Age. E-contracting makes most customers feel more comfortable and helps eliminating last-minute misunderstandings. With electronic contracting, there's no mystery or confusion. The customer sees everything and then signs the pad, so it's extremely straightforward.

But still, besides all the advantages of e-contract, there are some not very good parts of it, which may be harmful for both or only one of the contractual parties. As it's somehow novelty for Georgia, it's less trusted between some businesses or customers, so some questions may arise during forming contracts and in the end traditional ink signed contracts may be preferred to avoid all “misunderstandings”. Lack of reliability between parties is one of negative reference we have to agree when it comes to conclude contracts e-way. That is way it's very important to gain reputation in internet, because people struggle to click button and trust on someone unknown for them. The issue of conflict of laws and jurisdiction is also field to consider as a negative aspect of e-way concluded contracts between international parties, when either party wants to enforce the law that will give more redress to them, while enforcing the law in one country's jurisdiction, while the second party is resident of another country is completely inefficient in major cases.

Conclusion

“A technological revolution is transforming society in a profound way, if harnessed and directed properly information and communication technologies have the potential to improve all aspects of our social, economical and cultural life. It can serve as an engine for development in the 21st century and as an effective instrument to help us achieve all the goals of millennium declaration.”⁶

⁶ Kofi Annan



What we should admit considering Georgian reality in connection with e-contracts is, that lawyers need to be trained appropriately about relevant issues and the technical nuances of the law pertaining to them. Judges also need to be trained about the various issues pertaining to e-contracts. People in the lower and middle level Judiciary are almost completely unaware of the various nuances regarding ecommerce laws. This area needs to be seriously and urgently addressed. Likewise the industry and public at large have also been generally unaware of the provisions and remedies of e-contracts stipulated under the law. Therefore, it is necessary that the end users, lawyers and the Judges be properly trained. This can be done by conducting courses in Cyber laws, establishing community information centers.

What also should be mentioned is that e-contracts are well suited to facilitate the re-engineering of business processes occurring at many firms involving a composite of technologies, processes, and business strategies that aids the instant exchange of information. The e-contracts have their own merits and demerits. On the one hand they reduce costs; saves time, fasten customer response and improve service quality by reducing paper work, thus increasing automation. With this, E-commerce is expected to improve the productivity and competitiveness of participating businesses by providing unprecedented access to an on-line global market place with millions of customers and thousands of products and services. On the other hand, since in electronic contract, the proposal focuses not on humans who make decisions on specific transactions, but on how risk should be structured in an automated environment. Therefore, the object is to create default rules for attributing a message to a party so as to avoid any fraud and discrepancy in the contract.

E-contracts are formed through exchange of data messages communicate over internet wherein generally e-contracts are not reduced to a written document. Consumers therefore entering into e-contracts should take a print out of the same for any future reference and produce it as evidence. As business will move into the next millennium, ecommerce will become a multi trillion dollar economy, more operations and traditional business, software platform will become integrated with the web platform. Ecommerce may be the way that the international business is conducted. Therefore e-contracts conducted over the internet should not be treated any differently from consumer contracts concluded by traditional means, otherwise, an unfair competitive advantage would be awarded to online businesses.

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Electronic Contractual Relationships Actuality of the Issue

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ABSTRACT

Purpose: Aim of this paper is to expose the nature of e-contracts. This is innovation not only in Georgia but in whole world as well. As usage of internet grows, e-commerce becomes more and more popular between businesses and customers. This study will show advantages and disadvantages of e-contracts, if it's possible to alternate traditional ink signed contracts with its digital analog. Not only e-contracts, but also the meaning and importance of e-signature will be discussed as step by step it becomes constituent piece of e-contracts.

Methodology/approach: Because of the novelty of the topic, in Georgia especially, not many sources could be used, so optimal solution was to discuss the issue on the basis of foreign experience, not forgetting to mention the only Georgian Law considering e-contracts

Findings: During discussion of the topic it was found out that not all occasions can be covered by e-contracts; there are some exceptions according to foreign legislation that should by all means be printed out on paper and signed with ink, while Georgian legislation doesn't set limits on this matter. It may be caused by lack of practice and usage of e-contracts. Still, it's not excluded after reforms in Georgian legislation; some more concrete terms will be set, like it's in foreign legislation.

Originality/Value: As the topic by its nature is innovative, In Georgia not many papers can be found discussing this matter. Practice is also scarce, which makes a bit difficult to define appropriate direction, but considering foreign practice will help to underline proper accents. Still this work represents itself as interim ring, which will enable possibilities for potential consumers and businesses to communicate electronically and also it can fill the gap for lawyers to refine their skills and move on next level of contracting.

INTEGRATION BY CONSTITUTION



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A. Introduction

“Europe doesn’t grow out of contracts, it grows out of the hearts of its citizens – or not at all.”

Federal Foreign Minister Klaus Kinkel

in front of the 47th UN General Assembly, September 23rd, 1992

Not least the fact that more than half of today’s existing constitutions worldwide emerged after the year 1974 proves the “triumph of constitutionalism”.¹ This triumph can only be explained by awarding constitutions an importance exceeding the mere act of constituting a state, namely for integration. Especially political and legal theory often attribute a certain integrative effect to constitutions, be it on national or supranational level. One of the open questions hereby is, however, under which conditions this effect occurs or - in other words – how integration takes place.² Foundation, aim and mechanisms of a constitution’s ability to integrate are still disputed.

To be able to answer these questions, a closer look at the term ‘integration’ is necessary. What one will find out in doing so is, on the one hand, that integration is an actual process that can only be understood with the help of sociology and which has to be distinguished from entirely legal questions in connection with constitutions. On the other hand, that the integrative effect’s basis of constitutions is consistently seen in consensus, but how such consensus can be reached, what it relates to and how it could be substantiated is highly contested.

Focusing on integration on EU level, the definition and significance the EU constitution attributes to values plays a decisive role. Against the backdrop of pluralistic societies, the degree of value congruence demanded by a constitution may make the difference between victory and defeat of successful integration.

¹ Vorländer, *Integration durch Verfassung*, p. 9.

² Grimm, *Integration durch Verfassung*, p. 2.



B. About Constitutions' role in Integration and Creation of Identity

The manifold dimensions of integration

In times of immigration and reception of refugees, integration is mainly understood as process of their inclusion into society. Also the Cambridge dictionary for example defines integration as “the action or process of successfully joining or mixing with a different group of people”³. So integration of societies is a main field of investigation of sociology.⁴ A general, transdisciplinary definition, however, has neither been found yet, nor would such a definition be selective. Thus integration has to be defined contextualized.⁵

With regard to integration three different reference levels can be distinguished, the social, state-organizational and supranational. In Europe, there's a growing gap between economic, political and social integration.⁶ Talking about the EU and the constitutions' role for integration, *prima facie* the main dimension of integration to talk about seems to be the political one, meaning “a modus of accordance in relation to the political community, thus the sphere of society where public issues are being negotiated and collectively binding rules of social coexistence are agreed upon”⁷. However, constitutions also play a role for economic and social integration. Although the importance of economic success for integration must not be underestimated, for reasons of space this article will leave aside the European constitution's – or rather the EU Treaties (TEU and TFEU) in their form as given by the treaty of Lisbon, which so at least substantively substituted the failed EU Constitutional Treaty – integrative force and task with regard to economic aspects. It will only explore political and social integration through law.

Looking at the question what contributes to integration, it can be distinguished between long lasting and temporary factors.⁸ If one transfers this to the people's support of political systems, in accordance with *Easton* two different dimensions can be distinguished: *diffuse support*, meaning long-lasting support independent from specific decisions and *specific support*, relating to the political process' performance.⁹ For the viability of the political system diffuse support is the decisive dimension, since it deals with the general acceptance of the system itself as its supporting pillar.¹⁰ What this support can be traced to with regard to EU membership, is disputed within integration research. Two main currents can be distinguished hereby, the “utilitarian” one drawing upon a Cost/Benefit Analysis, assuming that support depends on a membership's benefits; the other one based on the notion of perceived threat from other cultures, measuring the attitude towards European integration using protection of the ‘in-group’ identity derived from nationality, religion or language.¹¹ However, what this support is based on says nothing about the necessary degree of diffuse support for stability or viability of a political system. But it indirectly helps examining the constitution's contribution to integration, since the constitution draws the framework for Cost/Benefit of a membership and influences adverse effects by

³ Cambridge Advanced Learner's Dictionary & Thesaurus, available at: <https://dictionary.cambridge.org/de/worterbuch/englisch/integration>.

⁴ See e.g. Peters, *Die Integration moderner Gesellschaften*, who defines Integration as „certain quality defined forms of order or structuring“, p. 92.

⁵ Bühler, *Das Integrative der Verfassung*, p. 16.

⁶ Grimm, *Integration durch Verfassung*, p. 6.

⁷ Stein, *Gibt es eine multikulturelle Leitkultur als Verfassungspatriotismus*, p. 35, fn. 1.

⁸ Landecker, *Smend's Theory of Integration*, SF, p. 41.

⁹ Knelangen, *Die öffentliche Meinung zur europäischen Union in der Bundesrepublik Deutschland*, p. 120.

¹⁰ Knelangen, *Die öffentliche Meinung zur europäischen Union in der Bundesrepublik Deutschland*, p. 120.

¹¹ McLaren, *Public Support for the European Union*, *The Journal of Politics*, p. 551 et seq.

the degree of value congruence it demands. As the Cost/Benefit considerations are of an economic nature, this article will deal with the second aspect.

II. The constitution as factor of integration and integration as a function of constitution(s)

1. The constitution as factor of integration – an historical approach

Discussions about creation of state and social unity and the constitutional's role hereby have a long tradition in Germany. Then one thing became clear: the existence of a constitution alone doesn't constitute integrative effects.¹² This finding has been proven historically by the so called "Weimarer Verfassung", which in postwar I Germany even deepened the cracks between constitution and reality with disintegrative effect¹³ and which is the root for 'creation of unity' not being adopted as a theme by *state* but rather *constitutional* theory in Germany.¹⁴ The most important German constitutional law expert who developed a theoretical system of Integration qua constitution, widely known as "Integration Theory", is Rudolf Smend. He centered a sociological understanding of Integration around his state and constitutional theory, assuming "that a fruitful study of the state and the constitution hinges on the use of a social science method, rather than of a strictly juridical method of interpretation of legal norms"¹⁵. So his main finding was the interdependency between constitution and political reality.¹⁶

But even if the existence of a constitution alone is not sufficient, not least the example of the US constitution shows that constitutions must not generally be deprived of an integrative effect. In cases when non-legal integrative factors are weak, as for example in a new founded state comprising a melting of ethnical and cultural diverse citizens like the United States of America or an association of states without common language¹⁷, history or culture like the European Union, this gap can be filled by a constitution. And so it happened in Germany after the second world war. Without continuity and legitimacy, being a mere product of law, not a "decision on form and content of political unity"¹⁸, the federal republic became a community not of common values, but legal and economic success.¹⁹ Finally, the substitution of political disputes by disputes with regard to legal-constitutional positions even lead to the emergence of the so called "constitutional patriotism" several years before German unification.²⁰ Today, according to **§ 10 sec. 1 sentence 1 nr. 1** Staatsangehörigkeitsgesetz (law on citizenship and nationality), a declaration of belief in the German constitution is a precondition for citizenship.

The difference between the normative, legally binding, and integrative effect of constitutions is that the one effect *will*, the other one only *may*, flourish.²¹ The reason is that integration is an actual, social process that might be influenced or even started by legal rules, but not forced or controlled by these.²²

¹² Grimm, Integration durch Verfassung, p. 4.

¹³ Lehnert, Desintegration durch Verfassung?, p. 237 et seq.

¹⁴ Koriath, Europäische und nationale Identität, p. 122 et seq.

¹⁵ Landecker, Smend's Theory of Integration, SF, p. 39.

¹⁶ Koriath, Europäische und nationale Identität, p. 123.

¹⁷ With respect to the connection between language and integration see e.g. Esser, Sprache und Integration: Konzeptionelle Grundlagen und empirische Zusammenhänge.

¹⁸ Schmitt, Verfassungslehre, p. 20 et. Seq.

¹⁹ Koriath, Europäische und nationale Identität, p. 124.

²⁰ Koriath, Europäische und nationale Identität, p. 124.

²¹ Grimm, Integration durch Verfassung, p. 4.

²² Grimm, Integration durch Verfassung, p. 4.



Two aspects can be seen as connected with an integrative effect exceeding the legal-normative force of constitutions. The first is an understanding of the constitution as more than a mere legal textbook, which depends on the public perception. The other one – but related to the first – is the population's identification with the constitution's substance.²³ When talking about creation of identity, two different levels have to be distinguished; the individual and collective identity. This essay focuses on constitutions' effect on creation of collective identity, dealing with characteristics attributable to groups and being based on consensus.

2. Excursus: Integration as a function of constitutions

First and foremost, constitutions are rulebooks for political processes and institutions. As legally binding policies, one of their main (instrumental) functions is to steer political processes in accordance with the principle of democracy.²⁴ But do they also have an *integrative* task? This question should be looked at with caution and must not be confused with considerations with respect to constitutions' actual integrative effects. It rather has to be distinguished carefully between the actual effect and function, between "integrating reality"²⁵ and normative task. Among German constitutional law experts, it has long been disputed if the German constitution has an integrative function, but this can now be considered as generally recognized.²⁶ However, this finding can't be transferred to other constitutions, especially not those of a supranational merger, one-to-one.²⁷ But it is not even necessary at this point to solve the questions focused at in this article, nor possible for reasons of space, to investigate if the European constitution – or rather the TEU and TFEU – has an inherent integrative function as well. This article only focuses on examining constitutions' actual integrative effect and its preconditions.

However, this does not preclude expectations with regard to a certain unifying power across the differences inherent in a pluralistic society, based on the advantages coming along with a "good political order" established by a constitution.²⁸

III. Integration through consensus

Although political and legal theory attribute a certain integrative effect to constitutions and there's wide spread acceptance with regard to consensus being this integrative effect's origin,²⁹ it's disputed how such consensus can be reached, what it relates to and how it could be substantiated.³⁰ *Schaal* illustratively divided four groups or, as he named them, "Modi" of integration qua constitution: namely Integration qua Neutrality, qua Values, qua Discourse and qua Conflict.³¹

The concept of integration qua Neutrality arises from political liberalism, dealing with the question how to handle the factum of pluralism of conceptions of the good within societies

²³ Grimm, *Integration durch Verfassung*, p. 7 et seq.

²⁴ Vorländer, *Integration durch Verfassung?*, p. 9.

²⁵ Smend, *Verfassung und Verfassungsrecht*, p. 84; „As positive law the constitution is not only a rule, but rather reality; as constitution it is integrating reality“ (translated from German).

²⁶ Morlok/Schindler, *Smend als Klassiker*, p. 16.

²⁷ A detailed investigation of which parts and norms of the German constitution display their integrative function from political theory's perspective was e.g. made by Bühler, *Das Integrative der Verfassung*.

²⁸ Grimm, *Integration durch Verfassung*, p. 3.

²⁹ supported e.g. by Ronald Dworkin, John Rawls and Jürgen Habermas; against e.g. Haltern, *Mythos als Integration*.

³⁰ Schaal, *Integration durch Verfassung*, p. 221.

³¹ Schaal, *Integration durch Verfassung*, p. 223 et. seq.

sharing only a little “overlapping consensus”³². The answer political liberalism offers seems rather easy. To be able to meet with approval, a constitution has to be ethically neutral – means neutral with regard to certain (reasonable) conceptions of the good life – and must govern exclusively the political sphere. This would automatically lead to acceptance of and compliance with this constitution.³³

The idea of integration qua consensus on values, based on communitarian considerations, in contrast argues that constitutions could only have integrative effects if they were reflecting pre-political values of the political society.³⁴ Thus social integration took place via shared values, which are codified in the constitution.³⁵ This theory can be seen as the liberal’s theory of neutrality antipol, reproaching the liberals’ atomistic-egoistical individualism as center of their theory and their disregard of virtues, which is deemed to be connected with the disappearance of virtues and values in modern liberal-democratic societies.³⁶

Deliberative theories on democracy represent, that the integrative effect of constitutions depends on if they allow „the addressees of law to regard themselves at the same time as the authors of the law”³⁷; so they already start from the relationship between individual and state in claiming a democratic collective self-determination.

Finally, the civic republicanism somehow widens deliberative approaches, stating that integration could only take place through discursive conflicts. Only if decisions based on the constitution – mainly by constitutional jurisdiction – that don’t enjoy social consensus are discussed conflict among society, this society can reinsure the republican background-consensus and so also promote integration through reciprocal recognition.³⁸

Each of these concepts has its strengths and weaknesses. Against the concept of an ethically neutral constitution one could argue that it’s delusive to believe in ethically neutral rules and regulations, on the other hand, too much force with regard to value congruence can have disintegrative effects and potentially violates minorities’ rights. Whereas deliberative theories, including those supporting conflict rather than consensus, are highly theoretical and can only work in a society of living democracy that on top has an institutional system allowing e.g. politicians’ direct sanctioning (in representative democracies). Moreover, the conflict theory’s main weakness is that it neglects the fact that conflicts have the same disintegrative as integrative potential.

With regard to the EU Treaties’ integrative effect it is quite clear that the deliberative theories requiring the preconditions for democratic influence can’t be applied due to the EU’s democracy deficit. An integrative effect on EU level may thus only occur over shared values or political objectives.

³² The term „overlapping consensus“ was established by John Rawls in his Theory of Justice.

³³ Schaal, Integration durch Verfassung, p. 224.

³⁴ Schaal, Vier Konzepte der Integration qua Verfassung, p. 79.

³⁵ Schaal, Integration durch Verfassung, p. 225.

³⁶ Schaal, Integration durch Verfassung, p. 224 et seq.

³⁷ So Habermas, cited from Collignon, Democratic Requirements for European Economic Government, p. 8.

³⁸ Schaal, Integration durch Verfassung, p. 226.



IV. On “values” and membership

1. Europe, a “community of values”?

After two world wars, Europe had been seen as political product to prevent war recurrence, warrant prosperity and, most recently, promise safety – in summary a guarantor to improve people’s lives by orientation towards the common good.³⁹ However, to the early architects of the European Union like Konrad Adenauer, Robert Schuman, Alcide de Gasperi, Jean Monnet and Winston Churchill it was clear that, on the one hand, economical and rational integration wouldn’t be sufficient but, on the other hand, the occidental-christian values that should be adapted and protected by European community would only be accepted by the people if they lived in prosperity and social justice.⁴⁰ So the aim of a community of shared values was never really contested – latest until Turkey’s application for membership.

Today it’s not clear any more what can be understood to be Europe, how it is defined. Does Geography determine its borders or are other cultural, historical or intellectual similarities decisive? If it comes down to a “community of values” – which values are those that matter most? Answers to these questions haven’t been found yet.

But the most interesting question, anyway, is if a common value base is *constitutive for membership*.

Art. 7 TEU and its meaning with regard to normative preconditions for membership

An answer to this question can be provided by a look into Art. 7 TEU. This article states in his second paragraph that: “The European Council, [...], may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2.” And in his third paragraph that: “Where a determination under paragraph 2 has been made, the Council, [...], may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council.” So *prima facie* the sanction mechanism contained in Art. 7 TEU is connected to compliance with “...the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities” on which the Union is founded, see Art. 2 TEU. However, an interpretation of this Art. 7 TEU as mechanism to enforce the “EU’s values” in sanctioning member states that don’t comply with these, would ignore the dynamic nature of values.⁴¹ An understanding of Art. 7 TEU that’s politically reasonable and in accordance with contractual theory recognizes, that it is about securing of those preconditions and requirements for membership, that have to be met to become a member state and which the member states mutually formulated.⁴²

So Europe is more united by political objectives than shared values. Therefore, a community of values can’t be seen as the European Union’s common base of identity and herewith integration. And thus, the only integrative factor that may be attributed to the EU treaties is a *formal* one. However, the complete development of this function is impeded by the EU’s main problem; its democracy deficit.

³⁹ Nettesheim, „Gegründet auf Werten...“, p. 3.

⁴⁰ Thesing, Die Europäische Union als Wertegemeinschaft, p. 1.

⁴¹ Nettesheim, „Gegründet auf Werten...“, p. 11.

⁴² Nettesheim, „Gegründet auf Werten...“, p. 11.

V. About the symbolic effect of constitutions and their impact on integration

A constitution can especially then be seen as integrative, if it is able to express the social community's ideas on political order and thus, in the society's perception, establishes a "good political order", becomes its guarantor and herewith symbol. In general, constitutions' symbolic effect is therefore more due to their openness to interpretation, allowing citizens to deal with the constitution in a reciprocal way and so identify with it as their common organizational concept.⁴³

The term "symbolic form" is derived from the philosophy of Ernst Cassirer, defining it as the form of mediation between political culture, containing and negotiating about the ideas of political order, and the constitution laying these ideas normatively down.⁴⁴ In summary, a constitution then has integrative effects if it is a symbol for "more" than it is in a juridical sense.⁴⁵

As just stated, a community of values can't be seen as this "more" on EU level, and therefore also doesn't work as common base of a European identity. Much more, national identities seem to be a normative limit of integration, not only of social, but more and more also political integration. This proves the interdependency between the different forms of integration, since, as has been shown, political or formal integration within the EU has a profound base in the EU Treaties and despite gets challenged by the missing social integration.

C. Conclusion

Although the existence of a constitution alone doesn't constitute integrative effects, a constitution can indeed unfold such effects especially with regard to social and political integration – not least by its symbolic effect – and herewith help to create a collective identity, which in turn is important for integration of the political community and functionality of democracy.

Whereas economic and political integration within the European Union are reality, social integration is not nearly as far proceeded. However, according to the EU Treaties, the level of social integration doesn't have an effect on formal EU membership, which is decided upon on political level

Despite, since social integration can't be seen independently from systemic integration, this gap has to be closed – not least to prevent that the lack of social integration undermines the already implemented systemic integration like it now is to happen with Great Britain. Coming back to the citation at the beginning of this article, stating that "Europe doesn't grow out of contracts, it grows out of the hearts of its citizens – or not at all", one can resume that although political, economic and social integration can have different speeds, the one won't stand in the long run without the others – and thus the citation offers a core of truth.

A solution would be to put a new European Constitution, worthy of its name. Such a constitution should in a first step close the gap of the democracy and the connected legitimacy deficit of the EU by awarding the European Parliament the power it needs and deserves. A next step should be to increase the capacity to act through recruitment of further employees, increase the assertiveness and ensuring a clear separation of powers among the European institutions.⁴⁶ Last but not least, it should create the necessary basis for democracy by ensuring transparency and so contribute to increasing public confidence and perception.

⁴³ Brodacz, Chancen konstitutioneller Identitätsstiftung, p. 103.

⁴⁴ See Vorländer, Integration durch Verfassung? P. 18.

⁴⁵ Grimm, Integration durch Verfassung, p. 7.

⁴⁶ See also Dobbert/Lorenzmeier, Die EU braucht eine neue Verfassung, available at: <https://www.zeit.de/politik/2018-06/europaeische-integration-eu-verfassungsaenderung-recht-asylpolitik>.



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Integration by Constitution

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ABSTRACT

Purpose – This paper aims to examine the EU constitutions' actual integrative effect and its pre-conditions to be able to draw conclusions about the level of integration's effect on EU membership.

Design/methodology/approach - This work is inspired by contributions from different disciplines, next to law especially sociology and political philosophy. Taking as an argumentative starting point the findings made so far with regard to the national, especially the German, constitutions, namely their theoretical integrative task and actual integrative effect, it is asked if these findings can be transferred to a European constitution. Since this question has to be negated, at least the ideas raised so far to deal with questions around integration are taken as inspiration to deal with these issues on EU level.

Findings – It was found that focusing on integration on EU level, the definition and significance the EU constitution attributes – or rather does not attribute – to values plays a decisive role. According to the EU Treaty, the level of social integration is not decisive for EU membership, but rather the level of political, systemic integration. Despite, in the long run, the EU won't survive without complete social, political and economic integration, which could be reached through an EU constitution that fulfills all the requirements needed to implement integrative effects.

Research limitations/implications – A major weakness is that there was not much time for research and argumentation due to the tough deadline.

Originality/value – The paper shows that for EU membership a common value base, especially with the already present member states, is not strictly necessary; which is good and important for the EU's existence, since against the backdrop of the EU being an association of states with different cultures and histories, a violent approximation of values would rather support resistance than strengthen cohesion in the EU's population.

PUBLIC VS PRIVATE INTERESTS IN ENFORCEMENT POLICY



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Introduction

Debt Enforcement in Georgia

Debt enforcement procedure acting under the Georgian legislation contains both the rules and conditions of enforcement of tax, as well as civil acts, deprivation of property execution/penalty, property execution/fine. That is why it can be regarded as a universal enforcement procedure.

The purpose of enforcement is to restore the infringed rights of individuals/legal entities/administrative bodies to ensure implementation of justice. This function is the backbone of rule of law and promotes the good governance. The main practical duty of the NBE is debt enforcement.

The importance of enforcement is much greater than it appears at first glance; Strong enforcement mechanisms reverberate positively in the economy through increasing international trustworthiness, strengthening payment behavior of citizens and the protection for businesses which in turn increases the chances for foreign investment. Quality of debt enforcement is also one of the elements in the World Bank's "doing business"-index. Additionally, high quality enforcement is preventative since it affects overall payment behavior and morale. It is sometimes said that the quality of execution reflects the overall quality of due processes. Debt Academic work in the frame of debt enforcement issues are not very rich, while its value is very crucial and new legislation may change the whole state market challenges.

In the report, authored by Richard Bennet is described main difficulties and challenges while creating modernized civil services in Georgia. Transparency International Georgia observed the cycle of reforms in the NBE and the report was processed in the framework of possible amendments in debt enforcement structure. What is more, in the framework of non-state actors' interests and functions was investigated Georgian research report (Nino Dolidze, Tamar Koberidze, 2018). Theoretical materials concern about privatization of civil services (Min Z. Carter, 2013) and structuring NPM issues in post-Soviet countries (Wolfgang Drechsler, 2006) and fighting against corruption (Kupatadze, 2012).



Comparing to past experiences, the system is certainly elaborated, though current legal framework is not satisfying neither for the NBE nor private sector (private enforcement officers, private customers); Each stakeholder demands to make some changes in the regulation. Nowadays authorities discuss about possible changes to add enforcement more flexibility.

Methodology

The fieldwork of this research was undertaken in Tbilisi, as it is the capital city of the country, both business and governmental center. The NBE main building is located in Tbilisi and most of foremost private enforcement officers work in the capital as well. In 2003, when “Rose Revolution” happened, started a new wave of reforms. Before this cycle of changes, each administrative structure and level was totally corrupted¹. The new government aimed to cure the system, upgrade procedures and simplify bureaucracy. During the reforms from 2008 the NBE was recruiting young educated generation. There was lack of professionalism, that’s why many interns had been applied from universities and this new workforce totally changed the conditions; Most of interns started working in the NBE and even most of current managers are former interns or enforcement officers.

Since 2009, the case management within the NBE moved to an automatic computer based case management system. Since the beginning of 2010 the case management system was implemented in all regional bureaus of the NBE. Nowadays Parties (debtors and creditors), staff and their managers all can observe online the status of the case and control each step of the NBE. It has commonly been assumed that, the case management system has advanced the transparency of the activities of the NBE. Furthermore, according to recent reports, the system surged the efficiency rate; The debtors’ registry is a unified database of physical and legal entities; The debtors register is connected to other public registers and banks, which gives the NBE opportunity to assess the property of the debtors more precisely and enforce cases urgently. The NBE and all the regional bureaus are equipped with appropriate infrastructure. These modern facilities were the good example how E-governance was implemented in Georgian public administration. Within these unified database and computer based case management system it is equally possible to transform the debt enforcement structure into centralized or decentralized one.

Territorial bureaus of the NBE enforce judicial and administrative acts. The enforcement paper may be issued by the Court, arbitration, notary or by other persons / bodies (e.g. the Minister of Finance). Besides this main duty, the NBE has additional services for citizens and legal entities: statement of facts, online store, summary proceedings, debtor registry, property evaluation, e-auction.

Lately, the NBE has been transformed as a business-like organization, which has its own finances and cares for improving its services, as it has professional rivalry to private enforcement officers. The NBE has independent income as service fees, which is guarantee of more instant and efficient service to customers, than it used to be before reforms. Moreover, both the NBE and private sector would like to transform the service into much more business-like way.

The reason of started working on National Bureau of Enforcement was determined by several reasons; The most important is its complicated function; it has important contribution in pro-

¹ Dolidze, N., Jobava, I., Sopromadze, E., Loladze, N., Loladze, T., Ovsianikova L., Antia Zh., Mzhavanadze, G. & Sonishvili, T.(2013) “Public Administration in Georgia” in “Public Administration in Post-communist countries”

moting business and at the same time the NBE is an entity which equally defends individuals' interests. Under these circumstances, it is questionable whether it can be transformed as a free market service or not. In any case, the main goal of the article is to define viewpoints of civil and private sectors and find the intersections, if possible.

As will be clarified later, this study analyzes current circumstances, future plans and perspectives of stakeholders. The article attempts to summarize research results and drawbacks of how debt enforcement is perceived by the state. For the research reason, the data was triangulated by holding interviews with the NBE managers, former employees, private enforcement officer, the bank representative. While analyzing the stated case, previous experience of public sector reform of Georgia was used as a material.

For qualitative research, it was acquired fruitful information from strategic documents and previous research. In particular, it was treated policy document and strategic plan of the NBE, as well as legal documents, such as the law of Georgia on "Enforcement procedures", law of Georgia on "Conflict of interest and corruption in civil service".

From qualitative researches oral reports about possible design of future enforcement system have been attained. The first source was the web site of the NBE², where all the policy and documents are published, as well as information about organization supervisors. The strategic plan and policy paper of the NBE was achievable via the web site, as well as the law of enforcement procedures. The first respondent of the qualitative research was chosen from the site and the person was one of the top managers, who had been working in the NBE before reforms had started. Overall, six interviews were held strategically to cover relevant stakeholder perspectives. All were representatives of different structural and regional entities.

The literature for aims of this research is divided into three directions: 1. Empirical literature (cases and reports) 2. Legislation and policy documents, which were mentioned above. 3. Theoretical literature.

Analysis of the Main Findings and Discussion

Problems from the NBE perspective

Before 2000 bailiffs had been part of the court structure and they had been enforcing only court decisions. That time the problems of corruption existed regarding to court bailiffs; Bribes were the only way to enforce a case. One of the former NBE employees mentioned: "Corruption was the main problem. Corruption covered every level from issuing the enforcement paper to getting money from debtor. Even the heads of departments could not understand how it was all corrupted. Everyone said that corrupted was the system, not individuals". Consequently, creditors would try to find alternative, mostly criminal ways to get their money and the service of these informal ways were much higher than current tariffs are. Under these circumstances, there was no motivation to create new services. From 2002 Until September 2008, it was a department of the Ministry of Justice. After then the NBE has been transformed to a service agency, and has gained much more autonomy.

From 2003 Georgian government started its path to New Public Management; Most of administrative entities have transformed into business-like service agencies³. the NBE is one of such legal entities of public law (LEPL). LEPLs are regulated by special law of enforcement

² http://nbe.gov.ge/index.php?sec_id=1&lang_id=ENG

³ Bennet R. (2011) delivering on the hope of the Rose Revolution: Public sector reform in Georgia, 2004-2009



procedures and within this legislation it is half independent structural unit. Like other service agencies, the NBE has characteristics of de concentration as well; It has its own income and territorial bureaus which execute duties on-site but each step might be controlled by higher authorities, departments or even by Ministry of Justice (MOJ). Furthermore, the NBE employees are typical civil servants. In behalf of current regulation framework, civil servants have fixed salaries and they cannot be designated on any position but public function, except educational work.⁴ Despite the fact, that the NBE has become more business-like organization, it is a widely held view that, low salaries are one of the main problems for the staff. That is why, former NBE employees, who have learnt certain skills there tend to move to private sector or start private bailiff career. Both, the NBE and private enforcement are monitored by MOJ.

Another remarkable aspect is the budget issues; Due to the legal amendment of 2015 all the state structural entities have unified account number. Thereby, despite the independent income receiving from service fees, the NBE cannot fully control finances and the whole amount of money for each governmental organization transfers to central budget.

NBE representatives from different departments were interviewed, directly indicated, that private enforcement officers' institute with current rights deteriorates the circumstances for the NBE, but at the same time agree on, that the NBE lack resources to enforce all the cases alone; Private enforcement officers have a right to select cases and take as many, as they prefer. According to surveys, almost all high-profitable companies prefer to consume private enforcement officer's service rather than the NBE, while all small and unprofitable cases has to be enforced by the NBE.

NBE representatives marked the transformed functions and principles of the bureau; If ten years ago main purpose was to satisfy the claims urgently with all possible methods, nowadays the NBE employees get used to be mediators between creditor and debtor, first they attempt to provide agreement between parties and then if it does not have any positive result, start enforcing procedures. Conversely to it, private enforcement officers' earn salary from enforced cases and they do not see the necessity of such prelude, as it is not their direct duty. Additionally, the NBE softened its approaches; On budgetary cases debtors have an opportunity to pay debts piece-by-piece. Even on private cases, they support parties to have agreement and ensure creditors, let debtors pay stepwise. The NBE representatives stated these values as very crucial acquisition which might not be disappeared.

To draw conclusion, for the NBE the problem is the following: according to this freedom of case selection, private enforcement officers can only serve to few big financial organizations; That is to say, private organizations prefer to hire private enforcement officers, who work only for them and the result is that approximately all the profitable cases own to several enforcement officers, while the NBE has to work for loads of unprofitable cases and lose the chance of earning income. Additionally, the NBE cares for both parties a lot, has many campaigns and activities to prevent debtors from the most critical measures, while private enforcement does not considers this aim prioritized and cares only for earning as much money, as possible.

Problems from private sector's perspective

Generally, private enforcement officers' job was evaluated very positively from each respondent; It is acknowledged, that they have less cases and more motivation to execute the job as

⁴ Georgian Law about Conflict of interest and corruption in civil service, article 13

better as possible. As the bank representative mentioned: “private enforcement depends upon how well the private enforcement officer works. If he does his job well, it will depict on his bank account, reputation, everything. Private enforcement officer does a lot risk if he does not do his job well. And there is not any creditor on earth who does not want timely-friendly-manner executor who takes and executes cases on time.”

Private enforcement officers have some restrictions by law[9] and the three of them are most important:

1. It is mandatory to apply to the NBE when the reward according to enforcement letter exceeds half a million GEL;
2. Private enforcement officers can only take civil cases;
3. Holding auction is exclusive entitlement of the NBE.

On an interview with private enforcement officer, he remarked, that implementation of this institute was the demand of the market; The state could not cope with number of cases with its resources and as he assumed, that private sector worked quite well and maybe even better than the NBE itself. Under these circumstances, above mentioned regulations seem groundless. Private sector assesses these prohibitions as artificial mechanisms for the NBE to win in this market competition. Only about conducting auctions all the respondents suspect, that the centralized system was provided to eradicate widespread corruption and prevent future operations from it. Even though, centralized auctioning system has its logical explanation, private sector is not satisfied with the service the NBE offers customers from taking case to putting property on the site. The reason is staggering number of ongoing cases and lack of human or technical resources. That is why private sector suggests the government to make up more flexible and safe tools for smooth activities. As bank commissioner noted: **“To me, public enforcement is like a pool, and the cases keep adding into this pool with the bucket and they try to clear it with the spoon. That’s why finally they come up to the lack of resources....I don’t think there is any governmental institution, which can do everything on time...”**

It may seem counter-intuitive, that like the NBE top managers, private enforcement officers would like to lead not only civil, but each type of cases as well. An interview with private enforcement officer revealed, that it may become loss-making for him to take some small cases, but he could make an effort voluntarily. The reason is that much more functions need to be delegated to private sector to improve this service.

Besides above mentioned issues, there are some more flaws in current regulations; Such as, the NBE as a competitor of private enforcement and license issuer for them at the same time. This dual function puts healthy rivalry under suspect. What is more, as soon as the government noticed, that most of civil cases had flowed to private enforcement, certification exam was instantly quit⁵ and nowadays there is no practical ability for lawyers to pass the tests and take up this business. Consequently, on the one hand, private sector selects private enforcement service, but on the other hand, the NBE tries hard not to support this institution. To recall “good governance” index and its principle about regulatory quality, it is quite obvious, that in this field scores could be low, as the system is too overregulated.

Despite negative aspects in this realm, there are some principles, which are evaluated positive-

⁵ Transparency International-Georgia (2015, 26/11) The state constraints private enforcement officers <https://www.transparency.ge/en/blog/state-constrains-private-enforcement-officers>



ly enough by private sector. First and the most significant is freedom of acting area – private enforcer can take a case of any region in Georgia and the second, fee of private enforcement is a matter of negotiation. These two are the main principles of free market and this way, competition between private enforcement officers is fair enough, it all depends on their qualification and hard work.

Stakeholders about future plans

In the past years the law of “enforcement procedures” has been amended many times and it has become very chaotic. All the stakeholders felt the necessity to change and thus, the NBE started working on a draft code. This document is not public yet, but interviewees have some information on the current draft

It is planned to create a chamber of enforcement where all the enforcement officers will be enrolled and the structure may have its own management, chosen from members. The chamber will have autonomy from the NBE or any other governmental entity, but still will be monitored by the NBE and MOJ. In this system the NBE will remain services of automatic computer based case management system, statement of facts, online store, summary proceedings, debtor registry, property evaluation, e-auction. All these services can be sold to enforcement officers of the chamber.

The NBE top managers have rough idea, that at least the first year after this reform, might be implemented a territorial principle. The reason is to give equal opportunity to newcomer enforcement officers to settle on the market. Another possible amendment is connected to service fees. As it is doubted, that the tariffs will be fixed; Income will be depended on number and type of cases for all enforcement officers, but service fee percentage might not be matter of negotiation any more. It is assumed, that the certification exams will be restored and the government will contribute all enforcement officers to have resources and appropriate working environment.

To investigate processes, relevance between possible amendments and analysis is that this possible legislation delimits a free market. While modern management implies marketization principles in civil service and asserts, that administrative entities have to be flexible. The main purpose of free market is fully disappeared in the model of enforcement chamber, where costs and other working principles are strictly regulated by the government.

On the other hand, the NBE representatives see the function of this system from customers' angle of vision and they recall past bad memories of corruption at the same time. Against full marketization of enforcement, government officials state the same arguments:

1. All the creditors need to be assured that their claim will be enforced, no matter if the case is profitable or not; The NBE representatives have a doubt that some regions, which are socially and economically less developed, cannot attract private enforcement officers and they may stay without proper attention.
2. Past experience of corruption makes the government centralize system and observe occurrences from a very close distance not to lose steering wheels;
3. It is never directly said, but always meant, that the central budget consumes enforcement fees a lot and making away these financial resources for the private sector seems difficult.

When the NBE started working on reformation of the existed system, officials created draft code; The research respondents described the NBE's afterword activities differently. The NBE representatives mentioned, that they had sent the draft code to all stakeholders, received documents with track changes and approximately 80% of notes were depicted in the document. Whereas private sector representatives' perception of this process was completely contradicting; As they recalled, the NBE had only informational presentations about how it was going to change legislation. Therefore, private sector members assume, that the government did not take into account their position. In any case, it is obvious, that active participation of non-state actors before creating a draft code did not happen.

The results of the study indicate, that current number of human resources would not give an opportunity to privatize the whole system soon, but at least it is possible to start over certification exams and let the market fulfill with more private enforcement officers. This policy would prepare the circumstances to set up only private enforcement institute, which will work similar to institute of legal attorney. The NBE's argument of protecting creditors is easily dispelled: Free market suggest clients a variety of prices and quality of service; Therefore, one may not get by to hire the most prominent enforcement officer, but still it is possible to find beginner or less famous one.

Conclusion

Georgian governments are permanently putting an effort to improve technical skills, ease property registration and assist private sector in other ways to take up business. Correspondingly, enforcement procedures should be swift and comfortable enough. All the reforms from 2003 were dedicated to transform the government from classic bureaucratic system to new public management. All the materials reviewed so far, however, suffer from the fact that, the NBE cancelling the exams for private enforcements hinders the private sector to grow and therefore that NBE's decision is not in line with Georgia's economic policy. According to observation, on the surface, the chamber of enforcement seems like independent institution, but with all the stated restrictions result completely different consequences.

In this article, the aim was to assess how does enforcement work and if the development of the field follows the modern international trends. It should be indicated, that the most of European countries have already transformed their enforcement system. In particular, privatization of this realm has been intensifying in all well-developed countries.⁶ It is undoubted, that post-soviet and developing Georgia cannot implement any system from the EU countries without any special transformations. Therefore, in our case, if the government says that the country wants to strengthen private sector and free market, then they should implement a structure with less centralized regulations, more economical freedom and with better monitoring system to prevent it from the risk of corruption. Such general advice is impossible to be transformed into the practical and universal service, which may satisfy all stakeholders. This study has identified, that from 2003 reforms held with quite big success in the framework of eradicating corruption and giving the institution more freedom to act independently from the central government; Albeit the achievements were positive, the practice showed that although private enforcers discretion is limited which hinder private sector to function as efficient as it possibly could, they struggle to legitimate a larger discretion. It should be mentioned, that banks value

⁶ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/effective-justice_en#page=13



their efficiency, effectiveness and reliability a lot higher than NBE's performance. The empirical studies revealed, that private enforcement officers struggle to prove their professionalism, deserve clients' respect and earn money, while the NBE enforcement officers do not have such motivation to improve their job. Despite the dedication of their job, which private enforcement officers may have, the risk of corruption still exists, while the statistical information states, that institute of bribes was eradicated only after moving management into centralized system and e-government tools exchanged previous mechanisms. Thus, the government hesitates delegating some functions on lower levels or to private sector.

The latest observations have confirmed that the cycle of reforms are not even close to over. The draft code of enforcement procedures has not yet sent to parliament and it might be changed. While both private sector and the NBE are not satisfied with current circumstances, the way out of it is only mutual discussion, changing interests and ideas. It is hard to imagine, that absolutely perfect solution exists for this matter, but the government should evaluate processes and the possible results from broader perspective than it can be only gaining financial resources by the NBE. Privatization of this realm may foster enforcement officers to create some effective tools for executing their duties faster and better. This automatically may be one more benefit for investors to take up a business in the county, where creditors have an opportunity to receive comfortable and swift service of enforcement. But first, it needs to be studied and assessed whether privatization have such positive effects without damaging anyone's rights and it should be done via letting private enforcement officers to work with less restrictions.

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Public vs Private Interests in Enforcement Policy

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ABSTRACT

Purpose – The paper aims to study current circumstances of Georgian National Bureau of Enforcement (NBE), figures out possible changes in this field and compares their efficiency. Contemporary changes in legislation aim to regulate private sector more, while at the same time expand the responsibilities of the private sector. In this paper, it is analyzed the transformation from a totally public system of debt enforcement until today's system and show how this process have evolved over time.

Design/methodology/approach – The research approach aimed to cover various perspectives by interviewing strategically chosen actors in enforcement such as managers at various levels. The interview material is triangulated by analyzing strategically chosen documents.

Findings – The findings show in what way the reform-process of NBE reflect a step-wise privatization process going through phases of reform. The paper thereby contributes how main issues of debt enforcement perceive stakeholders

Research limitations/implications – The main limitation is that the enforcement legislation will be definitely changed, but nowadays there is no proof of it; NBE has worked on the document, which is going to be initiated in the parliament, but still the draft law is not public and the study alludes only to oral statements of NBE representatives. The significant implication is to synthesize modern public management concepts and draw on past experience (cases and reports) to offer a process-oriented view of privatization.

Originality/Value – The importance of enforcement is much greater than it appears at first glance; Strong enforcement mechanisms reverberate positive in the economy through increasing international trustworthiness, strengthening payment behavior of citizens and the protection for businesses which in turn increases the chances for foreign investment. Also, It is sometimes said that the quality of execution reflects the overall quality of due processes.



COMBATING CORRUPTION: NEW PERSPECTIVES IN ACCORDANCE WITH THE NEW DRAFT OF CRIMINAL CODE OF ARMENIA



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Introduction

Corruption has existed for centuries in Armenia. Over time corruption manifested itself in new forms and dimensions. It had a destructive effect on democratization and market development of Armenia, and because of that corruption was officially revealed as an extremely serious obstacle for development of Armenian nationality.

Thus, according to a study by the international organization Transparency International, in 2014 the Republic of Armenia occupied 94th place out of 175 countries, in 2015 - 95th out of 168 countries, and in 2016 – 113th place. And the corruption perception index in 2014 was on a scale from 0 (highly corrupt) to 100 (very clean), and in 2015 - 35 out of 100 possible, and in 2016 – 33 of 100 possible¹.

But the official statistics on the results of the detection and investigation of corruption crimes on the official website of the RA General Prosecutor's Office do not correspond to the realities of our society, since based on the sociological research of legal scholars the level of corruption latency reaches 95%².

The fight against corruption is a crucial prerequisite for ensuring and improving public administration efficiency. With this understanding, the fight against corruption has been recognized as one of the priorities of the national security strategy of the Republic of Armenia.

Particularly, according to the national security strategy of the Republic of Armenia, one of the internal threats to national security is the reduction of the effectiveness of the public administration system and the lack of confidence in the judicial system.

Institutional reforms are aimed at strengthening the democratic state, ensuring effective functioning of public administration bodies, securing independence and impartiality of the judiciary, improving the role of civil society in decision-making processes, strengthening the fight against corruption, in particular the fight against bribery.

¹ Transparency International Corruption perceptions index report http://www.transparency.org/news/feature/corruption_perceptions_index_2016 accessed 25 October 2018

² Sargsyan, Grigor. *Problems of Bribery Response*. "School of the Prosecutor's Office" SNCO, 2012.

At the same time, under the name of activating the fight against corruption, there is never a need to understand, for example, the manifestations of artificial, baseless accusations in the investigation of criminal cases. It should be taken into consideration that corrupt people have never been separated from the lack of imagination and they can always find the way to avoid barriers.

Concerning the definition of corruption there are no general approaches in the scientific literature. For instance, A.V. Makarov rightly points out that a lot is said about corruption: they write, they hold international conferences and symposia, they take all kinds of resolutions and appeals, but there is still no common approach to this phenomenon³.

Regarding the concept of “corruption,” the opinions of criminologists are divided, as a rule, depending on the content of the elements forming it or on other grounds.

Corruption is derived from the following: it originates from “cor” or “com” or “c” “together”, “through” in connection with the prefix “rumpere” that means “to break”, to “crumble” in this case brings a new interpretation - “break the peace, the treaty, the law,” “deprive the youth,” “falsify the results.”⁴ One of the meanings of this word has been to bribe someone in drams or generous gifts. The prefix “Cor” generally defines that corruption is a phenomenon that has a coherent action⁵:

A.I. Dolgova defines corruption as “a social phenomenon characterized by bribery and exploitation of state and other servants, based on using their official duties in beneficial aims, for the personal or social or corporate group interests, which is connected with the reputation and capabilities of the official position he holds”⁶. The essence of corruption is the fact that one person is bribing the other, - says another well-known criminalist V.F. Kuznetsova⁷:

However the concept of corruption as a social phenomenon is more correct, as it is not summarized in terms of bribery and general bribery.

The short and concise definition of corruption is enshrined in the United Nations International Anti-Corruption Guidance information document, according to which “Corruption is the abuse of state power for personal gain”⁸:

The political crisis exposed the need for deep reform of Armenia’s governance system and instilled a new political will for change in the government. In recent years, Armenia has seen a wave of reforms being adopted with the aim to modernize the state.

A number of structural factors, such as the entrenched corruption, the lack of genuine political will, deeply rooted vested interests or the overly powerful role of a small wealthy elite, make these reforms largely ineffective. Very few percentage of Armenian population thinks that the government is effective in its anti-corruption efforts⁹.

There is a reported cynicism among the Armenian population towards any possible way out of

³ Makarov A. *Corruption: Opportunity for the bad debate of China and reality in the modern Russia*. Governmental authority and self-governance. 2012.

⁴ Ayvazyan, Aram. *Peculiarities of qualification of corruption crimes with blanket dispersions*. Yerevan. 2018

⁵ Andrianov V. *The global problem of corruption is: History and modernity*. Moscow: Economics, 2011.

⁶ Dolgova A. *Criminology. Textbook for Law faculties*. 1997.

⁷ Kuznetsova N. *Corruption in the system of criminal offenses*. Moscow University Bulletin. Series 11. Law. 1993.

⁸ Luneev V.V. *Corruption, taken into account and actual // State and law*. 1996

⁹ Transparency International Anti-corruption Centre. *Anti-corruption policy in Armenia*. Yerevan. 2006



corruption – with more than 60 per cent of the respondents admitting that they do not think that citizens can make a difference in the fight against corruption. According to experts, Armenian citizens are generally unwilling to get involved in the fight against corruption, which is reflected by the very low positive response rate of Armenia¹⁰.

Armenia joined a number of international conventions against corruption and became a member of international anticorruption organizations. Through the last few years, a large number of laws aimed at preventing corruption were adopted.

Armenia ratified the Council of Europe's Civil Law Convention on Corruption and Criminal Law Convention on Corruption in 2005. Armenia is a state party to the United Nations Convention against Corruption (UNCAC) since March 2007. In July 2003, the country also ratified the United Nations Convention against Transnational Organized Crime (UNTOC), as well as its Protocol on Human Trafficking. In 2012, Armenia acceded to the UNTOC's Protocol on Firearms. Armenia is also a state party to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Taking on-board the recommendations put forward by the OECD and GRECO, Armenian government amended the Criminal Code that now criminalizes major corruption offenses, such as active and passive bribery; embezzlement, misappropriation or other diversion of public property; abuse of office; trading in influence; and bribery in the private sector¹¹. Armenia has extended its definition of "official" to include foreign and international public officials. Following the OECD recommendations about introduction of liability (criminal, civil or administrative) of legal persons for corruption, coupled with appropriate sanctions, as well as criminalizing illicit enrichment, Armenia in 2016 criminalized Illicit enrichment (art. 310.1 of Armenian Criminal Code) and is going to criminalize liability of legal entities for corruption (according to the Draft of the new Criminal Code of Armenia).

Armenian government adopted a new law on public service that entered into force in January 2012. The scope of this law goes beyond previously applied legislation. It covers not only civil servants, but also high-level officials, staff in the National Assembly, Constitutional Court, Central Banks, National Security Council, Judicial Department, Prosecutor's Office, Yerevan Mayor's Office and bodies of local self-governments¹². This new law designed to prevent conflicts of interest, corruption and undue influence contains legal provisions and rules of ethics, as well as procedures to apply them.

The Armenian Anti-Corruption Strategy and its Action Plan are incorporated in one document (under the same title). The goal of Anti-Corruption Strategy is to overcome corruption, elimination of its causes, form a healthy moral and psychological environment in the country, which will, in its turn, promote the establishment of democratic institutions, civil society and the rule of law, free competitive market, economic development and reduction of poverty¹³.

It should be noted that the public never accepted the Armenian Anti-Corruption Strategy Program, because it has been developed without public participation. The previous documents were neither comprehensive, nor balanced; and they focused on changing the legislation rather than enforcing the law or punishing the perpetrators of corruption.

¹⁰ Transparency International Anti-corruption Centre. *Anti-corruption policy in Armenia*. Yerevan. 2006

¹¹ OECD third round of monitoring Armenia. Progress update. 2017 <http://www.oecd.org/corruption/acn>

¹² OECD third round of monitoring Armenia. Progress update. 2017 <http://www.oecd.org/corruption/acn>

¹³ Anti-Corruption Strategy and Its Action Plan. Yerevan. 2015

Anti-Corruption Strategy is not based on real needs, resources and capacities. It contains measures, which are already included in other programs. The assessment of the implementation of the AP measures, as well as that of international obligations of Armenia in the field of anti-corruption, are mainly based on reports from the governmental bodies and do not assume their supplementation with data from another, independent sources¹⁴.

Anti-Corruption Strategy provides a definition of corruption and its causes and underlines directions and measures to fight against corruption in Armenia. According to Anti-Corruption Strategy, the major instruments in the fight against corruption in Armenia are the establishment of a system of fair governance based on the rule-of-law, disclosure of corrupt practices and holding liable the persons involved in corruption, and promotion of public awareness and development and implementation of the codes of conduct and ethical norms for state officials¹⁵.

The measures also include transparency in holding liable public officials involved in corrupt practices, internal and external audit of state institutions, improved mechanism of their financial management, better legal acts, and Armenia's joining to international conventions on the fight against corruption.¹⁶

Armenia has taken some steps towards implementation of the recommendations concerning prevention and fight against corruption, however, the changes are not effective yet.

No serious progress had been recorded in the fight against corruption in Armenia despite creation of the Anti-Corruption Council (ACC) and adoption of the last Anti-Corruption Strategy. Established in February 2015, the ACC does not function as a specialized preventive, law-enforcement or multi-purpose agency, but simply consults the government on implementing the anti-corruption policies. The Council discusses and approves the ACS, suggests changes to the anti-corruption action plans, discusses and approves sectorial action plans, oversees implementation of the ACS.

Since the establishment of the Council, the Armenian government has initiated a series of changes of the legislative framework, aimed at fight against corruption. These measures included adoption of the Laws on the Corruption Prevention Committee and Protection of Whistleblowers, criminalization of illicit enrichment, enlarging the scope of the high-ranking officials entitled to submit asset and income declarations, and limiting cash transactions for the high-ranking officials.

The Law on Corruption Prevention Committee prescribes preventive functions to the anti-corruption body, but does not provide safeguards for its independence; instead, the guarantees of independence are limited only for the members of the committee. According to the amended Criminal Code, criminalization of illicit enrichment does not have retroactive effect. There is no separate legislative regulation on conflict of interests¹⁷.

It should be mentioned in this regard that Armenia witnesses rare cases of successful civil society interference into the legal drafting and the NGO participation in developing and implementing policy had in most cases a "formal" character. ACS does not propose specific

¹⁴ Transparency International Anti-corruption Centre. *Anti-corruption policy in Armenia*. Yerevan. 2006

¹⁵ *Anti-Corruption Strategy and Its Action Plan*. Yerevan. 2015

¹⁶ *Anti-Corruption Strategy and Its Action Plan*. Yerevan. 2015

¹⁷ Open Society Foundations-Armenia. *Monitoring report on implementation of ENP in Armenia in 2015-2017*. October 20, 2017



mechanisms to really promote civic participation in the implementation of neither preventive measures nor measures ensuring the rule of law.

It is generally accepted that bribery is the most widespread and dangerous form of corruption and takes the leading position among crimes in terms of latency. Bribery and corruption are interrelated and interdependent phenomena, accompanying, following each other. They are often used by the legislator at the same time in legal documents. Bribery is not only a dangerous, but also a very hardly solved crime.

Armenia is in compliance with the provision of United Nations Convention against Corruption, article 15. Active bribery of national public officials is criminalised in two different articles of Armenian Criminal Code: 312 (Giving a bribe) and 312.1 (Giving unlawful remuneration to a public servant who is not an official). Passive bribery of national public officials, again is criminalised under two different articles of Armenian Criminal Code: 311 (Receiving a bribe) and 311.1 (Receiving unlawful remuneration by a public servant not considered as an official). The offences cover “cash, property, property rights, securities or any other advantage”. The advantage can be promised/offered/granted personally or through an intermediary. The definitions are broad. According to the OECD Monitoring Report articles on active bribery (312 and 312.1) are in line with Article 15 (a) of United Nations Convention against Corruption and Article 2 of Council of Europe’s Criminal Law Convention.

Bribery is a serious obstacle for progressive transformations in the development of the modern Armenian state. However, according to the official state statistics, the number of registered criminal cases of this category in the period from 2012 to 2018 is rapidly increasing.

The official state statistics shows that the facts of bribery are spreading all over a large scale and legislative innovations do not lead to positive results, but exacerbate the existing unstable and uncertain position in the fight against bribery.

The high latency of bribery directly affects the low rates of detectability of this category of crimes.

In order to combat bribery more effectively and increase the detection of this category of crimes, the legislator provided incentive rules that enable the release from criminal liability for certain post-criminal conduct.

Being an effective means of solving crimes, incentive rules stimulate certain forms of positive post-criminal behavior of the person who committed the crime, thereby increasing the rate of disclosure of bribery.¹⁸

According to Armenian Criminal Code there is a possibility of release from criminal liability for the person who has given a bribe. The bribe giver is exempted from criminal liability if extortion of bribe took place and he, not later than in 3 days after committing the crime, voluntarily reported to law enforcement bodies, which did not know about the committed bribery, and promoted crime disclosure.

The rule about release the briber from criminal liability is incentive, stimulating, inducing the guilty on active repentance, on harm smoothing down, on exposure of bribe-takers¹⁹.

¹⁸ Tsagikyan S. *Corruption counteraction in Armenia*. St. Petersburg, “Antares”, 2006

¹⁹ Volzhenkin B., Kvashis V., Tsagikyan S. *Responsibility for bribery: Socio-legal and criminological problems*. Er: Hayastan, 1988

According to p. 4 of art. 312, there are five obligatory actions, the briber must commit, to be able to be exempted from criminal liability:

- extortion of a bribe took place;
- he voluntarily reported about the committed crime to the law enforcement bodies;
- the law enforcement bodies did not know about the committed crime;
- the voluntary message has been made not later than in 3 days after committing the crime;
- the briber has promoted crime disclosure.

Bribe extortion means not only the requirement of the official to bribe, interfaced to threat to make actions (inaction) which can make harm to legitimate interests of the person, but also notorious creation of conditions, under which the person is compelled to give the specified subjects for the purpose of prevention of harmful consequences for the right protected interests .

We must distinguish the extortion of a bribe from the demand for a bribe. The Court of Cassation appealed to the issue of the correlation of concepts with the demand of a bribe and the extortion of a bribe in the case of Ed. Zakaryan, G. Gevorgyan, V. Vardanyan № EKD/0002/01/13 of August 15, 2014. According to the position of the Court of Cassation, the demand for a bribe can be expressed in an order, instruction, persuasion, other impact on the consciousness and will of a person, which should not be associated with the use of violence, threats.

The demand must be specific, available and real. Specificity of the requirement implies accuracy in the issue of the subject and size of the bribe. When assessing the reality of a claim, it is necessary to take into account all the actual circumstances of the case: the way the claim is presented, the situation, the intensity of the demand, the place, time, etc. That is, the bribe-taker must be sure that the official will perform an action only when he fulfills his²⁰.

Paragraph 24 of the above decision of the RA Court of Cassation refers to the delineation of the bribe demand from extortion of a bribe. According to this decision, the act should be qualified as extortion of a bribe in cases where the demand for a bribe involves threats to harm the legitimate rights of the bribe-taker's interests in case of refusal to give a bribe, as well as to put the person in such position or to show him such conditions under which a person is forced to bribe to avoid violating his legal rights.

That is, the basis for distinguishing the bribe demand from extorting a bribe is a sign of the threat of a bribe-taker. Also, the Court of Cassation drew attention to the fact that extortion of a bribe occurs only in cases where the bribe-taker had legal rights, that as otherwise the requirement conjugated with the threat will be qualified as a simple demand for a bribe.

Based on the above definition, we can distinguish two forms of bribe extortion:

- the requirement to give a bribe, which involves the threat of harm to the legitimate rights and interests of the briber;
- putting a person in such position or presenting him with such conditions under which the person is forced to bribe in order to avoid violation of his legal rights.

The voluntary message is considered the message which the briber has made at his own request, if he realizes that law enforcement bodies don't know about the crime.

²⁰ The decision of the Court of Cassation on the case of Ed. Zakaryan, G. Gevorgyan, V. Vardanyan № EKD/0002/01/13 of August 15, URL: <http://iravaban.net/38327.html> accessed 25 October 2018



The RA Court of Cassation established in the case of E. Adamyan № EED / 0048/01/14 of December 16, 2014, that a voluntary message about the committed crime is of great importance both for the person who committed the crime and for the investigation bodies. On the one hand, it entails the appointment of a lighter punishment than established by the sanction of a specific article, or in certain cases to the release of a person from criminal liability, and on the other hand, it facilitates the work of investigating and uncovering a crime²¹.

According to the above mentioned decision, the essence of the voluntary message is that the person voluntarily and guilty appeals to the law enforcement agencies and informs them about the committed crime, admits his guilt and informs about the circumstances of the case. A voluntary message is a message that is made at the person's own wish, if he realizes the possibility of evasion from the court and the investigation.

The RA Court of Cassation considers as a voluntary report of the crime the following cases:

- 1) law-enforcement bodies are not aware of the fact of the commission of a crime and of the offender voluntarily reports about the committed crime;
- 2) law-enforcement bodies are aware of the fact of the commission of a crime, but offender has not been identified, and the offender voluntarily reports about the committed crime;
- 3) law-enforcement bodies are aware of both the fact of the commission of the crime and the offender, but the offender voluntarily reports about the committed crime, without realizing the fact that law-enforcement bodies are aware of it;
- 4) a person, detained on suspicion of committing a crime, voluntarily informs about the fact of committing another crime, realizing that law-enforcement bodies know nothing about that crime.

The voluntary report on bribery also includes those cases when law-enforcement agencies, while investigating the crime of bribery, use the media to address the population with a request to report on the facts of giving bribes.

Motives of bribers, basing on which they report about the committed crime, are various. They include fear of criminal liability, understanding the abnormality of the committed actions, his repentance, etc. Law-enforcement practice showed that cases about the voluntary message on bribery based on revenge, jealousy, etc. are frequent. Such motives can arise, for instance, in connection with change of the relations between the briber and the bribe-taker, when the last improperly fulfilled the promised actions. Such motive of the briber is low, but as the authorities didn't know about the committed crime, and namely his message wasn't compelled, the briber is exempted from criminal liability. Some scientists consider that if motives of the briber have low character, authorities shouldn't exempt him from criminal liability. But such situation will not promote strengthening of fight against the bribery, because one of the objectives of the legislator when making regulations on exemption of the briber from criminal liability was to strengthen the fight against bribery.

The briber is exempted from criminal liability if he voluntarily reported about a crime not later than in three days after its commission. Authors of the changes made in the Armenian Criminal Code, concerning release the briber on the basis of the voluntary message within three days

²¹ The decision of the Court of Cassation on the case of E. Adamyan № EED / 0048/01/14 of December 16, 2014
URL: <http://iravaban.net/38327.html> accessed 25 October 2018

from the date of commission of crime, justify the adoption of this changes the fact that in the report about corruption, made by the group of the foreign states (GRECO), submitted the offer that it is necessary to exempt the briber from criminal liability only if the person voluntary reported about it immediately²². In many states there is no temporary restriction for release of the briber from criminal liability according to the voluntary statement. For example, in the criminal code of Russia, Belarus, Moldova, Turkmenistan, Uzbekistan, Tajikistan, Belgium, Latvia, Lithuania, etc. But this legislative regulation exists in the criminal code of Spain, where in art. 427 of CC it is spoken about the voluntary statement of the briber for the committed crime within ten days from the date of commission of crime.

The establishment by the Armenian legislator of a term of the voluntary statement generated various discussions. Supporters of this change consider that the establishment of three-day term will allow prevention of the corruption activity of officials in the earlier stages and will greatly simplify the possibility of proofing the fact of receiving a bribe.

The next mandatory condition of release the briber is the promotion of the disclosure of a crime. The changes introduced by the Armenian legislator in the RA Criminal Code on 16 May, 2014, generated the duty of the bribe-taker to facilitate the disclosure or investigation of the crime. This additional condition of the release of the briber from criminal liability was absent until recently. But in view of the fact that the Republic of Armenia must comply with its international obligations, it also introduced this additional condition in the RA Criminal Code.

We believe that the current definition of the bases of release of the briber from criminal liability does not serve to increase the detection of this category of crimes. Taking into account the fact that more than 55% of this category of crimes was disclosed on the basis of a voluntary report on giving a bribe, the current interpretation of the bases of release the briber from criminal liability creates additional obstacles to the effective application of the incentive rule. Toughening the bases of release the briber from criminal liability was unfounded, since the rule on the release of briber is incentive, and should not create any obstacles to his release.

The official statistics shows that the facts of bribery are spreading all over a large scale and legislative innovations do not lead to positive results, but exacerbate the existing unstable and uncertain position in the fight against bribery.

We made a sociological research to clarify in which case the person allegedly giving a bribe (respondent) would report about it to law enforcement bodies. 65% of the respondents said they would report about the committed crime if a rule in force before 2014 was applied, that is, when the legislator established two independent bases of release the briber from criminal liability.

Conclusion

The following aspects can be summarized: Many jurisdictions across the world actively combat corruption through criminal legislation and rigorous law enforcement measures. Corruption had a destructive effect on democratization and market development of Armenia and because of that corruption was officially revealed as an extremely serious obstacle for development of Armenian nationality. The fight against corruption has been recognized as one of the priorities

²² Report about corruption, made by the group of the foreign states (GRECO) http://www.parliament.am/draftreading_docs4/2/K-1926DR2.pdf accessed 25 October 2018



of the national security strategy of the Republic of Armenia. The political crisis exposed the need for deep reform of Armenia's governance system and instilled a new political will for change in the government. In recent years, Armenia has seen a wave of reforms being adopted with the aim to modernize the state. Armenia joined a number of international conventions against corruption and became a member of international anticorruption organizations. Through the last few years, a large number of laws aimed at preventing corruption were adopted. Armenia has taken some steps towards implementation of the recommendations concerning prevention and fight against corruption. Armenian government amended the Criminal Code that now criminalizes major corruption offenses, such as active and passive bribery; embezzlement, misappropriation or other diversion of public property; abuse of office; trading in influence; and bribery in the private sector. Armenia has extended its definition of "official" to include foreign and international public officials. Armenia criminalized Illicit enrichment (art. 310.1 of Armenian Criminal Code) and is going to criminalize liability of legal entities for corruption (according to the Draft of the new Criminal Code of Armenia). The official state statistics shows that the facts of bribery are spreading all over a large scale and legislative innovations do not always lead to positive results, but exacerbate the existing unstable and uncertain position in the fight against bribery. In order to combat corruption more effectively, Armenian government and legislator should also pay attention on public participation in creation of new anti-corruption strategy and democratic civil society.

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Combating Corruption: New Perspectives in Accordance with the New Draft of Criminal Code of Armenia

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ABSTRACT

Purpose – This study aims to identify and resolve the main issues arising in fight against corruption, as well as the development of proposals and recommendations aimed to improve criminal legislation in this area.

Design/methodology/approach – The methodological basis of this research is dialectics as a universal method of cognition. Logical, historical, comparative-legal, sociological methods of analysis of legal and social phenomena were applied. The normative basis of the research is international legal acts, the existing criminal legislation of Armenia, Decisions of the Court of Cassation of Armenia. We also take into account the results of scientific research carried out in Armenia on the regulation of standards in combating corruption. The empirical basis of the study is the official state statistics on the results of the detection and investigation of corruption crimes, the practice of the RA courts in dealing with corruption cases, the results of our sociological research in the form of an anonymous survey on the basis of a specially developed questionnaire.

Findings – It was found that corruption had a destructive effect on democratization and development of Armenia and because of that corruption was officially revealed as an extremely serious obstacle for development of Armenian nationality. The fight against corruption has been recognized as one of the priorities of the national security strategy of the Republic of Armenia. In recent years, Armenia has seen a wave of reforms being adopted with the aim to modernize the state. Armenia joined a number of international conventions against corruption, a large number of laws aimed at preventing corruption were adopted.

Research limitations/implications – A major weakness is that the public never accepted the Armenian Anti-Corruption Strategy Program, because it has been developed without public participation. Anti-Corruption Strategy is not based on real needs, resources and capacities. It contains measures, which are already included in other programs. The assessment of the implementation of the AP measures, as well as that of international obligations of Armenia in the field of anti-corruption, are mainly based on reports from the governmental bodies and do not assume their supplementation with data from another, independent sources.

Originality/value – The paper is the first of its kind to give scientifically justified proposals on the improvement of the current legislation and the practice of applying anti-corruption measures in the fight against corruption. In contrast to earlier studies, the paper reveals the problems of establishment of anti-corruption measures in Armenian legislation, the role and importance of legislative measures in combating corruption, the prospect of developing the role of anti-corruption strategy of Armenia.

INVIOABILITY OF PRIVATE LIFE AND SECRET INVESTIGATION ACTIONS



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Inviolability of Private Life and Secret Investigation Actions

I. Introduction

The fundamental essence of human rights law is to protect a person from possible arbitrariness of authorities. Officials are awarded special authority to resolve issues, which are of public importance, but they must act in a manner that freedom of individuals not gets of a fictitious nature.¹

This thesis aims to study interrelation of secret investigation actions and inviolability of private life, and provides review of their relation and analyzes the guarantees of judicial protection; we discuss here the history of formation of Inviolability of Private Life, its contemporary understanding, essence of secret investigation action, its principles and the basis and the procedures. On this background we analyze basic aspects of their interaction in the legislation and differentiate problems and adopt recommendations and proposals for solving those.

The thesis is based on historic, analytical, comparative and other scientific methods. Within the scope of available scientific references, we study legal acts and the court practice and the practice of Constitutional Court of Georgia and European Court.

II. Essence of Inviolability of Private Life

Universal recognition of human rights, which would provide equal rights for everyone, regardless of social origin, is related to Virginia Declaration of Rights 1776 in America and to the Declaration of the Rights of the Man and of the Citizen of France 1789² in Europe. On a way of judicial development of inviolability of private life, we may consider it as a progressive step that 4th modification was ratified in 1791 in the Constitution of USA. According to the

¹ Burjanadze G. Justification of Verdict of Court of Juries (compliance of legislation of Georgia with European standards), International Standards of Human Rights and Georgia, Collection of articles, Editor Korkelia K, Tbilisi, 2011, 25.

² Comment in the Constitution of Georgia, Chapter II, Citizenship of Georgia. Human Fundamental Rights and Freedom, Edited by P. Turava, Tbilisi, 2013, 10.



modification, unjustified (unreasonable) search and detention should not violate human rights to the personality, housing, papers and property and no search order may be issued without grounded justification and it must be confirmed by oath or ceremonial promises, as well as attached detailed description of the places, persons and subjects, which are a subject of search or detention.³

Paper of Lawyers Warren S. and Brandeis L (Boston, USA) concerning inviolability of private life is of a historic importance. As the authors interpret, right to personal life has become a right to enjoy life, the right – to be master of yourself.⁴ According to the concept of the paper, right to personal life enables people to be free from unwanted publicity and prohibits the government and society to “poke their nose” into personal life of persons and their business, in exception of the cases prescribed by law and applicable regulations.⁵

Legislation regulations for inviolability of private life for the first time were adopted in the Constitution of Georgia of 1921. It envisaged the best experience of constitutionalism for that time and was saturated with ideas of judicial and social state. Protection of accommodation was important aspect of respect to a private life, as accommodation place meant feeling of family, shelter and safety, when a person wishes to live as he wants, without any fair to be bothered.⁶

Protected right of inviolability of private life

The Article 20 of the Constitution of Georgia protects several main rights, namely:

1. Right of private life;
2. Right of inviolability of private business place;
3. Right of inviolability of personal record entries;
4. Freedom to use telephone and other communication means in a free manner;
5. Right of inviolability of message received by communication means;
6. Right of inviolability of residential apartment and other property.

We note that the term “private life” has a general meaning and it must be interpreted in a broad meaning. Constitutional Court of Georgia in the decision made against the case *Association of Young Layers of Georgia and national of Georgia Tamar Khidasheli vs Parliament of Georgia*, declared that inviolability of private life means ability of individual to lead private life as he wants and to be protected in his area without any engagement of the state. It protects choice of a person to live independently from the environment, be alone, and make decision in a free manner how to communicate with other members of society. Respectively, right of inviolability of personal life provides freedom of a person’s development, to share information, opinions and impressions without engagement of public and attention of others.⁷ Right of inviolability of private life, similar to any other rights, is expression of dignity of a person. Dignity and personal

³ Peltason J.W., About America, The Constitution of the United States of America, with Explanatory Notes, 2004, 34

⁴ Warren S. and Brandeis L., The Right to Privacy, Harvard Law Review, vol. 4, N5, 1890.

⁵ Sahkulashvili T., Essence and Importance of the Right of Inviolability of Private Life, mag. Law, N12, 2001, 48.

⁶ The Origins of Georgian Constitutionalism - The 90th anniversary of Georgia’s 1921 Constitution, Editor S. Kurashvili, Batumi, 2011, 56

⁷ Constitutional Court of Georgia Decision N2/1/484 made against the case *Association of Young Layers of Georgia and national of Georgia Tamar Khidasheli vs Parliament of Georgia*, dated February 29, 2012, paragraph II-2.

freedom of a person is reflected in his basic rights and adequate protection and implementation of such rights. This right is vitally important for freedom, individuality and self-realization of a person and its support and protection essentially defines development of democratic.⁸

III. Secret Investigation Actions in criminal law

Freedom is accompanied by judicial regulations and limitations. Limitations must be especially strict against the sources of danger, which bear potential risk to freedom.⁹ One of the main functions of the state is protection of society and each of its members. The state provides this on the basis of force mechanism, and the authority awarded to the state institutions under the legislation (among them regulations of criminal code). The basic objective of criminal code process is identification of factual circumstances of crime and the offender. For this purpose only the actions prescribed by the legislation are allowed, as criminal code is a field of public law, main principle of which is "Everything that is allowed, is not prohibited."¹⁰ This is the reason why a process of criminal law defines the rules for crime investigation, criminal persecution and implementation of judicial actions.¹¹

Principles of secret investigation actions

When we discuss engagement into private life of individuals, which sharply is engaged in a protected field (e.g. secret telephone listening), international law of human rights additionally prescribes several fundamental guarantees, in case of protection of which such engagement is deemed to be justified.¹² As European Court interprets, for regulation of norms of investigation actions, we need to verify the following:

1. Judicial nature of crime, within the scope of fighting against which, secret telephone listening will be allowed;
2. Category of persons, who may be a subject of secret telephone listening;
3. Duration of secret telephone listening;
4. Procedure of inspection, application and procession of collected data;
5. Safety measures in view point of possible relation of third persons to the collected information;
6. Conditions for destroy of data.¹³

As we mentioned several times, right of inviolability of personal life is not an absolute right. It may be limited in order to achieve legitimate objectives prescribed by the constitution and which are necessary for democratic state. And the Criminal Procedural Code pays attention to necessity of achievement of this legitimate objective. It may be addressed to provision of

⁸ Decision №1/2/519 as of October 24, 2012 of the Constitution Court of Georgia against the case *Association of Young Layers of Georgia and national of Georgia Tamar Chugoshvili vs Parliament of Georgia*, par. II-2.

⁹ Loladze B., *Social State- Danger to Fundamental Rights and Freedoms? Protection of Human Rights: Achievements and Challenges*, Collection of Articles, Editor Korkelia K., Tbilisi, 2012, 108.

¹⁰ Jorbenadze O., *Personal Search*, mag. Justice and Law, N3 (22), 2009, 7.

¹¹ See Article One of Criminal Procedural Code of Georgia .

¹² Usenashvili J., *Problem of Realization of Inviolability of Private Life during State Controlled Operative and Search Activities*, mag. Law Magazine, N2, 2012, 92.

¹³ Detailed: *Valenzuela Contreras v. Spain*, [ECtHR], Application no. 58/1997/842/1048, 30 July 1998, Para. 46. *საგგო Klass and others v. Germany*, [ECtHR], Application no. 5029/71, 6 September 1978, Para. 50.



national security or public security, to avoid repeated irregularities or crime commitment, to protect economic interests of a country or rights of other persons and their rights.¹⁴

Permission issued by a court

According to the Criminal Procedural Code, secret investigation action may be conducted as per decision of a judge or on the basis of motivated resolution of prosecutor, without decision of a judge, if there is in avoidable necessity. When making one of the decisions, the Constitutional Court noted: "Mandatory condition of decision (verdict) of a judge, considered for engagement into the right of inviolability of private life serves provision of advance control of some measure by an independent and neutral institution. This first of all is addressed to avoidance of abuse of authority by the government. Court is a not political government, and this causes and in parallel makes court obliged to be neutral. Judge, who is personally and essentially independent, and law-abiding, can make fair and justified decision in each case, about necessity of engagement into the right".¹⁵

Petition by Prosecutor's Office must include justified judgment that a person, against whom they need to conduct secret investigation actions, has committed several crimes stated above or a person gets or delivers information which belongs to a person who has direct connection to the crime or a person directly connected to the crime, applies communication means of such person. In the Criminal Procedural Code they have adopted a new judicial term for potential offender – person directly connected to a crime. This is applied in a case when they conduct only investigation against the criminal case and no criminal prosecution is commenced against the person. As for evidential standard, this is a justified supposition.

Mandatory legitimate requirement is a certain expectation of prosecution party. This is reference to the circumstances, that as a result of secret investigation actions they will obtain information essentially important for investigation, collection of which in any other manner is impossible or needs unreasonably big attempts. In the petition of Prosecutor's Office they need necessarily to mention information about the investigation actions, had been conducted before submitting of petition, but target objectives have not been achieved. Objective of this requirement is that court control over the permission must be effective and may not bear just official nature, and which must ensure limitation of rights of a person only for achievement of legitimate goals, without any excess engagement in the right.

European court in the case *Jasper vs United Kingdom* interpreted that right of prosecution for reading case materials is not absolute right and it may be limited for the purposes of national security, protection of information sources, safety of witnesses, to keep secret the methods of investigation, only in the case when limitation of access of prosecution party is necessary and the loss caused from such limitation to the prosecution party will be compensated later within the scope of judicial process, by application of different measures.¹⁶ In each case, court, through protection of principle of equality must carefully apply the above mentioned limitation, in order not to be in breach of the most important guarantee of offender – right to be protected and the principle of competition.

¹⁴ See Criminal Procedural Code of Georgia, Article 143²-9 section two.

¹⁵ Constitutional Court of Georgia Decision N1/3/407 made against the case *Association of Young Layers of Georgia and national of Georgia Ekaterine Lomtadidze vs Parliament of Georgia*, dated December 26, 2007, paragraph II-24.

¹⁶ *Jasper v. UK*, [ECtHR], Application no. 27052/95, 16 February 2000, Para. 43.

Function of personal data protection inspector during secret investigation actions

Generally, the main directions of activities of personal data protection inspector are:

- Consultation;
- Inspection;
- Review applications submitted by data subjects;
- Inform society;¹⁷

In the inspector administration they make statistics and content analysis of court decisions and resolutions of prosecutor, on a regular basis.¹⁸

According to the Article 143³, section five of Criminal Procedural Code, verdict of judge about permission on secret investigation actions is issued in 4 copies. Two copies are delivered to the prosecutor who submits petition, one copy is filed in court and one verdict, which includes only requisites and resolution section, is immediately submitted to personal data protection inspector.¹⁹ According to the same Article, section 6², one copy of motivated resolution of prosecutor is immediately delivered to the personal data protection inspector.

Decision about termination of secret investigation actions is made by prosecutor, on the basis of application of investigator or initiated by the prosecutor himself. Secret investigation action may be terminated in case of existence of one of the cases below:

1. Certain task of secret investigation actions as per the judgment have been fulfilled;
2. Circumstances are verified, which confirm that fulfillment of certain task stated in the judgment about secret investigation actions is objectively impossible or secret investigation actions are not any more important for investigation process;
3. Investigation or/and criminal prosecution is being terminated;
4. Term defined for secret investigation actions is lapsed.

Legislation of foreign countries in relation with secret investigation actions

In the judicial system of the United States of America, methods of protection of inviolability of personal life was not introduced before the end of XIX century. Official, judicial protection methods of inviolability of personal life were adopted for the first time in the XX century. Judicial term of so called "Privacy" for the first time was introduced in American law.²⁰ From the beginning of the XX century, in the USA, in academic class and in the court decisions we meet judgement about essence and importance of inviolability of personal life.

Right of protection of inviolability of personal life, similar to other rights, is not absolute. When they discuss case in court, we clearly see the conflicts, which are arisen between the right of protection of inviolability of personal life and other rights or interests of the state. In this fight, right of protection of inviolability of personal life is defeated.²¹ In relation with limitation of this right, they have adopted many bylaws in the USA.

¹⁷ See Law of Georgia on Protection of Personal Data, Article 27, section one.

¹⁸ See Report about Condition of Protection of Personal Data and Activities of Inspectors, Tbilisi, 2015, 35.

¹⁹ Violation of the requirement means offense prescribed by the Law of Georgia on Protection of Personal Data.

²⁰ Okruashvili M., Inviolability of Private Life, Tbilisi, 2005, 9.

²¹ Ibid. 23.



Secrets of private life of Americans generally used to suffer violation even in 1970s. Investigation Committee of Senate, after “Watergate Scandal” concluded that intelligence service undermined constitutional rights, mostly by evading holding back and balancing system adopted for the objective of accountability by the Fathers of Constitution.²²

In 1972, Eliot Richardson, the Consultant of the President Richard Nixon in Health, Education and Social Affairs, formed commission, which studied influence of computer technologies over privacy and the commission came to the conclusion that personal life of people was facing real danger. They issued report based on the several principles:

1. There must not exist secret system of collection of personal data;
2. Each person must have possibility to control the information filed about the person and what for they use it;
3. Each person must have possibility not to allow application of collected information for any other reason;
4. Each person must have possibility to make corrections to the information available.²³

On the background that on September 11, 2001 terrorists attacked World Trade Centre and the Pentagon, Congress issued USA PATRIOT ACT, which essentially expanded authority of Federal Government in the field of e-supervision. New law defined terrorism and computer fraud as crimes, which might become reason of secret audio records.²⁴ The Act legitimated for investigation agencies even the right of “continued supervision” that was previously prohibited. The later is a special form of order, issued to control not only any certain, but all communication means used by suspected person. The law legitimated “single orders” that are issued by Federal Court and legitimate investigation agencies to control persons suspected in terrorism within jurisdiction of any state. The Act as well prescribed listening to voice mail on the basis of court order and collection of credit card information. Validity of the Act was terminated in 2005. After the Congress continued validity of the law temporary for several times and finally deleted only two provisions and defined them as permanent parts of the legislation.²⁵

Article 100, section 4 of Criminal Procedural Code of Germany prescribes obligation of investigation agency to destroy the material immediately, which is not important for investigation and which includes reference to private life. Such action must be confirmed by applicable written act.

In Germany secret listening to talks is as well regulated by so called Act of Listening (Article 10-Gesetz-G10). Article three and Article five of the Act prescribe that order may be issued about investigation action when available facts form presumption, that action of a person is directed against safety, democratic order of Germany, information obtained as a result of secret listening is needed to avoid military attack or terrorist acts, as well as during crime investigation, such as international traffic and money laundering.

²² Zakukashvili K., Right of Personal Life – Challenges in Internet Age, mag. Law Magazine, N1-2 (3-4), Tbilisi, 2012, 127.

²³ Sahkulashvili T., Personal Life of Citizens of Georgia in Global E-space, mag. Justice and Law, N1(36), Tbilisi, 2013, 99.

²⁴ Ducat C. R., Constitutional Interpretation, Rights of The Individual, Vol. II, Ninth edition, Northern Illinois University, 2009, 707.

²⁵ Zakukashvili K., Right of Personal Life – Challenges in the Internet Age, mag. Law Magazine, N1-2 (3-4), Tbilisi, 2012, 134.

IV. Conclusion

Democratic and judicial states are based on a single system of valuables, where they recognize person as the main value. State is obliged to provide guaranteed protection of fundamental rights and freedoms that are protected by the Constitution of Georgia, though interests of a person will be preferable all the times. It may be limited for the purpose of achieving legitimate objective existed in the democratic society. Preclusion of crime, effective fighting against crime, provision of compensation of loss incurred as a result of crime and proper enforcement of law are the most important public interests. In the criminal case procedures, interest of the state to punish the offender mostly is opposed to the legal interest of protection of right. So, it is important to follow balance, in order to avoid unreasonable engagement.

Evidences obtained as a result of secret investigation actions, because of the content and relevancy are quite effective. Though, investigation actions must be based on effective system, which must exclude even the smallest possibility of lawlessness. Illegal secret investigation is directly related to violation of inviolability of personal life. Inviolability of personal life is a constitutional right, within the scope of which any person is guaranteed to inviolability of personal data, accommodation, correspondence and telephone conversations. Since 2014 many positive changes have been adopted in the regulations of secret investigation actions and measures for protection of rights. Criminal Procedural Code prescribes mandatory elements of law references, legitimate objective, necessity and proportionality. Petition justification standard is being increased, meaning that court may not confirm petition in automated manner. Procedural Code now prescribes obligation of notification about secret investigation actions and destroy of collected materials. In criminal law there have been adopted independent subject for protection of rights – Personal Data Protection Inspector, with authority to supervise, control and inspect secret investigation actions.



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Inviolability of Private Life and Secret Investigation Actions

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ABSTRACT

Purpose – This research aims to study interrelation of secret Investigation Actions and inviolability of private life, and provides review of their relation and analyzes of the guarantees of judicial protection; we target to identify main aspects of their interaction in the legislation, to differentiate problems and adopt recommendations for solution of those.

Design/methodology/approach – This research is based on historic, analytical, comparative judicial and other scientific methods. Within the scope of this research we analyzed scientific references, legal acts and the practice adopted in Constitutional Court of Georgia and European Court.

Findings – The inviolability of a person's private life is of utmost importance, but not overwhelming and it can be restricted in the cases directly defined by the legislation.

Research limitations/ implications – On the background of the changes made to criminal procedural code and other bylaws, some theoretical and practical problems still have been emerged in relation with secret investigation actions, which prevent the protection of the constitutional rights. Thus, it is important to prevent those in a timely manner.

Originality/value - The actuality of the problem has brought to the criminal proceedings not only the new regulatory norms but also the independent subject that protects this right, such as personal data protection inspector. Peculiarities of supervision, control and inspectors of secret investigation actions still provide the basis for future legislative amendments.



SORTING/SELECTION OF CONVICTED PERSONS IN ACCORDANCE WITH THE RISK IN THE PENITENTIARY SYSTEM



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List of Abbreviations

1. p. – Page
2. ECHR - European Court of Human Rights
3. Ed. – Editor
4. Minister – minister of justice of Georgia
5. Convention - European Convention on Human Rights

Introduction

A prison facility is a facility for the enforcement of the sentence. An accused/convicted person are located. The following prison facility:

- a) a low risk prison facility;
- b) a semi-open prison facility;
- c) a closed type prison facility;
- d) a special risk prison facility;
- e) a juvenile rehabilitation facility;
- f) a special facility for women.

In 2014 Sorting of convicted persons there was a novelty in the Georgian penitentiary system.

Convicted persons are sorting according to:

1. a low risk;
2. medium risk;
3. Great risk;
4. a special risk.¹

Selection of convicts according to risks is important as the safety of the penitentiary system, as well as the purpose of resocialization of convicts.

The fact is interesting that, the type of transition to risks is not yet.

¹ LAW OF GEORGIA IMPRISONMENT CODE, Article 10 paragraph 2;

The Procedural issues of selection of convicted persons by risk

a) Low risk prison facility

For the purpose of serving a sentence, a **low risk prison facility** is used, as a rule, for convicted persons whose personal qualities, motive of the crime, consequences of the unlawful actions and/or conduct demonstrated in the prison facility suggest that they may pose a low threat to the prison facility or to other persons, to state or public safety and/or to the law enforcement authorities. A convicted person is placed in a low risk prison facility based on his/her written consent which must indicate that he/she agrees to fulfill the obligations established for low risk prison facilities, in particular, to study and/or work, and to participate in rehabilitation activities offered by the facility. The Minister defines the procedure for placing a convicted person in a low risk prison facility.²

b) Semi-open type prison facility

As a rule, the following persons shall serve their sentences in a semi-open type prison facility: a person who is convicted of a crime of little gravity or a grave crime and whose term of sentence does not exceed 10 years; a convicted person who has been transferred from the prison facility of a different type, as determined by this Code; a woman sentenced to a fixed-term imprisonment. Other convicted persons may also be placed in a semi-open type prison facility taking into consideration the risk factor.³

c) Closed type prison facility

As a rule, the following persons shall serve their sentence in a closed type prison facility: a person convicted for the first time of an intentional, especially grave crime and sentenced by the court to imprisonment of more than 10 years; a person convicted for repeatedly committing an intentional crime, a person sentenced to life imprisonment or a person convicted previously who was sentenced to imprisonment; also, a convicted person transferred from a prison facility of another type, as established by this Code. Other convicted persons may also be placed in a closed type prison facility taking into consideration risk factors.⁴

d) A special risk prison facility

For the purpose of serving a sentence, a special risk prison facility is used for highly dangerous convicted persons whose personal qualities, criminal influence, motive of the crime, consequences of the unlawful actions and/or conduct demonstrated in the prison facility poses or may pose a serious threat to the prison facility or to other persons, and to the state or public security and/or to the law enforcement authorities.⁵

It should be noted that a juvenile Convicted persons and women prisoners are not selected according the risk.

Selection by the risk important for personal safety purposes.

² LAW OF GEORGIA IMPRISONMENT CODE, Article 60¹ paragraph 1-2;

³ LAW OF GEORGIA IMPRISONMENT CODE, Article 61 paragraph 1-2;

⁴ LAW OF GEORGIA IMPRISONMENT CODE, Article 64 paragraph 1-1⁴;

⁵ LAW OF GEORGIA IMPRISONMENT CODE, Article 66²;



There are one problem in the Georgian penitentiary system Criminal subculture, which is characterized by adulthood and juvenile convicted persons. Correctly This is the goal to solve this problem, by sorting of convicted in accordance with the risk.

Stages of transition from types to risks are not yet completed in Georgia. This is a transition phase that should be completed.

The juvenile justice and sorting of convicted persons in accordance with the risk

In recent years, juvenile justice is important in the field of justice Changes were made. Prevention of juvenile crime, which serves Juvenile Justice Code is a complex issue And it is necessary to create legislative norms as well as the country Socio-economic condition.⁶

An accused minor who has been detained as a pre-trial restriction shall be placed in the juvenile section of a detention facility, and a convicted minor who has been sentenced to imprisonment shall be placed in a juvenile rehabilitation facility. Services in detention and prison facilities where accused or convicted minors are placed shall meet the requirements for the health care of minors and shall respect the dignity of minors.⁷

“To protect the best interests of minors, detention and prison facilities shall have sufficient, qualified and trained personnel (pediatrician, doctor, nurse, psychologist, psychiatrist, social worker, etc.).⁸

On the basis of the special need for the protection and care of minors as defined by treaties and international agreements ratified by the Parliament of

Georgia, the Minister of Corrections of Georgia shall define:

- a) the procedure and conditions for the enforcement of imprisonment in a juvenile rehabilitation facility;
- b) the structure and the rules of operation of a juvenile rehabilitation facility;
- c) the procedure for individual sentence planning for convicted minors;
- d) the procedure for the application of incentives and other measures to convicted minors;
- e) the procedure for the imposition of disciplinary measures on convicted minors;
- f) the procedure for proceedings related to the claims and complaints of convicted minors;
- g) the procedure for organizing a rehabilitation process for convicted minors;
- h) the procedure and conditions for applying security measures and special measures against convicted minors;
- i) the procedure for keeping registers and maintaining personal files of convicted minors.⁹

It is necessary to add to this list the determination of the issue of juvenile risks.

A convicted minor shall serve the sentence in a juvenile rehabilitation facility according to the individual sentence plan, that is very good, but this is not enough, Taking into account the criminal history of Georgia, Most of the criminal authority, „The legal thieves” (such is Mafiosi in Italy, They have their unwritten rules And do not respect the state authorities) status was still in the period of minors. Sorting of juvenile convicted persons in accordance with the risk is important to protect other juvenile offenders who do not want to be criminal boss.

⁶ Manual juvenile justice, Shalikashvili m, Miqanadze g. 2016, Pp6;

⁷ LAW OF GEORGIA JUVENILE JUSTICE CODE Article 79 paragraph 1;

⁸ LAW OF GEORGIA JUVENILE JUSTICE CODE Article 79 paragraph 2;

⁹ LAW OF GEORGIA JUVENILE JUSTICE CODE Article 80;

Conclusion

Based on the analysis of the article discussed in the present paper and taking into consideration that human rights are one of the most important components of the penitentiary system, Selection of convicts according to risks is important as the safety of the penitentiary system, as well as the purpose of resocialization of convicts. Selection by the risk important for personal safety purposes. For the protection of minors from the influence of criminal subculture, it is necessary to selection juveniles in accordance with the risk.

It is also necessary for women convicts to selection juveniles in accordance with the risk, based on the purpose of individual treatment with convicts.

It is necessary to complete the stage, which means full transfers of risks institute, and the old type of system must be finished.

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4. The European Convention on Human Rights.



Sorting/Selection of Convicted Persons in Accordance with the Risk in the Penitentiary System

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ABSTRACT

Aim – The goal of the research is to find out how the works sorting of convicted persons in accordance with the risk in the penitentiary system. Show us how important it is selection of a juvenile Convicted persons and women prisoners.

Structure / Methodology / Approach – The research focused on each of the risks. In addition to the legislative regulation review, practical aspects are presented. In the study of this issue, the methods of comparative-legal, inductive and analytical research were used.

Conclusions – Analysis has demonstrated that sorting of convicted persons in accordance with the risk is very important, also important is selection of a juvenile Convicted persons and women prisoners.

The limitations of the research – The disadvantage of the research are that, not enough literary articles.

News/Value – This is the first article discussing sorting of convicted persons in accordance with the risk in the penitentiary system, The literature used within the article discusses themes that are both theoretical and practical aspects, based on monitoring and polls conducted in penitentiary institutions.

USE OF SOME SECURITY MEASURES IN THE PENITENTIARY SYSTEM



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List of abbreviations

1. p. – Page
2. ECHR - European Court of Human Rights
3. US - United States
4. Ed. – Editor
5. UNO - United Nations Organization
6. Minister – minister of justice of Georgia
7. Convention - European Convention on Human Rights

Introduction

The „Security Measures” are The novelty in the Georgian legislation. Article 57 of the Code of Imprisonment deals with the use of security measures, the types and the grounds for the use of the „Security Measures“. „Prison staffs/employees of the Special Penitentiary Service are sometimes forced to use **force** to control prisoners who go to violence, In this situation there is a great risk of **inhuman or degrading treatment** or punishment of prisoners and, therefore, the necessity of special safeguards for rights protection.“¹

The article will be discussed in compliance with the security measures, the 5. UNO and the European Standards, Recommendations, the proportionality of their use as fundamental aspects of human rights, as well as the legislation deficiencies and practical aspects related to the use of Security Measures.

The importance and relevance of the article is confirmed by the Public Defender’s General Reports and Recommendations regarding the use of security measures, as well as the ECHR’s decisions regarding the specific use of the Security Measure.

¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) 2nd General Report on the CPT’s activities (CPT/inf (92) 3) paragraph 53;



Security Measures

According to the Code of Imprisonment, there are **four types** of security measures:

- a) use of special equipment
- b) separation from other accused/convicted persons
- c) temporary transfer to another penitentiary institution
- d) placement in a solitary cell for not more than 24 hours.²

The aim of the use of security measures under the “Code of Imprisonment” is:

Avoid self-injury, self-injury and property damage.

- To avoid **self-injury**, or **damage to other persons** and **property**, to **prevent crimes** and **other offences** in the penitentiary institution,
- To prevent the **non-compliance** by an accused/convicted person of a lawful demand of an employee of the Special Penitentiary Service,
- To repel **attacks**, to suppress **collective disobedience** and/or **mass unrest**.

„Security measures may not be applied to punish an accused/convicted person“³, “For the purpose of carrying out security measures, it is permissible to use Special Measures.”⁴

According to the Georgian legislation during the use of security measures focuses on damaging self-injury and other persons. Also, the use of these security measures shall cease immediately after the threat, due to which this measure has been applied, is eliminated.⁵

Special equipment and the procedure for their application

The following special equipment may be used against an accused/convicted person:

- a) Handcuffs
- b) A strait jacket
- c) A restraining chair
- d) A restraining bed
- e) A baton
- f) Tear gas
- g) Pepper gas
- h) A non-lethal weapon
- i) An acoustic device
- j) A flash bang device of psychological effect
- k) A water cannon
- l) A police dog.

Article 57¹ of the Code of Imprisonment and Order N 145 of the Minister Corrections of Georgia establishes preconditions for the use of a special equipment.

The N 145 Order determines the subject (person) who has the right to use special tools. Special equipment may be used by a specially authorized person of the Special Penitentiary Service who has completed the appropriate training.

² LAW OF GEORGIA IMPRISONMENT CODE, Article 57 paragraph 1;

³ LAW OF GEORGIA IMPRISONMENT CODE Article 57 paragraph 5;

⁴ Order N145 of the Minister Corrections of Georgia on Approval of the Rule of Determining the Rules of Terms and Conditions of Terms and Conditions of Use of Special Penitentiary Equipment;

⁵ LAW OF GEORGIA IMPRISONMENT CODE Article 57 paragraph 2;

Special equipment may be used by:

- A) of employees of the facility or a group of employees of the facility;
- B) Employees of the exterior guard services or an escort team/colony of the Penitentiary Department of the special penitentiary service;
- C) Officers of Special Weapons and Tactics of the Penitentiary Department of the special penitentiary service;

A special equipment is used as a security measure in case other means are ineffective. The use of a special equipment should be proportional to the threat that would be less damaging to the legitimate aim of the aforesaid event.

The use of special equipment has restriction of the recipients of the use of this measure:

- 1) Juvenile
- 2) Women
- 3) pregnant woman
- 4) Person with limited disability
- 5) The person whose health condition is to be considered.

It should be noted, handcuffs are used **daily** in a special risk prison facility, for the movement of an accused/convicted person.

Unfortunately, there is no practical instruction to use Security Measures in penitentiary institutions yet.

3. Use of security measures according to European recommendations and standards

The internal legislation of the country is necessary to comply with the European Convention on Human Rights and the country should gradually envisage European recommendations.⁶

In accordance with the rules of the European Prison, “all persons deprived of their freedom must respect their rights”

In accordance with Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules use of chains and gas shall be prohibited under domestic law.

Prison staff shall not use force against prisoners except in self-defence or in cases of attempted escape or active or passive physical resistance to a lawful order and always as a last resort. The amount of force used shall be the minimum necessary and shall be imposed for the shortest necessary time.⁷

Handcuffs, restraint jackets and other body restraints shall not be used except:

- a) if necessary, as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise; or
- b) by order of the director, if other methods of control fail, in order to protect a prisoner from self-injury, injury to others or to prevent serious damage to property, provided that

⁶ „Penitentiary questions Council of Europe conventions, recommendations and resolutions“ publishing editions council of Europe 2009. 11;

⁷ Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules 64.1 – 64.2;



in such instances the director shall immediately inform the medical practitioner and report to the higher prison authority.⁸

Use of security measures is directly related to human rights, such is Right to life, the right of health, Prohibition of torture. According to the European Convention on Human Rights Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law, ⁹ and No one shall be subjected to torture or to inhuman or degrading treatment or punishment¹⁰.

"The existence of life-saving legislation is a positive obligation of the state. The law should prohibit the immediate interference of human life. The state's obligations in the legislation also mean that the State regulates any kind of activity related to the risk of life for a person or the risk of creating such a threat and to have **relevant legislation** or **instructions**¹¹.

"Effective **legislation** is not enough. It's equally important **effective execution**. The state is obliged to have a system of enforcement of law that ensures the **prevention of violation** of legislation and **punishment of responsible persons**¹².

In accordance with Article 65 of the European Prison Rules, within the country, there shall be an **instruction** to detail the procedures in relation to the use of force. The **instructions** should be focused on the use of minimal force. „The state is obliged to take care of the danger of life.“¹³

"The state has a special **positive obligation** to protect the lives of prisoners.“ The state is always responsible for death if it fails to prove any other origin of injuries.

In all cases of the death of the prisoner, the State is responsible or positive, or negative, or at least simultaneously for both non-fulfillment obligations.

"Absolute necessity of use of force is measured by very strict criteria. On the one hand, it implies a proportionality assessment, and on the other hand, could have achieved the goal without the use of force or less force. "¹⁴

"Assessing whether the force used was strictly proportionate, it should be taken into consideration the purpose of the set objective, the threat of life threat, the expected development of the events, the possible consequences, and the risk of the use of the force to destroy life. The use of firearms in some circumstances makes it clear that the use of excessive force was excessive.¹⁵"

⁸ Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules 68.1 – 68.2;

⁹ The European Convention on Human Rights ARTICLE 2 paragraph 1;

¹⁰ The European Convention on Human Rights ARTICLE 3;

¹¹ Comment of the Constitution of Georgia Chapter II "Georgian Citizenship. Basic Human Rights and Freedoms Eva Gotsiridze - Article 14, 15, 16, 17, 19, 38; P. 75;

¹² Comment of the Constitution of Georgia Chapter II "Georgian Citizenship. Basic Human Rights and Freedoms Eva Gotsiridze - Article 14, 15, 16, 17, 19, 38; P. 75;

¹³ Comment of the Constitution of Georgia Chapter II "Georgian Citizenship. Basic Human Rights and Freedoms Eva Gotsiridze - Article 14, 15, 16, 17, 19, 38; P. 75;

¹⁴ Comment of the Constitution of Georgia Chapter II "Georgian Citizenship. Basic Human Rights and Freedoms Eva Gotsiridze - Article 14, 15, 16, 17, 19, 38; P. 82;

¹⁵ Comment of the Constitution of Georgia Chapter II "Georgian Citizenship. Basic Human Rights and Freedoms Eva Gotsiridze - Article 14, 15, 16, 17, 19, 38; P. 83;

“Absolute necessity of use of force can not only depend on the personality of the person.“

“The right to life does not prohibit the killing of a person, but at the same time obliges him to actively protect human life.”

Article 2 (2) of the European Convention of human right describes the situation in which the permissible use of force may be caused someone’s death by the state.

Conclusion

Based on the analysis of the article discussed in the present paper and taking into consideration that human rights are one of the most important components of the penitentiary system: Although the order of the Minister of correction of Georgia, which can be positively assessed for the system, is not enough, as it is necessary to use quite special tools, because the order should contain all the nuances of the use of these means. Detailed regulation is required in relation to the type of defendants / convicts belonging to the special category of prisoners, such is Persons with Disabilities, Pregnant women and Juveniles. The use of security measures should be prohibited.

It is not necessary that the use of special means does not have a formal nature and should not be used by a penitentiary servant and a penitentiary person who has the right to use the means - must be trained not only theoretical but also practical.

It is necessary to create practical instruction on the use of security measures.

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Use of Some Security Measures in the Penitentiary System

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ABSTRACT

Aim – The goal of the research is to find out how the use of special means in penitentiary establishments. Examine each type of special means and determine their compliance with the European standards.

Structure / Methodology / Approach – The research focused on each of the special means. In addition to the legislative regulation review, practical aspects are presented. In the study of this issue, the methods of comparative-legal, inductive and analytical research were used.

Conclusions - Analysis has demonstrated that legal and practical aspects of the use of special means are mainly compatible with European standards, although it is necessary to adapt to certain issues with European standards.

The limitations of the research – the disadvantage of the research are the fact that the legal comparison of security measures in the penitentiary system is not possible with the security measures of other internal structures (including special means), due to its absence.

News/Value – This is the first article discussing the use of security measures in penitentiary establishments. The literature used within the article discusses themes that are both theoretical and practical aspects, based on monitoring and polls conducted in penitentiary institutions.

MNE MOTIVATIONS AND INFLUENCE ON GEORGIAN ECONOMY THROUGH FDI



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Introduction

Foreign direct investment implies a direct or lasting interest in, and control of, an enterprise (Loungani & Razin, 2001). It normally consist of a bunch of assets, including capital, technology, human resources, and knowledge (Dunning, 1993). However, MNE motivations and the driving force could be different in different countries and different sectors of the economy. In general, Central and Eastern Europe is attracting more and more relatively higher added value production (such as: electronics and engineering), which is characterized by geographic concentration, proximity to the customers and high quality control demand. These fields are attracting Efficiency oriented FDIs, while South-East Europe and Turkey are attracting FDIs in such areas as: textile, food processing and other relatively low-tech service market oriented fields.

Georgia is one of the post soviet countries where FDIs played tremendous role in the transformation of the host economy in last 20 years. However, there are still a lot of questions, but answers are not seen on the horizon. Questions are very simple, but need the answers: what are the MNE motivations and their influence on the Georgian economy? How much it is assisting development and modernization of different economic sectors? And what is the level of integration between MNE and different sectors of the Georgian Economy.

I. Eclectic Paradigm of FDI

Based on Eclectic Paradigm by J. Dunning, motivations of FDI are classified into: resource-based, market-seeking, efficiency-seeking, and strategic asset-seeking motivations (Dunning, 2002). Each of them has different impacts on host economy and each of them is characterized by different level of economic development and economic integration into global markets.

The goal for the host economy is to get as much benefits as possible, out from the MNE created assets. However, it is very much depended on both, local governmental policy and MNE motivation. The less there is a connection between host economy and MNE, the more it is unclear what host economies really benefits out of those FDI's, i.e. FDI's has the possibility to improve the competitiveness of the host economy, but its impacts are different:



- In host economies with unfavourable characteristics, such as lower GDP per capita or low educational skills, higher total FDI stocks tend to be associated with lower subsequent growth. Generally it seems to be much easier to attract FDI than to derive macroeconomic benefits from FDI;
- Countries with highly qualified human resources will benefit more from transmitting MNE's business related modern technologies;
- Openness of the economy is vital, since MNEs are followed by Complex Integrity Strategy, i.e. elimination of restrictions for intermediary products at all levels of the production cycle;
- Transfer of technologies is widely depended on the institutional development of the host economy.

All above mentioned factors are closely related to the FDI motivations and has different growth effects on the host economy. For instance, Market-Seeking FDI is providing the host economy with technological assistance and staff trainings. Also modern technologies and import of intermediate products provide additional benefits for the local economy. Finally, rising competitiveness is pushing local firms to innovation (Charaia, 2014). Otherwise the "crowded out" effect is expected, since foreign firms are highly competitive. Market-Seeking FDI's oriented on conquering local markets are less involved in export oriented activities. In a long run it could result a crisis for balance of payments, since such FDI's cannot provide inflow of financial assets from the export oriented activities.

Country with unfavorable characteristics are hardly attracting Market oriented FDI's in the service sector, when Location attractiveness is determined by the GDP per capita parameter. However, if we consider the distribution in Georgian case, it is obvious that service is one of the dominant sectors in terms of FDI attractiveness: financial and energy sectors, trade and tourism, transport and communications; thanks to the privatization process happened in Georgia for last decades in the respective sectors. However, this Market oriented investments in Georgian service sector are less efficient in terms of economic growth and exports; they are characterized with limited capabilities.

Recourse-seeking FDI's are attracting mainly large sums of capital inflows, are promoting technological upgrade and knowhow transfers, also providing economic with the stable currency inflows. Such investments are most often concentrated in the enclave formations, with weak ties to local commodity and labor markets. Also, one of the negative side effects could be the corruption promotion on macro level by the local elite. Recourse-seeking FDI's can cause the "infection" of "Dutch disease". However, such FDI's are good to promote a foreign trade.

Despite the fact that Georgian GDP per capita parameter does not seem to be very attractive (4068 USD in 2017 by GEOSTAT), still it is attracting Market seeking (natural resources) investments. According to the research done by the author on macro level, it is obvious that investments done during the 2007-2015 years are mostly Market-oriented investments – 60%; second place was taken by Efficiency-seeking investments – 36%; while Resource-seeking investments took only third place with 4% (Charaia V, 2017). This results are essential to understand the MNE motivations on the macro level, however not enough to deepen into the micro level incentives and to analyze the impacts of those investments on the local economy.

The main problem in case of FDI analysis is that most of the researches are oriented only on the total amount of the investments and does not interested in the heterogeneity of different economies. Based on the questions raised, the research was focused on MNE motivations and their impact on different sectors, taking into a consideration the specifications of the host economy.

II. Theoretical Background

To meet the necessities of the research goals a well known Scott-Kennel's (2001) model of local industry upgrading was used, which was based on Georgian case and which applied the framework of the IDP at the micro level. The model proposed a typical process of local asset augmentation, as well as the contribution of inward FDI to industrial development as a continuum from enclave to full integration. The model is concentrated on direct and indirect linkages, created by MNEs with local companies, thus having possibilities to modernize local companies and the whole sectors (Scott-Kennel, 2005).

Qualitative methods have been defined as procedures for coming to terms with the meaning not the frequency of a phenomenon by studying it in its social context (Van Maanen, 1983). Qualitative methods are particularly well suited to new research areas (Eisenhardt, 1989) and are appropriate when the requirement is to build new theories, synthesize existing theories (Ragin, 1989) or develop a theoretical framework which can then be subjected to hypothesis testing and quantitative analysis.

Ghuri (2004) says that case-study methodology is practical for getting insight the problem. It involves data obtaining through several sources. This approach relies on the integrative powers of research; the ability to learn an object with many dimensions and then to draw the various elements together in a solid explanation (Selltiz, 1976).

Case studies are chosen as an instrument for the research, to analyze the direct and indirect connections of MNEs and local companies/industries, through which their (local companies/industries) modernization could be achieved. It is also important to analyze the factors which could affect the final modernization. Therefore, the research should be done simultaneously on MNE's investment activities and their cooperation with local companies/industries.

Ragin (1989) argues that the case-study methodology is inadequate in terms of the difficulty in maintaining attention to complexity across a big amount of cases. He states that eight cases are a "modest number" and 20 cases are "thorough" (p. 20). The cases were chosen from the fields which are most attractive for FDIs during last decades, those are: financial and energy sectors, trade and tourism sectors, transport and communications. Since the cases were from the different sectors a special attention was devoted to the correct linkages between them, during the analysis.

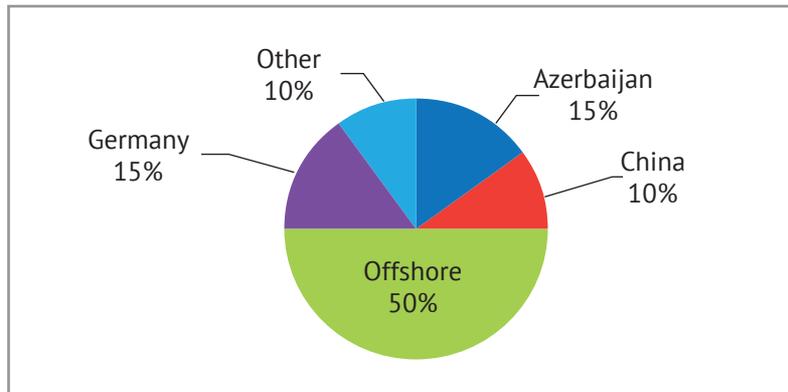
III. Results

Data were collected by self-administered questionnaires, prepared according to the Scott-Kennel's model. Questionnaires were lasting for approximately 60 minute each, in Georgian, English or Russian languages according to the preferences of respondent. Questionnaire had different sections, where respondents were evaluating the business environment, issue of competitiveness, linkage formation, innovation implementation and other important aspects of the Georgian economy and MNE influence on it. The study was carried out among 20 companies from the list of top 200 foreign investor companies in Georgia.

As the diagram 1 show, the most number of investor companies questioned were from the Offshore, while other important investor countries were from Azerbaijan, Germany and China.

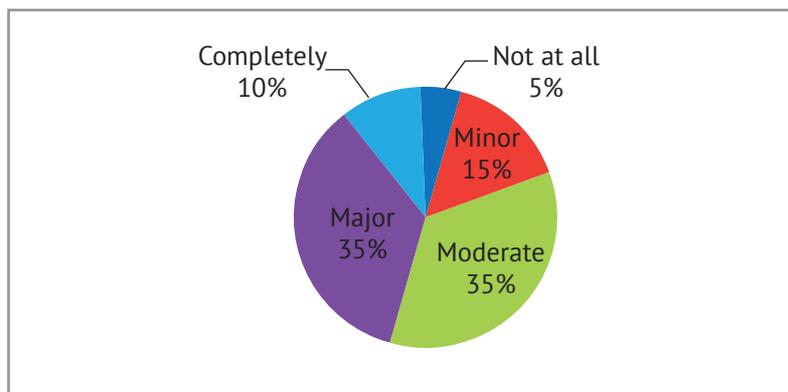


Diagram 1. Country of Origin and Investment Satisfaction



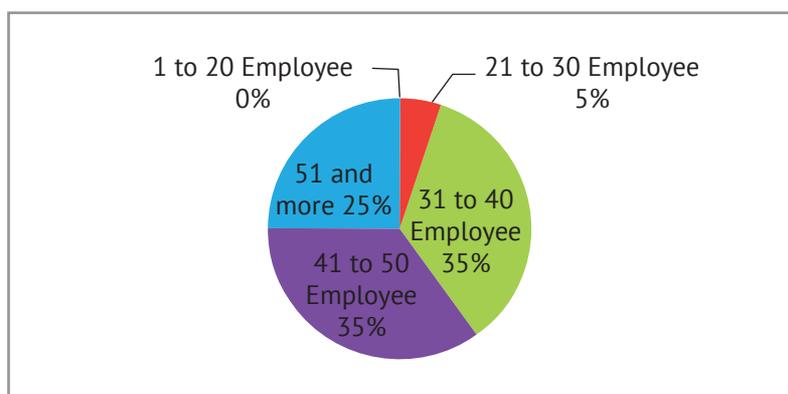
It is important to underline, that the vast majority of MNEs were satisfied by their investment and presence in Georgia. Only 5 percent of respondents think that their investment decision was a wrong, because of different reasons (see Diagram 2).

Diagram 2. Investment Satisfaction Rate



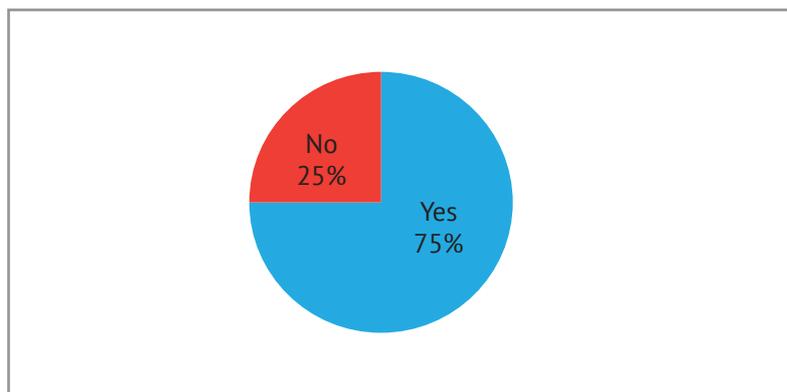
40 percent of companies were employing 40 or less persons, while 60 percent of companies were employing more than 41 people, Small companies with up to 20 persons were not presented in the survey (see diagram 3).

Diagram 3. Number of Full Time Employed Personnel



75 percent of the companies where training their staff abroad, mainly because lack of proper infrastructure (variety and quality of courses, availability of specific equipment and infrastructure, low level of educational programs etc.) in host country (see diagram 4). At the same time, worth to mention that 100 percent of all companies had implemented Labor Security Management, which is a novelty for local companies, but an important aspect of operation for foreign companies.

Diagram 4. Staff Training Abroad Indicator



Responses were asked to name the most important obstacles and opportunities of doing business in Georgia. Each question was evaluated from 0 to 5 points. The highest mean score was for the biggest obstacle or the biggest opportunity.

Table 1. Obstacles of Doing Business in Georgia

	Min	Max	Mean	Std. Dev.
Macroeconomic instability (inflation, exchange rate...)	3	5	4.3	0.71
Skills and Education of available workers	2	5	4.2	0.89
Cost of Finance (interest rate)	2	5	4.1	0.87
Political Instability	1	4	3.6	0.81
Justice Inefficiency	1	4	3.4	0.78
Innovation and Sophistication	0	5	3.2	1.26
Infrastructure	2	5	2.5	0.85
Access to Land	0	2	1.6	0.37
Labor Regulations	0	5	1.8	1.45
Crime, theft, and disorder	0	1	0.4	0.21

Macroeconomic Instability was named the biggest obstacle (See table 1). Unfortunately for the Georgian economy and investors in particular, exchange rate instability has become the biggest problem to the foreign investors in Georgia, since it became problematic to plan the prices (Charaia, 2018), budget, salaries, logistics and etc. Since the devaluation process has been started in late 2014, Georgian Lari has been devaluated by around 60 percent to 2.6 Gel per USD, but the even bigger problems come from main trading partners devaluating local currencies by 2 and 3 and even more times (Turkey, Russia, Ukraine, Azerbaijan etc).



The second biggest problem was named - **Skills and Education of Available Workers**. Despite the fact that this problem is known for many years already, no significant improvement has been done in this direction so far. By the way this issue is declared as one of the most significant obstacles for doing business in Georgia, according to different international organization and international rankings. The roots of this problem are hidden deep into the educational system and mental understanding of Georgians. The fame for older generation scientists still exist in Georgia, but at the same time qualification and possibilities of the majority of those scientists today are bellow the world average. Thus having the leading positions at different universities, the majority of older generation scientists with lack of knowledge and experience in modern science trends are not ready to transmit the power into the hands of younger, western educated generation, not even ready to cooperate with them. On the other hand, one of the lowest mean scores was distributed to the – **crime level**, saying that Georgia is one of the safest places to do business in terms of low criminal level and high trust in police.

The second part of the questionnaire related to the opportunities was also interesting (see table 2). Answering to the question, which are the aspects of FDI policy that positively influence the way your firm operates in Georgia? One of the highest mean scores was devoted to the – **Easiness of Interaction with the Governmental Bodies**.

Low Corruption and **Tax Rates** were also defined as one of the main advantages for doing business in Georgia. According to the transparency international, Georgia is on the 46 place and among the average European countries according to the corruption parameter, which is a positive result. The tax system in Georgia has been simplified, probably to the maximum possible level, allowing investors to reinvest without income tax being paid, but paying only when distributing the income.

Table 2. Advantages of Doing Business in Georgia

	Min	Max	Mean	Std. Dev.
Easiness and Speed of interaction with the governmental bodies	3	5	4.4	0.73
Easiness and Speed of different procedures	3	5	4.2	0.71
Business Licensing and Operating Permits	3	5	4.1	0.70
Tax Rates	2	5	3.9	0.84
labor Force	0	5	3.8	1.34
Corruption	1	4	3.5	0.75
Access to Finance	0	4	3.3	1.17
Customs and Trade Regulations	0	5	3.0	1.19

Customs and Trade Regulations are important aspect for the companies aiming to settle down in Georgia to operate in the whole region. For instance this particular reason was crucial for Toyota. Free trade agreements with EU and China simultaneously make Georgia one of the most unique countries in the world, which could promote not only Georgia, but also EU and Chinese economies as well (Papava, 2017; Wang, 2018).

Labor force in General is an obstacle for doing business in Georgia according to many investors, however in this case, many Local Market seeking MNEs were quite satisfied with it. For many

MNEs it was important to have motivated youngsters with knowledge of foreign languages and ready to work for lower salary than in developing countries or even starting with an internship, which was easy to find in Georgia.

Based on the data collected we also applied factor analysis to discover if the measured variables can be explained to a larger degree in terms of a much smaller number of variables (factors), i.e. we divided all variables into three main factors both for obstacles and opportunities of doing business in Georgia. Namely, for obstacles: Regulation, Infrastructure and Stability; and for opportunities: Speed and Price. Results came interesting and important for policy making.

Table 3. Most Important Obstacles for MNE in Georgia

	Mean	Std. Dev.
Stability (economic, political, social)	3.65	0.79
Infrastructure (physical, social, criminal)	3.12	0.74
Regulations (licenses and access)	2.50	0.62

Based on the results, it's clear that macroeconomic stability is the number one problem for foreign companies (and for local ones also), since it affects the price and therefore the competitiveness of their product.

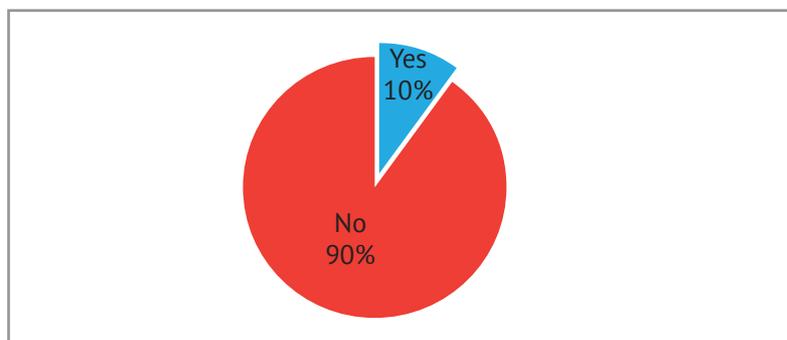
Table 4. Most Important Opportunities for MNE in Georgia

	Mean	Std. Dev.
Speed	3.8	0.58
Price	3.7	0.73

On the other hand investors say that Speed and Price of doing business in Georgia is very much positive (see table 4) and if we measure its efficiency, it is equal to 75% satisfactory, which would be a good asset to attract additional FDIs for any developing country.

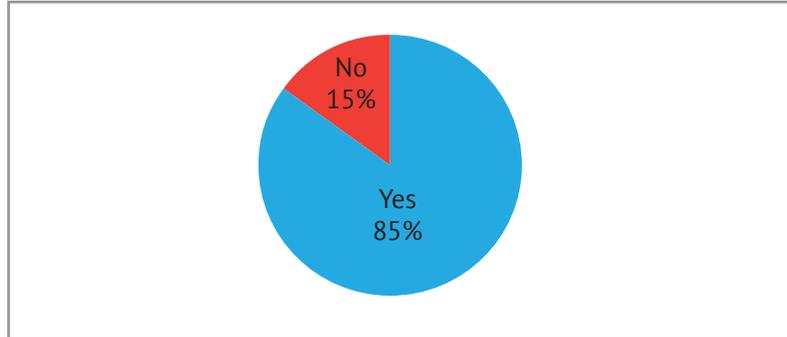
MNEs are creating new work places, contributing to local production and export diversification, paying taxes and participating in many other important aspects of economic life in Georgia. However, the Quality of Linkage of MNEs with local companies is on the low level so far. Only 10 percent of the resources transferred to the local firms were Unique (See diagram 5), while non-unique equaled for 90 percent.

Diagram 5. Unique Resource Transferring from MNE to Local Companies



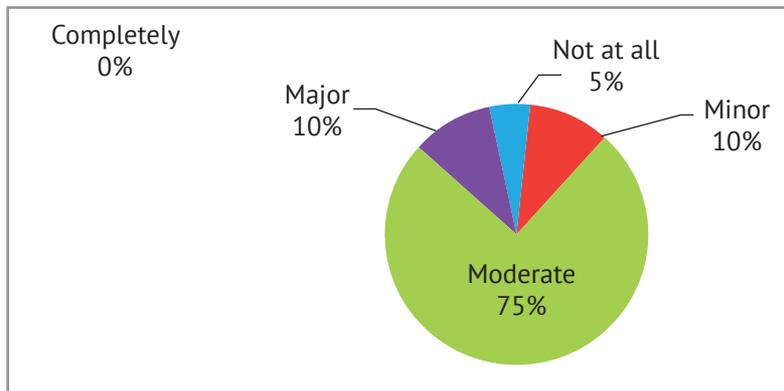
On the other hand MNEs are claiming that they are actively assisting local companies to improve their product or service, by the way which could be later on used by MNEs also (see diagram 6).

Diagram 6. MNE Assistance for Local Product Improvement



According to the question, if the firm's operations in Georgia influenced the changes (see diagram 7), the response is – at Moderate level (75 percent), while only few say - Not at all (5 percent) or Minor (0) or Major (10).

Diagram 7. MNE Influence on Change.



Scott-Kennel (2001) proposes that the quality of linkages between MNE and the local economy is positively related to the degree of linkage (DOL), thus the higher DOL brings to more benefits. However, the degree of linkage between MNEs and host economy in Georgia is considerable low at this stage of development, which is not a surprise.

Conclusion

In the beginning of the article we put several questions: what are the MNE motivations and their influence on the Georgian economy? How much it is assisting development and modernization of different economic sectors? And what is the level of integration between MNE and different sectors of the Georgian Economy. After reviewing the data, we can say that MNEs play an important role for the Georgian Economic development, but the level of their integration and the quality of their presence is an average so far. That means that MNEs motivations and the Georgian Expectation are not the same. However, the path is correct and more benefits for both sides are expected to appear.

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MNE Motivations and Influence on Georgian Economy through FD

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ABSTRACT

This work was supported by Shota Rustaveli National Science Foundation of Georgia (SRNSFG) [YS-2016-66207, The Impact of MNE motivation on Georgian Economy]. From the strategic point of view, not all Foreign Direct Investments (FDI) are always positively benefiting the host economy, i.e. not all MNE's are promoting local/host economies. Even more, not all FDIs are equally beneficial for the different sectors within the same economy. The fact is that FDI could have different impacts on different sectors and it is not only based on the amount of FDI itself, but MNE motivations and the peculiarities of the host economy, which could be different from country to county. In other words, only aggregated per year FDI numbers are not really giving the comprehensive picture of the process and even more, in many cases are driving to incorrect strategic decisions.

Keywords: MNE, FDI, Georgia, Scott-Kennel Model, Investment

STUDENT INSURANCE IN GEORGIA-CHALLENGES AND OPPORTUNITIES



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“Far too often it is the case that adults decide what is best, forgetting that young people are service users whose needs may not necessarily be the same as those of adults”

J. Coleman, A. Hagell¹

Key words: *Student Health Insurance, Universal Health Coverage Programme, Voluntary Health Insurance, Social Services Agency, Private Insurance, Out-of-Pocket Payment.*

As it was shown by different researches, students are not intended to healthy behavior : “... low motivation of preventative health is caused by following factors: low risk factor of disease among young people, low socioeconomic level of country, slight development of primary health care, less interest of society towards preventative health, less information about current screening programs.”² At the same time, youth represents socially most active group on which depends existential future and wellness of any country and/or nation and importance of health and a wellbeing of this segment should not be underestimated.

From this stand point, we decided to research existing conditions of student insurance coverage in Georgia, and the level of student’s awareness about their abilities to use it. Also, we reveal what alternative services proposed by different insurance companies and compare them with international standards and policies in this regard.

History and challenges of the Georgian healthcare system

Since its independence, Georgian health system has moved strongly away from the Semashko model it inherited from the soviet past. According to the report of European Observatory on Health Systems and Policies (a partnership hosted by WHO), published on 2017-“The Georgian Healthcare system is now highly decentralized and was extensively privatized under reforms

¹ J.Coleman, A.Hagell. “Young people, health and youth policy”. Y & P (2015), 114, 17-30, https://www.researchgate.net/publication/280599972_Young_people_health_and_youth_policy, (accessed 10/26/2018, 12:20).

² I. Lacabidze, S. Skhirtladze, L. Fanjiani, T. Verulava. Healthy Behavior in Students. Scientific Reviewed Journal “Health Policy, Economics and Sociology” (2017), 3, 119-129.



introduced from 2007 to 2012. These reforms were characterized by deregulation and trust in market mechanisms. During this period, most government spending on health was channeled through private health insurance companies, which were paid to provide a standard package of benefits for households living below the poverty line. In 2010, health insurance companies bid to be the sole provider of health insurance for families below the poverty line in a specific region. In exchange for this monopoly provision for a fixed term, the companies were required to invest in upgrading the hospital and primary care facilities in their region. This created a number of vertically integrated for-profit purchaser–providers at the regional level. Infrastructure and capital planning are driven by concerns for equitable geographical access to services, but planning in the health system is made much more complex by the dominance of private for-profit providers. Following extensive privatization and decentralization, most providers are independent of government in terms of ownership, governance and management. The pattern of vertical integration of pharmaceutical companies, private insurance companies and medical service providers is unusual in the European context and these companies are influential in the system”³ In 2013 was introduced the Universal Health Coverage Programme (UHCP), that extended the breadth of coverage to almost the whole population, most of whom had no health coverage before 2013. Since that time, private insurance companies and market mechanisms’ roles were diminished and as the single payer in the health system for different government-funded covers under the UHCP came to the fore the Social Services Agency (SSA).

Generally, newly adopted system met demand for medical care among those who previously did not have health care coverage, and out of pocket payments considerably decreased. “Georgia still has some of the lowest utilization rates for outpatient care in Europe, but utilization of outpatient and inpatient care has more than doubled since the introduction of the UHCP (from 2.1 outpatient contacts per year in 2010 to 4 in 2015). Utilization of inpatient care is relatively high, but this is indicative of a strong preference in the system for care-seeking and treatment at more specialized levels of the system at the expense of primary care, as well as incentives in the system that encourage hospital care. Despite primary care being made free at the point of use for all, most of the UHCP budget is spent on inpatient services.”⁴

Since 2014, the UHCP has consistently overspent its budgeted amount. This was largely due to the rapidly growing demand for health services among those who were previously uninsured or lacked coverage for certain interventions. Alongside cover provided under the UHCP, the health budget also finances 23 vertical programmes for priority diseases and conditions. These vertical programmes seek to provide access to services for the whole population, but with varying depth of coverage. The vertical programmes include: mental health, diabetes management, child leukemia services, dialysis and kidney transplantation, palliative care, and a range of public health protection programmes including tuberculosis control, vaccination programmes and the innovative hepatitis C programme, which aims to achieve a 90% reduction in prevalence by 2020. Georgia has a high prevalence of hepatitis C infection, mainly due to inadequate infection control in health care settings and unsafe injections among persons who inject drugs. In 2015, 7.7% of the adult population was living with hepatitis C. By 2017, ~30% of the estimated population infected by hepatitis C in Georgia had received treatment, with cure rates of 82% and 98% depending on the regimen.

³ E. Richardson, N. Berdzuli “Georgia: Health system review”. Health Systems in Transition, 2017; 19(4):1–90. (<http://www.healthobservatory.eu>), (accessed 26/10/2018)

⁴ E. Richardson, N. Berdzuli “Georgia: Health system review”. Health Systems in Transition, 2017; 19(4):1–90. (<http://www.healthobservatory.eu>), (accessed 26/10/2018)

In May 2017, the most affluent households (about 43 000 people, whose annual income is above 40 000 Georgian lari (GEL)) were excluded from the UHCP on the understanding that they would purchase Voluntary Health Insurance.

Health expenditure by service input is dominated by expenditure on pharmaceuticals, which was 38% of Total Health Expenditure by 2015 (Ministry of Labor, Health and Social Affairs, 2018).

The UHCP dominates public expenditure on health, accounting for 75% of public spending on health in 2016. Of total public spending on health, 67% was on hospital services, while 25% went to primary care providers (World Bank, 2017). With the introduction of the UHCP, there was a fall of 49% in spending on medical goods (mainly pharmaceuticals), which is partly related to generous inpatient care coverage which includes necessary medicines, while benefits for outpatient pharmaceuticals are limited. There was also a 79% fall in administration costs, which were calculated differently to exclude profits from the administration costs of private insurance companies as the system moved to one with a single payer (World Bank, 2017).

In essence, there are three patient pathways in Georgia: the route for those covered under the UHCP and some vertical programmes; the route covered by Voluntary Health Insurance; and the private 'out-of-pocket' route. The route taken also depends on the condition (i.e. whether or not the condition is covered under the particular insurance package or under the UHCP – or other – programme). Patients can access inpatient treatment covered under the UHCP while bypassing primary care. For inpatient services under VHI, a referral from a registered primary care provider is needed. The bypassing of primary care entirely is common and there is a strong patient preference for accessing care at more specialized levels (Smith, 2013). Access to essential medicines is also cheaper in emergency and inpatient care settings.

Under the UHCP, in order to get a planned hospital service, the patient chooses the provider and they or the medical facility are required to submit the necessary documentation to the SSA for authorization. Once authorized, the patient is issued with a voucher that also indicates what proportion of the costs will be covered by the government and how much the patient is expected to pay (generally between 10% and 30%). Previously, patients under Voluntary Health Insurance had more choice of provider, but now many providers are integrated with private insurance companies and these tend to have preferred providers, thus limiting patient choice. Some primary care doctors are also employed or subcontracted by inpatient care providers and they do proforma referrals to their allied hospitals.”⁵

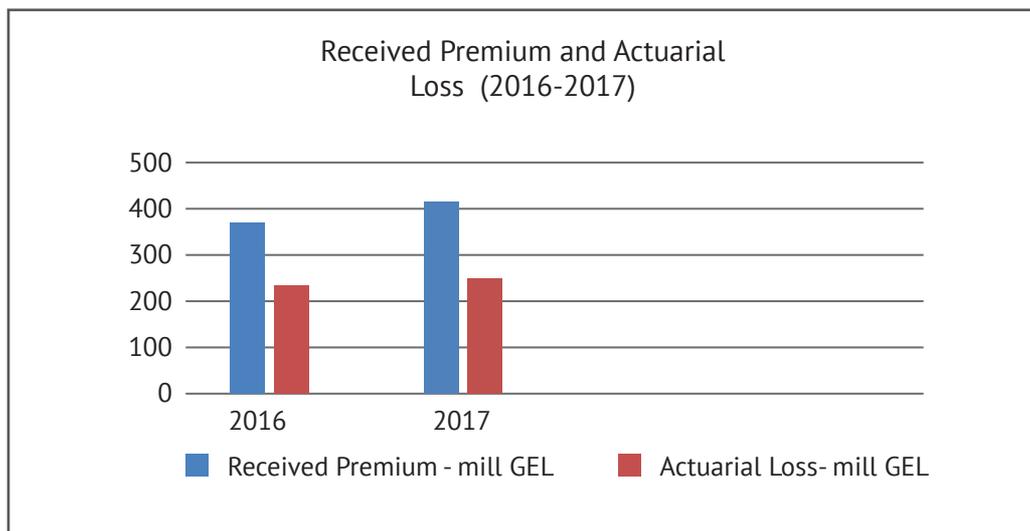
As with the UHCP, many VHI packages and vertical programmes are not totally comprehensive, and many interventions are still not covered. Patients are free to self-refer to any service provider but the patients then bear the full cost of care themselves. The scope for self-referral makes it difficult for primary care physicians to coordinate care.

Out-of-pocket (OOP) spending in health in Georgia is high when compared with OOP spending across the European region, but it fell following the introduction of the UHCP, even though government expenditure on health increased 126% from 2012 to 2016. Since the introduction of the UHCP, catastrophic OOP spending on inpatient care has halved, but average OOP spending on outpatient pharmaceuticals has almost doubled. This is not due to any change in cover-

⁵ E. Richardson, N. Berdzuli “Georgia: Health system review”. *Health Systems in Transition*, 2017; 19(4):1–90. (<http://www.healthobservatory.eu>), (accessed 26/10/2018)



age but because pharmaceuticals in Georgia are relatively expensive, generics are not always available (and often are of a less demand), and the reliance on imports makes pharmaceutical prices vulnerable to economic shocks such as the depreciation of the lari. Despite all pros coming from UCHI, it became heavy burden for the Georgian economy. For more visibility, in 2015 instead of 470 mil GEL allocated for UHCI from the state budget were spent 573 mil GEL, in 2016 were spent 645 mil GEL versus 570 mil GEL allocated in the budget. 2017 budget was planned accordingly- 660 mil GEL. Correspondingly, money spent by private insurance sector also increased, please see chart below:



Chart#1- Developed Insurance Premium and Actuarial Loss in 2016-2017, GeoStat.ge (12)

Student Insurance Development

Taking into consideration all mentioned above challenges, students appear to be one of the vulnerable segments of Georgian social categories. Student Insurance was introduced in Georgia in September 1, 2012. Provision of it was supported by private insurance companies in rural areas, as well as by “Archimedes Global Georgia” in the capital. After declared bankruptcy of “Archimedes” in 31/12/ 2013, all students, studied in Tbilisi, from 01/01/2014 were transited to the Universal Programme, and from 01/09/2014 all students fell under UHCP, regulated and administered by Social Services Agency.

Eligible for that type of universal healthcare programme is a student, citizen of Georgia, studied:

- A. in authorized higher educational establishments on Bachelor’s, Master’s, Medical or Dentist’s as well as Georgian language educational programmes;
- B. in vocational training schools on 4th and 5th stage as well as higher vocational education programs.

Duration of insurance period depends on the duration of educational programme and not on the age of a student. Thus, in case of Bachelor’s degree programme continues for 48 month, Master’s degree programme for 24 month, Georgian language study programme –for 12 month, etc.. Termination of student insurance can be caused by completion of insurance period, death

of insured, rejection of insurance by its holder, committing to prison or another restraint facility, termination or stay of student status with exceptions for pregnancy, delivery, child care and health condition. Continuation of such exceptional period should not exceed 1 calendar year.

In the frame of student insurance, beneficiary can receive following services (cost-free, without additional payments): ultrasound of all systems, all systems roentgenography/roentgenoscopy, consultation of all specialists, consultation of family doctor in the clinic and at beneficiary's home, blood general analysis, urine general analysis, lipid spectrum, creatinine, glucose, electrocardiography, hidden blood analysis, 100% cost of emergency care and 80% cost of planned surgical interference. While proposed universal services have satisfied needs of insured and made available timely medical care for students, fell under mentioned above categories, despite material wealth of their families, activation of such insurance in case of necessity is simple, doesn't take time and does not exclude simultaneous utilization of private insurance package, this insurance has its discrepancies. Namely, it does not cover dentist care, medications costs, and is not popularized at all. Many claims difficulties in obtaining particular information about student insurance.

From 23 of June 2018, Eastern Europe University has signed cooperation memorandum with Acad. N. Kipshidze Central University Clinic (Republic hospital) for provision medical care services to EEU students in the frame of Universal Healthcare Insurance Programme. The value of one students' package is, as it is foreseen in UHIP, 15000 GEL. Besides covering mandatory medical services, Republic Hospital proposes for EEU students 30-50% discount for advanced technological researches (computer tomography, magnetic resonance, etc). From September 2019 is planned to provide same services to student's family members.

Starting from September 2018, some private insurance companies proposed insurance packages for students, as well. For instance, IGG has developed special package for Caucasus University students, with monthly premium- 20 lari. It gives an opportunity to utilize such services as consultation of family doctor in clinic and at home, dental services, copayment for prescribed medications, conduction of high technological research procedures (computer tomography, MRT, etc.). Besides, students are proposed individual limit of 4000 GEL for planned hospitalization. If, for instance universal student insurance allocates for that propose only 70-80% of sum, private insurer fills amount up to 20-30% as a copayment in accordance with the limit. In case of outpatient and inpatient emergency company covers 6000 GEL limit.

Another privately owned insurance company "GPI Holding", proposes students following reductions:

- 20% reduction for travel insurance while travelling abroad
- 10% for family package "Medi Policy" covering beneficiary's family members.
- 10% for package "Auto Policy" for the student and his/her family members.
- One moth home insurance "Policy Comfort"
- 20% for dentist care in GPI Holding's provider clinic "Universe"
- 10% for medical services in GPI Holding provider clinic "Curacio".

New product was delivered to the Georgian insurance market by another insurance company "Global Benefits Georgia". Company has developed special policy package for Georgian and international students, that is tailored to individual requirements of each student. This package can be even used while travelling and studding abroad, as beneficiary gains an access to



about 10 000 of high standards medical facilities- Global Benefits Group's worldwide providers, avoiding additional costs and bills payment procedures. Among benefits of that package is GBG Assists' 24/7 hotline, where qualified professionals are consulting customers and helping them in planning medical services. "Student Protector Policy" holder can choose desirable geographical as well as medical coverage.

The most recent proposal, focused on the improvement of beneficiary service in the frame of student universal insurance was introduced on 25 October 2018, by "Evex" corporation. It covers 100% of all services, foreseen by universal student insurance, but in addition provides 30% discount for services do not covered by state insurance, as well as 30% discount for all types of dental services. As an additional benefit, registered in Evex corporation student can receive service in any of 15 "Evex" polyclinics all over the country, become candidate for monthly stipend (100 GEL during 6 month), participate in employment program, undergo simplified registration in special "Evex" registration centers (settled up in educational institutions and in 8 Evex polyclinics, located in 8 districts of Tbilisi). "Evex" corporation also declared participation in different student activities like lectures and master classes, sport activities, etc. due to propaganda of healthy nourishment, healthy lifestyle and health monitoring (preventive care).

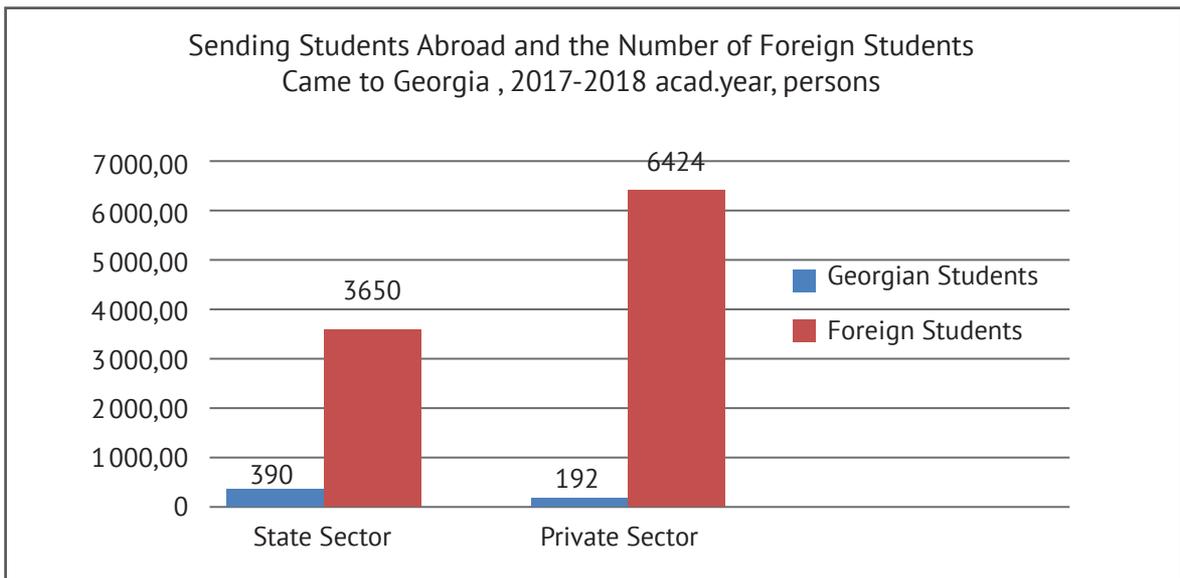
On the basis of international standards, Georgian Insurance State Oversight Service has developed instruction on "Provision by insurer of all essential information to the customer while delivering insurance services" and had introduced it on 24 March, 2017. Instruction reflects obligation of insurer, on each and every stage of provision of insurance services, including product proposing, as well as after signing a contract to adequately inform customer about all essential information including standard procedure of claims revision. The regulation of such type, supposed to increase service quality and prevent potential lawsuits.

International Experience

Currently accumulative packages are not obligatory in Georgia. In contrary, in European countries such as Germany, Holland, Belgium and Sweden student insurance is mandatory. In Spain, for instance, all students before age of 28, undergo accumulative insurance automatically, they are not paying for it, as it is included in tuition fees. In Germany, the least student insurance premium is 46 €. Besides beneficiary's life insurance it incorporates different medical costs, including visits to dentist. French students to receive an accumulative package are contracting special agencies. Annually it costs about 250 € and represents part of universal accumulative social insurance. In United States only 10% of population enjoys state covered insurance, other 90 % uses private insurance companies' services. American students spend on insurance 100-500 \$ annually. In Japan there is in place state system of mandatory accumulative insurance, that covers not only life/death insurance, but visits to different specialists, operations, treatment and nourishment in hospitals, and all necessary medications. Accumulative life and health insurance gives an opportunity not only to put aside monetary resources, but in case of necessity ensures adequate level of medical service. International insurance packages nowadays become of a big interest for exchange program students, travelling from Georgia to different countries, while exact knowledge of foreign requirements helps to save and properly allocate money, purchasing adequate.

Study

Taking into consideration that student insurance problem is as important as actual, we suggested a hypothesis, that universal, Georgian government funded student insurance is underused by its beneficiaries, because of informational vacuum in this regard. To another hand- coming to Georgia international students represent potential market for Georgian private insurance sector that is not properly researched and, thus, utilized.



Chart#2. Georgian students sent abroad (blue) and international students came to Georgia (red) in 2017-2018 a.y.

So, the aim of study was estimation of the awareness level among students and discovering correlation between level of ignorance and the rate of visiting healthcare facilities. If in the first part of study, where we revealed existing preconditions in Georgian student insurance market were used mainly qualitative research methods as well as interviews with educational, medical, state oversight, insurance facilities representatives and students. To investigate the problem and prove the hypothesis, randomized quantitative study was conducted. Study subjects were: Georgian as well as international students of Free University of Tbilisi, The University of Georgia, Business and Technology University, Caucasus University, Sulkhan-Saba Orbeliani Teaching University, Business Academy of Georgia and vocational training schools. Study object- level of awareness among Georgian students about student insurance and employment by international students Georgian private insurance. Total number of respondents was 565 (517 Georgian and 48 International students). On Bachelor's educational programs study 93% respondents, on Master's- 5%, in vocational facilities- (5th degree)- 1%, other -1%.

In regard of Georgian students' awareness about possibility to get free of charge medical services, positive answer was given by 41%, while negative by 59%.

Only 13% of Georgian students utilizes medical services of ultimate student insurance and only 15% is aware what services are for their disposal without any fee. 25% thinks that information about student insurance is not approachable for them, 26% easily gets it, while 49% find dif-



difficult to answer this question. 16% counts that their consumer rights at insurance market are protected, while 8% answers negative, 76% abstains from the answer.

As it was revealed by our study, 29% of international students do not have any insurance, 28% have private insurance packages from their home countries, 14% have Georgian private insurance, and 29% do not know "what is it"! 29% (all students without insurance) are going to purchase it in nearest future. Only 10% from Georgian and 25% from international students confirmed an insurance proposal from their universities and 64% and 57%, correspondingly, never heard about such. 26% and 18% from each group did not understand what they were asked about.

Healthcare facilities are often visited by 7% of Georgian Students, 53%- visits them very seldom, 8% -do not refer to healthcare facilities at all, 32% refer to facilities 1to 3 times in a year.

Conclusion/ Recommendations

There is noticeable correlation between numbers of informed about state insurance students and students visited medical care facilities. Despite existence of instruction "Provision by insurer of all essential information to the customer while delivering insurance services" knowledge about student insurance details is extremely low, which is direct violation of consumer rights. No information comes from other governmental agencies including Ministry of Education, whose role apparently should be increased.

Georgian Insurance is not mandatory, it can be applied for, in case of necessity. As for preventive examinations, only limited tests are foreseen in this package and only after family doctors' prescription. As it was mentioned above, limit of the package is 15 000 lari for hospital services and about 12 000 for oncological patients. Majority of students is not informed about this allocations and application for these services is low. It is important to improve supporting of primary health care. In addition, education about healthy lifestyle should be promoted among adolescents.

Remains open issue of preexisted conditions of potential beneficiary. Currently it is not taken into consideration neither by government funded universal insurance, nor by private insurance companies.

Only accredited educational facilities can insure their students, otherwise they can be treated as citizens. Major concern- quality of provided services, overload of facility, lack of preventive observation.

Positive features of students insurance - person picks desirable facility, about 20% co- finance for extra services.

As students represent low risks group, they can be offered better packages for lower premiums.

Seems reasonable to continue research in terms of identification international students' requirements and needs in insurance products, to facilitate coverage of this comparatively new segment.

Some NGOs, like "Social codex", are closely studying activities around student insurance, which seems to be positive sign of social interest and activity.

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Student Insurance in Georgia-challenges and Opportunities

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ABSTRACT

Despite the fact, that adolescents are counted as the healthiest segment of society, they remain due to their age and behavioral activities one of the most vulnerable groups, which requires adequate attention from educational, governmental as well as health care institutions.

Taking into consideration that student insurance problem is as important as actual, we suggested a hypothesis, that universal, Georgian Government funded student insurance is underused by its beneficiaries, because of informational vacuum in this regard.

The aim of study was discovery and evaluation of existed options for students at contemporary insurance market, estimation of the awareness level among them and discovering correlation between level of ignorance and the rate of visiting healthcare facilities.

Methodology used includes quantitative, qualitative an empirical research methods.

Innovation of the work is associated with a research of the less popularized topic in Georgia- student insurance and its practical application consists first of all in obtaining relevant information about proposed services and conditions and in communication of that information to the students as well as assisting them in their choice of insurance plan and protection of their customer rights.

As the result of conducted research, the hypothesis of study was proved- there is noticeable correlation between numbers of informed about state insurance students and students visited medical care facilities. Despite existence of instruction "Provision by insurer of all essential information to the customer while delivering insurance services" knowledge about student insurance details is extremely low, which is direct violation of consumer rights. No information comes from other governmental agencies including Ministry of Education, whose role in this regard apparently should be increased.

THE EU-GEORGIA ASSOCIATION AGREEMENT, THE REQUIREMENTS FOR FOOD SAFETY



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Regulation of food safety is one of the most important issues of the EU common policy. All EU Member countries give prior importance to the risks associated with food security. Over the years, the regulation mechanisms were changed and updated. This process is still underway.

Food safety at the international level coordinated by Food and Agriculture organization of the United Nations (FAO) and World Health (WHO) organization. Food trade and appropriate safety issues are regulated by the World Trade Organization (WTO) regulations and agreements. It is also worth to mention the Agreement on Sanitation and Phytosanitary (SPS Agreement). SPS Agreement sanitary / phytosanitary measure means all normative acts, regulations, the prescribed procedure, the requirements for the production process, testing and inspection, certification, recognition procedures, quarantine measures, the requirements of the animals or plants transportation, risk assessment, sampling, statistical analysis methods, packaging and labeling rules, which the country is conducting in its territory.

The SPS agreement is based on the provision, according to which to protect the health of the population, also the health of animals and plants in its territory it is necessary that the established and operated measures must meet two conditions: 1) Do not go beyond the limits necessary to protect the health of people / animals / plants, and 2) they should be based on scientific justification.

The first difficulty is associated with the necessity of sanitary / phytosanitary measures (necessity, sufficient). As a rule, countries differ according to the level of health protection of the population (as well as animals / plants level of protection). The WTO cannot oblige them to change this level - to take care of their population more or less. This choice should be done by the country and nobody will interfere with it. However, it is clear that if the government does not care about the health of the population, the food safety in the country is less provided.

The SPS agreement brings the “general indicator” to compare these different measures with each other. The result of these measures is - the level of risk for a particular food-related disease (roughly Human or animal or plant diseases / pests’ frequency or prevalence) in country. In the SPS agreement terminology is “appropriate level of sanitary / phytosanitary protection”



(hereinafter referred to as ALOP) – so the level of protection considered by country by the sanitary or phytosanitary measures to safeguard the life and health of humans, animals or plants in its territory. According to this indicator should be compared Sanitary / phytosanitary measures in different countries. If they are the same, then food produced in one country would enter in the second country without any obstacles.

The case is simplified if the sanitary / phytosanitary size used by the country is internationally recognized. In this case the country can directly use them. The SPS Agreement specifically refers to three international organizations that are approved by the standards or other guidelines that may be used by the countries for sanitary / phytosanitary measures. These are:

- Code Alimentarius Commission - in food safety issues;
- World Health Organization - in the field of animal health and zoonotic diseases;
- The International Plant Protection Convention Secretariat - in the field of plant protection.

In areas where these three organizations do not apply, it is permissible to use the standards, recommendations or guidelines published by the relevant international organization.

In the EU-Georgia case, instead of evaluating the equivalence of SPS-measures, is being brought closer to each other the legislations (more precisely harmonization / approximation of the Georgian legislative framework with European legislation) and its adequate implementation / execution check, in case of satisfaction, the parties' SPS-sizes shall be considered compatible.

According to the Agreement, Georgia should be able to harmonize its sanitary and phytosanitary measures with EU legislation. Georgia must adopt new or correct existing normative acts in order to reflect the requirements of the relevant EU legislation. All the provisions of the Georgian legislation contradicting the harmonized legislation shall be abolished and effective enforcement of these approximated norms shall be ensured.

It can be approached by step by step, part-section, individual measures, size groups, individual products, or product type. Georgia may request and evaluate the equivalence of these individual measures. In case of successful completion would be opportunity to open import, or mitigate import conditions in food products, which are covered by the equivalent system with the EU.

The country should not have anticipated that a free trade agreement would allow in EU to provide goods that do not meet the safety standards / criteria set by the EU. Within the framework of free trade only rules and procedures will be cleared, which will examine the safety but not the norms itself.

In 2018 shall be carried out the following important normative acts in the field of food safety:

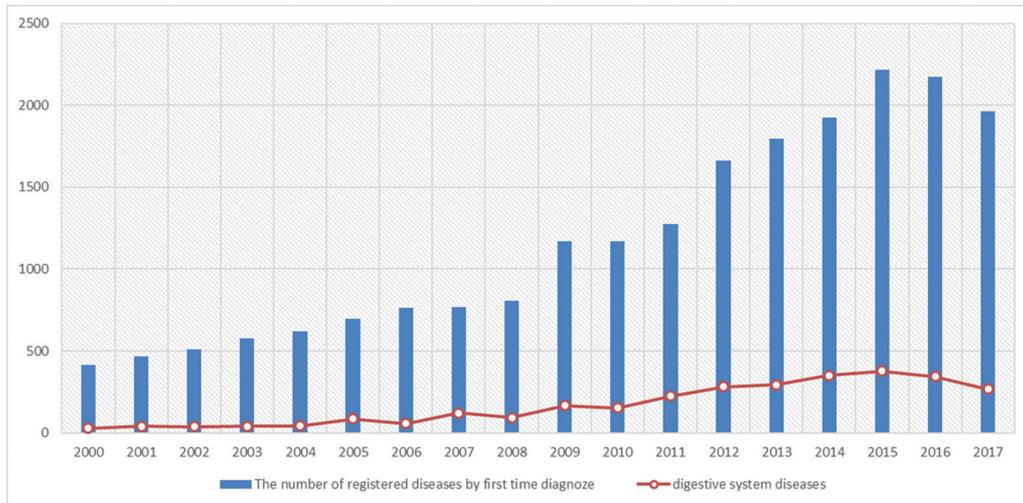
- Quality of drinking water standard;
- General regulation of material being in touch with food;
- Regulation rules for genetically modified food;
- Frame-directive control of animal diseases;
- Code of Veterinary Medicines.

Important issues of food safety in 2019 are:

- Control of “food made with new technologies”;
- Rules of animal feed hygiene.

At this stage the National Statistics Office of Georgia examines only morbidity of the population according to the main groups of diseases. Statistical data are presented in the Chart 1:

Chart 1. Population morbidity by years and according to the main groups of diseases



In 2017, the number of registered diseases by first time diagnose compared with 2016 is estimated at approximately 9.7%. It should be noted that the increase in data after 2008 is explained by: 1) increase in registration, 2) increasing access to healthcare system and 3) by introducing the health insurance system (enlargement).

Implementation of the obligations defined by the Agreement will give Georgia the opportunity to improve its sanitary and phytosanitary, animal welfare legislation, preservation of veterinary goodwill, protection from invasion and dissemination of harmful organisms of the territory of the country and achieving the equivalent level of European regulation. To realize Georgian products in the form of animal and vegetable products in a simplified manner with the European Union.

Improvement of sanitary and phytosanitary systems and closer to European standards will increase the quality of Georgian products, increase its credibility to the world market, which will contribute to the growth of Georgian exports. Besides: Georgian customers will be provided with safe products; the competitiveness of Georgian agricultural products will increase; agricultural enterprises will be modernized.



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The EU-Georgia Association Agreement, the Requirements for Food Safety

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ABSTRACT

Purpose – In order to satisfy the EU standards and norms signed in term of the Association Agreement, Georgia undertakes obligations to get closer to the European Union with its own legislative and institutional bodies. The goal of the research is to inform the wide society about the EU-Georgia Association Agreement requirements on food safety and assess the difficulties faced to the Georgia.

Design/methodology/approach – To achieve the goal, was made the analysis of the terms of the Association Agreement, Agreement on Sanitation and Phytosanitary, EU and Georgian legislation, as well as experts' opinion about food resource, world scientific achievements and practical experience.

Findings – Improvement of sanitary and phytosanitary systems and convergence with European standards will improve the quality of Georgian products and increase its credibility at the world market, this will contribute to the growth of Georgian export and the competitiveness of the Georgian agro products.

Originality/value – In term of effective Implementation of EU-Georgia Association Agreement and to maximization benefits from this agreement, it is important to raise the awareness of private and public-sector concerns of the DCFTA's food safety requirements in order to make the adaptation process much less painful and to bring Georgia closer to the international standards.



DEVELOPING AND APPLYING YOUTH ONLINE SOCIAL NETWORKING READINESS FOR ENTREPRENEURSHIP IN SMALL EUROPEAN ECONOMIES



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Introduction

Albania is country in South Eastern Europe which is currently struggling to access the European Union and it is has one of the youngest populations in Europe. Young people in Albania are digital natives and millennials whom own a smartphone or different like many other young people in other parts of Europe. The number of young people enrolled in Business related degrees is increasing from year to year. The reasons that students chose such degrees are as simple as the fact that this kind of degree can offer some kind of employment possibilities.

From the experience with working with students, it is very uncommon to hear from them in the Albanian context that they choose such a degree because they want to have their own business. In spite this young students are usually keen to learn about entrepreneurship and even to find any kind of opportunities related to it. Albania is not part of the Global Entrepreneurship Monitor Survey and there are not currently statistical data in how to trace entrepreneurial activity of young students, despite this a community of young entrepreneurs is growing up. Entrepreneurial education in Albania became more popular after 2000 when higher education institutions integrated it as part of the curricula.

This study and the whole previous research of the author departs from the need to diversify entrepreneurial learning possibilities for young students especially in the Albanian context though integrating a new perspective in the entrepreneurial learning process which are online social networking platforms.

In Estonia young students are as well experienced users of online social networks even though entrepreneurial learning curricula tends to be more innovative especially at Estonian Business School, from her experience the author noticed some kind of skepticism in integrating online social networking for entrepreneurial learning purposes and entrepreneurial learning opportunities in informal class discussions.

This paper is the conclusive stage of the doctoral degree of the author, online social networking readiness is crucial for using online social networking platforms for entrepreneurial purposes, young students need to develop online social networking readiness as well as they need to have a kind of orientation in order to be involved in learning processes.

In order to determine online social networking readiness journey the author used interpretivist/constructionist approach and gather qualitative data through focus groups realized with young students at Estonian Business School in Spring semester 2018 and 12 semi-structured interviews realized with 8 Albanian and 4 Estonian experienced entrepreneurs and former students who were engaged at some point in the previous research of the author.

In the first section literature review will be presented continuing with second section with methodology, the third section findings and concluding with limitations and conclusions.

1. Theoretical background

1.1. Puzzling online social networking readiness for entrepreneurship purposes

Online social networking field is a novel body of knowledge which is developing and it is challenged by the rapid digital transformation. Tapscott (2008) would define young generation of millennials which is born and it is growing digital. Internet is the future and every job will have at least a digital component. Young students even in small developing economies in Europe such as Albania are active users of online social networks but there is need of them to get more leverage from the use of these online social networks.

Traditionally, in the literature, the networking theoretical foundations of entrepreneurship will focus in face-to-face networks or networks individuals have physical interactions with other people in the network. These networks can be classified as formal networks that are usually networks defined by the institutional relationship that the entrepreneur has with different public and private organizations (Johaninsson, 1997). Informal networks are build in informal context including relationships that are more personal and consist of family, friends and acquaintances, is the most important network during the entrepreneurship process. The role of networks is not only related to business creation, but it is applicable in all life-cycle of the business (Hoang and Antonic, 2003).

At the other hand online social networking emerge as new actor in networking theories. They do not just facilitate communication but they accommodate collaboration (Kazienko et al., 2011) and they are adopted by students in their academic activities (Roblyer et al., 2010). Young students can find business and entrepreneurial knowledge sources even in the context of online social networks

(Hardwick et al., 2014). Entrepreneurial knowledge opportunities are increased through online social networks (Elenurm, 2008). Benson et al. (2014) suggest that higher education institutions should prepare students to use online social networks for professional development. Young students even in former communist countries such as Albania and Estonia are familiar with online social networks as they are digital natives but they do not yet fully integrate them in their learning processes (Dawn and Valentine, 2013).

Currently, there is not an appropriate definition for the theoretical construct of online social networking readiness. Some theoretical orientations are given by the definitions on e-readiness and social media readiness as given by Ventkatesh et al (2012) which refers to e-readiness as set of users competencies in order to overcome the barriers of technology acceptance. Hoffmann et al. (2014) will define social media readiness in the context of public sector in Germany to which citizens are willing or prepared to use social media holistically for knowledge purposes. Coduras et al. (2016) estimate that online social networking readiness will rely on the



ability of young people to explore various opportunities and the use of skills and capabilities to analyze the environment in order to channel their creative and productivity potential. There is not yet in the specific construct that synthesizes theoretically online social networking readiness for entrepreneurship purposes.

The author during her doctoral degree explored different elements of online social media readiness which will be presented in the next theoretical section.

1.2. Relevance of components of online social networking readiness for youth entrepreneurship in Albania

The first elements that compose online social networking readiness is online social networking competencies. Developing digital competencies is at the core of digital policies by European. Currently two frameworks of digital competencies are finalized the first framework is DigComp 2.0 (2013) (Vuorikari et al., 2016) and the second framework was finalized on 2017 ((DigComp Framework 2.1(2017) (Carretero et al., 2017)) propose eight proficiency levels of the areas of digital competencies such as information and data literacy, digital content creation, safety and problem solving in the digital world. These competencies can be extended in the use of online social networks by young students but there is a need to determine online networking competencies that enable online networking readiness for young students. Sula and Elenurm (2017) determined a set of online networking competencies map that was determined by in class-focus groups with Estonian and Albanian students during the academic year 2013/2014 in Tallinn and Tirana, these competencies are : technical competencies(that are basic ICT competencies or basic digital competencies), collaborative competencies (knowledge sharing competencies in online social networks), creative competencies (these competencies refer to content creation competencies in online social networks that it is allowed to multimedia features that these networks offers),storytelling competencies(narrative competencies that refer to tell the story in online social networks) ,relationship building competencies (long term contact building for entrepreneurial purposes in online social networks), interpersonal competencies(these competencies enhance relationship building in order to build interpersonal connections even in online context), effective communication competencies (these competencies facilitate the flows of communication processes in online social networks) and monitoring competencies (filtering and monitoring knowledge sources for entrepreneurial purposes in online social networks).

Another antecedent of online social networking readiness as determined by Sula and Elenurm (2017) is online mentoring and expertise. In the current state of literature there is not such a construct as online mentoring and expertise for business or entrepreneurial purposes. E-mentoring of young students as suggested by Allen et al. (2006) was a facilitator for entrepreneurial learning and entrepreneurial hunting opportunities as in the context of youth entrepreneurship mentoring provides support to from an experienced mentor and mentee (St-Jean and Audet, 2012). Sula and Elenurm (2017) determined two typologies of online mentoring useful for online social networking readiness such classical mentoring strategies (traditional mentoring that happens even in face-to-face context where usually adults mentor young people) and collaborative mentoring strategy(young students can mentor their peers but as well as young people are more comfortable with the use of online social networks they can monitor even adults or digital migrants).

Online networking competencies and online mentoring and expertise are antecedents of online social networking readiness and can help to overcome knowledge sharing barriers in on-

line social networks. Sharing knowledge in online social networks implies some barriers as developed by Sula and Elenurm(2017) such as : lack of control during the knowledge sharing process, isolated learning barrier, lack of motivation barrier, lack of time barrier, lack of social interaction, communication barriers, cultural barrier, lack of trust and physical distance barriers.

Entrepreneurial learning in online social networks is supported by online ties. Traditional foundations of networking theories will estimate that not only strong ties with closer contacts such as friends and family matter for the entrepreneurial learning process and entrepreneurial opportunities hunting as suggested by (Granovetter,1973), weak or wider ties matter as well. It is supposed that in the context of Albania which is a high context culture young students should rely more to strong ties for knowledge sharing opportunities and in Estonia which is a low context culture young students may rely more to weak ties. This is support by Eagle et al(2010) that estimates that relying to strong ties is connected to the fact that this process implies more trust. Lechner and Downing(2003) will agree that strong ties may be useful in providing knowledge about but they may be deficitary in providing knowledge and opportunities in other areas of the entrepreneurial projects. Hampton et al.(2011) suggest that online ties may be useful for the young entrepreneur as well. As it was found on study by Sula and Elenurm (2018) with Albanian and Estonian young students, young students in both countries tend to rely equally to offline (face-to-face ties) and to online ties for their entrepreneurial projects, the cultural context does not matter. As well in the literature there is an underexplored construct about the typology of ties that are established in online social networks depending on the particularities of the online social networks.

Sula and Elenurm(2018) suggest that for entrepreneurial learning there are three types of online networking ties that are useful: Facebook tie (established in the context of Facebook which includes more informal interaction and a part from professional information sharing as well professional information) , LinkedIn tie (established in the context of LinkedIn in a more formal setting where the profile is more like CV oriented) and group tie (it is developed in interaction with online contacts in online social in Facebook groups where young students share entrepreneurial knowledge and opportunities).

Online entrepreneurial learning represents as some benefits which are speed and reactivity as specified by Salway et al.(2008) , autonomy, cost-efficiency that allows knowledge sharing information with less costs (Wang et al., 2011). As estimated by a study by Sula (2018) online social networking readiness in the context of the most widespread online social network which is Facebook can be determined in terms of benefits and challenges that were determined after an Exploratory Factor Analysis. The main challenges that young students face in the context of Albania in order to develop online networking readiness are : need for a friendly online learning community in online social networks (determined by barriers issued by physical distance and communication barriers) and the need to adapt to the virtual learning learning reality (appropriate learning tools and appropriate learning culture). The main benefits of online learning readiness are : online networking competencies (extension of use even in other contexts), operational benefits that come from technical features of online social networks, learning environment that is created in online social networks and in particular in the context of Facebook, opportunities of collaborative learning and support that comes from online mentors.

Another element that determines online networking readiness is online networking orientation in online social networks, Elenurm et al.(2007) determined three main typologies of orien-



tation which are individual orientation, imitative orientation where the entrepreneur will just replicate business ideas and co-creative orientation as suggested by Adner(2012) it is necessary to ensure synergies. Furthermore Sula (2018) determined that young students usually tend to have a solo orientation online learning orientation which will privilege the individualist orientation, collaborative orientation where young students will tend to focus on collaborative incentives from online social networks and influencer orientation as suggested by Forbes(2016) through which young students will tend to be influencers in their fields.

The main objective of this paper is to explore how the development and application of online social networking readiness can determine the path/journey of entrepreneurial learning and entrepreneurial opportunities hunting in online social networks.

2. Research Methodology

The epistemological approach of this research is interpretivist/constructionist as suggested by Burrell and Morgan(1979) because it tries to explore the theoretical directions of the development and application of new theoretical construct which is novel and underdeveloped. The methodological approach for this study is qualitative.

Data was collected through focus groups were realized during the course of Business in Virtual Networks at Estonian Business School Tallinn and Helsinki, the group had 22 participants from different nationalities because there were as well Erasmus + students together with Finnish and Estonian students. The instructor led up the discussions. They focused in-class discussions where it was discussed how students can take advantage from online social networks in general and in particular from Facebook their orientation in online entrepreneurial learning online social networks and what kind of path has their learning in online social networks in general following up was in Canvas were students posted their additional comments about the topics. Interviews contribute to respond to research question 4 and research question 5.

Semi-structured interviews were realized during summer 2018 with 12 experienced entrepreneurs which were former students or which somehow involved to different stages of research about online social networking readiness for entrepreneurial purposes undertaken by the researcher. 8 participants were from Albania and 4 participants were from Estonia. The semi-structured interviews were totally realized in the most widespread online social networks such as Facebook and LinkedIn. The semi-structured interview grid contained 12 questions about the use of different online social networks for entrepreneurial purposes, online entrepreneurial orientation, learning activities in online social networks and influence in the networks.

Data was analyzed through thematic analysis, similar an related codes can be aggregated to form a major idea or a bigger overarching theme (Braun and Clarke, 2006, Saunders et al., 2009). As the analysis of qualitative data is delicate and complex, there should be clarity on the process of analysis (Braun and Clarke, 2006). Researcher first tried to use qualitative analysis made with N-vivo, but researcher felt that considering the amount of data narratives a manual thematic analysis was more suitable as it goes for Albanian much of data narratives were in Albanian therefore they were translated to English. Identification of themes and concepts was top-down guided by theoretical concepts and bottom-up driven by data set (Patton, 2002).

The resume of the interviewees is presented in Table 1

Table 1 Profile of participants in the interviews

	Pseudonym initials	Industry	Entrepreneurial experience	Nationality
1	S.L	Consulting Services/Project Management	5 years	Albanian
2	B.S	Retail	4 years	Albanian
3	V.S	Digital Marketing	1 years	Albanian
4	K.S	Retail	1 years	Albanian
5	B.Q	Digital solutions	2 years	Albanian
6	O.S	IT solutions	1 years	Albanian
7	L.S	Tourism	2 years	Albanian
8	A.Z	IT solutions	2 years	Albanian
9	M.A	IT solutions	5 years	Estonian
10	R.L	IT solutions	5 years	Estonian
11	E.A	IT solutions	2 years	Estonian
12	S.R	Technical solutions	3 years	Estonian

3. Findings and their discussion

From thematic analysis from focus groups and interviews different steps of development and application of online social networking readiness path were identified as below:

The first step: online networking readiness is about online networking transition

Even when the researcher started her research journey about online social networking readiness, the majority of online social networks have been constantly changing and integrating new features. As one of the participants from Albania admits, it is very common to start the entrepreneurial learning process and the entrepreneurial journey in Facebook as it is the most widespread online social network. Participants from Albania and from Estonia in general admit that it is important to keep active an LinkedIn account as well. One participant from Albania estimates that for LinkedIn can more business oriented and can act as business card. Whereas it is important in specific sectors to manage transition from an online network to another, for instance for one of the participants that passed from consulting to retail he needed to have some kind of online social networking readiness to transit from Facebook to Instagram for example and to develop according some online social networking competencies that are related to this specific platform such creative competencies focused in specific content creation and how to find opportunities in order to not risk to have a predatory attitude with the audience. Communication and interpersonal competencies are challenged as the setting of opportunities and knowledge sharing depends from a network to another network. For example as one of the participants from Estonia admits in LinkedIn you are challenged by using some paying premium services.



The second step: openness to learn not only about entrepreneurship about as well about online social networks

Online social networking readiness is not about just to gain entrepreneurial knowledge through different knowledge sources that can be found in online social networks but one should be open to learn about the specificities of the tools that the online social networks has for entrepreneurial purposes. As one participant from Albania specified what he has learned about his sector, which is delivering IT services and about how to use online social networks in this specific sector could not be offer from any other kind of more formalized knowledge transfer and expertize offered even by more formalized context such as higher education institution. What one entrepreneur can learn through group ties in online social networks is impressive and everyone is keen to share and knowledge and opportunities in such a groups even in the context of a small developing economy such as Albania, a lot of cross border opportunities come through posts in specialized groups in Facebook. The community is always keen to give feedback and solutions to young students or to young people coming from an international context. Entrepreneurial learning and entrepreneurial opportunities imply that the young student should learn within the networks practical features of the online social networks but specifically in the context of Albania young students should have support even from higher education institutions as well as youth policies.

The third step: Influencer is more than a fashionable concept

Participants in the focus groups and in the semi-structured interviews overall agree that influencer in online social networks especially in knowledge transfer setting is more that a fashionable concept and it is far from being a traditional influencer in online social networks. An influencer is someone to who other peers in the network will rely and trust in terms of knowledge expertize. As one participant in focus groups admitted today everyone can be an influencer, the ultimate goal of an entrepreneur is to succeed in his entrepreneurial project. One participant in the semi-structured interviews from Albania always try to guide and motivate others in his sector given the specifics of the IT sector, one must create some kind of ecosystem with others in order to increase synergy. Community-mindset is the key when exchanging knowledge in online social networks. Online social networking readiness cannot be applied fully if the young entrepreneur does not have a community-mindset. As one participant in the interviews from Estonia concludes maybe through online social networks it is easy to and feasible to be an influencer compared to the face-to-face to context, you can collect likes or shared or mentions but without the community-mindset, an influencer cannot survive. Influencers do not feel different from others, they are just part of the whole collaborative entrepreneurial ecosystem. Influencers in small developing economies and in small countries in general have the possibility to cross the physical borders with their ideas.

Conclusion

The aim of this paper is give a general overview of the importance of online social networking readiness in order to develop and apply online social networking readiness elements such as online social networking skills, online social networking expertise, online social networking barriers, support from online ties and online entrepreneurial orientation for entrepreneurship in small European economies. Qualitative research design achieved through focus groups in

Estonian Business School in Tallinn and Helsinki and semi-structured interviews realized with 8 Albanian young experienced entrepreneurs which were former students who started their entrepreneurial project. The steps of online social networking readiness path can be summarized as: the online social networking readiness for online networking transition, online social networking readiness to learn not just about entrepreneurship and entrepreneurial opportunities and collaborative-mindset in influencer posture in knowledge sharing process.

The main limit of this study is that the sample is purposive and the researcher had some kind of previous interaction with the participants in the semi-structured interview which can cause a respondent bias but in qualitative research a certain degree of social interaction it is supposed.

Further research avenues can be in applying online social networking in courses realized fully in online social networking if educational policies specifically in Albania accommodate it. Young people in small economies in Europe can be empowered to be more competitive in the virtual world through online social networking readiness.



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Developing and Applying Youth Online Social Networking Readiness for Entrepreneurship in Small European Economies

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ABSTRACT

Purpose – The aim of this study is to explore how online social networking readiness can be developed and applied in the context of two small European economies, which share a common ex-communist past but quite different future paths. Albania is a developing country struggling to enter the European Union. Estonia has embraced technological change and it is taken as a reference in Europe in terms of innovation and entrepreneurship. Online social networking readiness is an underexplored novel concept by the current body of literature. This study focuses on two main dimensions of entrepreneurship for young people and specifically young students, which are online entrepreneurial learning and online opportunities hunting.

Design and methodology – This research employs a qualitative method approach using data collected through focus groups with young students realized at Estonian Business School in Tallinn and interviews realized with 12 (8 Albanian students and 4 Estonian) young students who were former Business Degree students or connected to other phases of the research realized by the author in the framework of her doctoral dissertation. This study corresponds to the very last stage of the doctoral dissertation of the author.

Findings – The main findings of this study consist of establishing a typology of online learning strategies that have implications on online social networking readiness and in the determination of the stages of the online networking journey which for young students entrepreneurs.

Research limitations/implications – The main limitation consists in the use of qualitative data themselves as they usually can limit the generalizability of the study, another limitation is respondent bias as the researcher is herself a lecturer and interacts daily with students but qualitative studies imply always a certain degree of interaction.

Originality and value – This study completes the construction of a new theoretical construct which is online social networking readiness having some practical repercussions in how to apply it in the context of business degrees in higher education institutions in small developing economies.

MAIN CONDITIONS FOR CREATING COMFORTABLE WORKING ENVIRONMENT AT THE ORGANIZATION



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Introduction

Under turbulent and competitive business environment organization leaders are intensively seeking ways of overcoming challenges and developing their capacity in order to match on-going changes and keeping their own place in the market. Many researches has been done for revealing core affecting aspects of organizational performance and most of them came to the conclusion that main driving force lies under the organizational culture. In addition to a greater need to adapt to these external and internal changes, organizational culture has become more important because of an increasing number of corporations, intellectual as opposed to material assets now constitute the main source of value. Maximizing the value of employees as intellectual assets requires a culture that promotes their intellectual participation and facilitates both individual and organizational learning, new knowledge creation and application and the willingness to share knowledge with others. Culture today must play a key role in promoting: Knowledge management, Creativity, Participative management Leadership.

What is organizational culture and why should leaders understand its value?

Literature Review

The concept of organizational culture was first mentioned in the Hawthorne studies (Mayo, 1933¹; Roethlisberger & Dickson, 1939²), which described work group culture. Since 1980s several books on organizational culture were published, including Terrence Deal and Allan Kennedy's *Corporate Cultures* (1984³) according to which "*Corporate culture is one of the key drivers for the success – or failure – of an organization. A good, well-aligned culture can propel it to success. However, the wrong culture will stifle its ability to adapt to a fast-changing world*", and Tom Peters and Robert Waterman's "*In Search of Excellence*" (1982⁴) where authors indicated that "*Dominant and sustainable organizational culture is the crucial characteristic of successful and*

¹ Mayo, E. (1933). *The human problems of an industrial civilization*. New York, NY: Macmillan.

² Roethlisberger, F. J., & Dickson, W. J. (1939). *Management and the worker*. Cambridge, MA: Harvard University Press.

³ Understanding culture, Deal and Kennedy's Cultural Mode: https://www.mindtools.com/pages/article/newSTR_86.htm

⁴ Peters and Robert Waterman's *In Search of Excellence* (1982).



best organizations”, that *”organizational culture system of expressed informal rules that impose a certain general conduct”*. Some researchers have discovered that there are some cultural traits that relates with economic performance (Denison, 1990). A significant contribution has been done by Dutch researcher of culture, Hofstede (1991, p.5⁵) who defines culture as *”the collective programming of the mind which distinguishes the members of one group or category of people from another.”* According to Schein (1992)⁶ organizational culture is prescribed *”as a motive, in which fundamental beliefs in common are grasped by the staff members, which solves the problems of external orientation and internal unification, besides being such a culture doing much enough to be regarded valid and, thus, to be given to new staff as the right option to comprehend, judge, and assume touching the mentioned problems”*.

Organizational culture is also described by Newstrom, Davis (1993⁷) as an important condition for the success of the organization (Newstrom, Davis, 1993⁸) as:

- it identifies employees with the organization - employees have a clear vision about who represents the organization:
- is significant source of stability and construction of the organization, which provides security to employees;
- knowledge of the organizational culture helps new employees to explain what is happening within the organization because it provides them an important link with the events that would otherwise be unclear.

Cernetič (1997⁹) believes that *”organizational culture is created in the process of joint problem-solving. First, we have a number of individuals with common goals, which through joint cooperation, communication, problem solving and common sense leads to the gradual formation of a new group”*.

Organizational culture is expressed through cultural artifacts like symbols, rites and rituals, and sagas. Jordan (2003¹⁰) defines a symbol as any object that represents another object which holds a deep meaning for the culture’s members. Librarians value books because they are symbolic of information, and access to information is a deeply held value in librarianship. A symbol can take any number of forms other than the physical including logos, slogans, and images. Jordan (2003) argues symbols are the most important art of any organizational culture as all cultures are composed of symbols. A rite or ritual has a manifest purpose in the normal day-to-day operations of the organization, but they also fulfill a latent or symbolic role by reinforcing the values of the organization through the active participation of its members. Sagas are organizational histories that blend fact and fiction to explain the current beliefs and norms of a culture. Sagas often arise from an organization in chaos and tell how the members banded together to save and advance the organization. Sagas are crucial to understanding an organizational culture as they provide a glimpse into the past.

Schein (2004) suggests that organizational culture is even more important today than it was in the past. He introduces into his model the time dimension as follows: the first two phases of

⁵ Hofstede, G. H. 1991. *Cultures and organizations*. London: McGraw-Hill.

⁶ file:///C:/Users/tatia/Desktop/228-454-1-SM.pdf

⁷ Newstrom W. J., Davis K., 1993. *Organizational behavior*. Human behavior at work. 9th ed. New York: McGraw-Hill.

⁸ Newstrom W. J., Davis K., 1993. *Organizational behavior*. Human behavior at work. 9th ed. New York: McGraw-Hill.

⁹ Černetič Metoda, 1997. *Poglavja iz sociologije organizacije*. Kranj: Moderna organizacija.

¹⁰ Jordan, Ann. 2003. *Business Anthropology*. Prospect Heights, IL: Waveland.

an organization life time are thought to be birth and early growth, both of them being characterized by strong leadership and a results-oriented attitude, then the third phase, mid-life, that could bring the organization at an identity crisis, and finally, the maturity when the culture may be a constraint on innovation.

According to O'Donnell and Boyle (2008, p.10¹¹), "*an understanding of organizational culture and cultural types helps our understanding of why managerial reforms may impact differently within and between organizations.*" (p. 10). They also conclude that "*an informal, shared way of looking at an organization and membership in the organization that binds members together and influences what they think about themselves and their work*" (O'Donnell & Boyle, 2008, p.19¹²).

Organizational culture that is "manifested in beliefs and assumptions, values, attitudes and behaviors of its members is a valuable source of firm's competitive advantage" (Ehtesham, Muhammad, & Muhammad, 2011¹³).

Awadh and Saad, (2013¹⁴) state that "culture and performance were considered competitive advantage of an organization, which is attained through strong association and establishment of culture and that organization culture helps in internalizing joint relationship that helps to manage effective organization processes".

"Organizational Culture is the *"set of beliefs and norms that influence the way employees think feel and behave in the workplace"* (Agwu, 2014, p. 1¹⁵).

In an empirical study on the effects of organizational culture on change management, it was discovered that "organizational beliefs, employee attitude and value system, as part of organization culture, has an impact on change management" (Onyango, 2014¹⁶). He therefore recommended that organization should ensure that they openly support employee attitudes and pattern of work that promotes change management. This, according to him, will enhance the corporate culture that sustains economic development and prosperity of the organization (Onyango, 2014, p. 204).

"*Organizational culture is one of the most important factors that impact on organizational performance*" (Ahmed, & Shafiq, 2014¹⁷).

In one sense a healthy organizational culture is analogous to the healthy personality of an individual. A healthy person must have a clear sense of self, established ethics and values, a sense of purpose and self-control and a reason for being; hence, an organizational culture is the collective personality of an organization and must embody those same attributes.

¹¹ O'Donnell, O., & Boyle, R. (2008). *Understanding and managing organizational culture*. Dublin, Ireland: Institute of Public Administration, p. 10

¹² O'Donnell, O., & Boyle, R. (2008). *Understanding and managing organizational culture*. Dublin, Ireland: Institute of Public Administration, p. 19

¹³ Ehtesham, U.M., Muhammad, T.M., & Muhammad, S.A. (2011). *Relationship between Organizational culture and performance management practices: A case of University in Pakistan*. Journal of Competitiveness, 4. P. 79

¹⁴ Awadh, A.M., & Saad, A.M., (2013). *Impact of organizational culture on employee performance*. International Review of Management and Business Research, 2(1), pp. 167-180.

¹⁵ Agwu, M.O. (2014). *Organizational culture and employees' performance in the National Agency*, Global Journal of Management and Business Research: A Administration and Management, Publisher: Global Journals Inc. (USA), p. 1.

¹⁶ Onyango, W.P. (2014). *Effects of organisation culture on change management: A case of the Vocational Training Centre for the Blind and Deaf Sikri*. European Journal of Business and Management, 6(34), p. 204

¹⁷ Ahmed, M. & Shafiq, S. (2014). *The impact of organizational culture on organizational performance: A case study of telecom sector*. Global Journal of Management and Business Research: Administration and Management, 14(3), 22-29

Creating valuable intellectual product is largely based on the comfortable working environment for the employees in the organization that is based on **established leadership style, moral development stage of employees, the nature of work and job satisfaction of employees** in the organization. Below is described each of them.

Influence of leadership style on organizational performance

What is the essence of leadership and how it can affect organization?

Many scientific papers exist in this field according to which (Gholamzadeh, 2012) "*leadership is defined as a process that places an emphasis on social interaction and relationship that includes influencing others in a certain direction*". It is the manner and approach of providing implementing plans, direction and motivating people. Several reasons reveal that there exists relationship between leadership and organizational performance like intensive, dynamic markets feature innovation-based competition, price/performance competition, decreasing returns, and the creative destruction of existing competencies. Researchers suggest that effective leadership behaviors can boost to the improvement of performance when organizations face above mentioned challenges. According to (Mehra, 2006¹⁸), "*when some organizations seek efficient ways to enable them to outperform others, a longstanding approach is to focus on the effects of leadership*". Some researchers claim that leadership has the intensive influence on organizational culture and hence on its performance as well and vice versa, culture influences leadership style. Leaders can transform and change the culture (Lewis, 1996). According to Schein (1985), "the only thing of real importance that leaders do is to create and manage culture¹⁹". According to him "*understanding the relationship that exists between the leader and the culture is a mechanism for understanding the functioning of the organization*". He claims that "*leadership and culture are two sides of the same coin and neither can be understood by itself*".

The link between leadership style, organizational culture and organizational performance is shown in figure 1.



Figure 1 The links between leadership style, organizational culture and organizational performance

Influence of Moral development stage of employees on leadership style

When employee's habit is caused only by the private interests and existing strict rules in the organization also by the fair of punishment, mainly autocratic style of leadership is implement-

¹⁸ Mehra, A. S. (2006). Distributed leadership in teams: The networks of leadership perceptions & team performance. The Leadership Quarterly.

¹⁹ Schein, E. (2010). Organizational culture and leadership. San Francisco: Jossey-Bass.

ed in the organization. **Autocratic or authoritarian** – leaders order their followers on what they have to do and how it should be done without receiving any feedback or advice. Autocratic leaders, who are also known as authoritarian leaders, provide clear explanations for what the task is, what exactly has to be done, when the deadlines are and the way it should be done in. This leadership style is instructions-centric and the ways of controlling the followers. The negative part of this style is that it is usually viewed as controlling, bossy, and dictatorial (Lewin, Lippit, & White, 1939²⁰).

Two types of autocratic styles are known: **Exploitative-Authoritative Leadership Style** - the manager has no confidence or trust in subordinates. Subordinates feel no freedom to discuss things about the job with their superior. This style is relevant to Douglas McGregor's X²¹ theory (McGregor, D., 1960),. And the second one **Benevolent-Autocratic Leadership Style** – the manager has condescending confidence and trust in subordinates, motivates with rewards and some punishments, permits some upward communication, solicits some ideas and opinions from subordinates and allows some delegation of decision making but with close policy control. This is relevant to the y theory of McGregor. At the initial stage of moral development (Kohlberg L. 1995²²) for effective management of employees there is needed selecting the autocratic leader. At the basic stage of moral development stage, when people act in accordance with the environmental expectation and fulfill duties of social system, there is needed **democratic leader** as under this kind of leader members of the group take a more participative role in the decision-making process unlike the autocratic style. Researchers have found that this leadership style is usually one of the most effective styles and lead to higher productivity, better contributions from group members, and increased group morale. Some of the primary features of democratic leadership style include: group members are encouraged to share ideas and opinions, even though the leader retains the final decision over their decisions. Also, members of the group who feel more engaged in the process and tend to be more creative and are encouraged and rewarded. It is also important to have plenty of time to allow people to contribute, develop a plan and vote on the best course of action afterwards. (Lewin, Lippit, & White, 1939²³).

Next stage of moral development considers acting on the basis of employee's principles of kindness and justification as well. Hence person seeks for ways and methods of overcoming ethical dilemma, keeps balance among his own and the societies interests. The most optimal leadership style in this case is **transformative style** that will boost to the high quality of cooperation in the organization, mutual trust and respect, entire participation of employees in the management process and decision making on the basis of cooperation with competent colleagues (Yukl G.A., 2004²⁴).

²⁰ Bhargavi, S. & Yaseen, A. (2016). "Leadership Styles and Organizational Performance", Strategic Management Quarterly, Published by American Research Institute for Policy Development , Vol. 4, No. 1, p. 90

²¹ Kohlberg L., (1995). Moral Stages and Moralization: The Cognitive-Developmental Approach, in —Moral Developmental and Behaviorll, Business Ethics Quarterly 5, no. 1, pp. 43-54;

²² Understanding Human and Moral Development Stages for Leadership Styles and Implications for the 21st Century Malcolm Richards Professor Dr. Byron Martine, p. 6
http://malcolmrichards.weebly.com/uploads/2/8/3/5/28350459/understanding_human_and_moral_development_stages_for_paper.pdf

²³ Bhargavi, S. & Yaseen, A. (2016). "Leadership Styles and Organizational Performance", Strategic Management Quarterly, Published by American Research Institute for Policy Development , Vol. 4, No. 1, p. 91

²⁴ Yukl G.A., (2004). Leadership in Organizations, Prentice-Hall, Upper Saddle River, NJ.; Yu H., b



Influence of nature of the work on leadership style

There are several ways and techniques (surveys, questionnaires) for determining the proper leadership styles for an organization. The leadership style that is required by a head of corporate security would, for sure, be very different from the leadership style of an art museum director: authoritative versus creative. Identifying the leadership style includes identification of the type of work, the complexity of the organization, and the qualifications of the followers as well. Conducting survey by this kind of questionnaire in the organization will enable head parties to identify what leadership style is implemented in their organization and which one should be matched to the specified work groups in order improve organization effectiveness by satisfied employees.

According to the situational leadership theories (Hersey P., 1985), the nature of work largely determined the leadership style of the manager. For instance for fulfilling routine type of work both autocratic and democratic leaders will be relevant. The more substantial work is, the more creativity is requested from the employee, hence transformative leadership style is required. Transformative leader adequately assesses capacities of the employees, feels their demands and in order them to fruitfully fulfill their duty can enhance their motivation.

Researchers concluded that transformative leadership style is focused on maximally revealing of employees' potential. Hence due to above mentioned characteristics interest in this leadership style is quite high in the developed countries (Barnett, McCormick, 2004), (Bogler, 2002), (Yu, 2000), (Darling, 1990), (Koh W. L., Steers R. M., Terborg J. R., 1995) and etc. According to the modern researchers properly selected leadership style is prerequisite for the development of science and creating innovative ecosystem in the country as well (Cross Stephen E., 2012²⁵), (Goodall Amanda H., McDowell John M., Singell Larry D., 2014), (Middlehurst Robin, 2012²⁶).

Job satisfaction of employees

The relationship between job satisfaction and performance has been for many decades the object of in-depth and disparate studies. In the recent years since the turn of the century, companies have found themselves in an economy heavily affected by globalization, an economy in which knowledge and information are indispensable elements in order to succeed. The importance of intellectual capital has increased to the point of being one of the most valuable assets that must be better understood in order to be developed. From such a perspective, human resources and their management now occupy a privileged place in business. The impact of human resource management is generally measured by the individual performance of each employee that, in turn, has a quantifiable impact upon the overall organizational performance.

Performance is a complex notion that is ever-present in the secondary literature related to organizations, and it occupies, perhaps, the predominant place in the day-to-day practice of actual companies. Numerous studies highlight the pertinence of linking work related performance with another important concept for companies; that is, satisfaction at work. A large empirical

²⁵ Cross Stephen E., (2012). A Leadership Model for the Research University, Published by Elsevier Ltd. Selection and/or peer-review under responsibility of the 3rd International Conference on Leadership, Technology and Innovation Management. pp.1-12;

²⁶ Middlehurst, R. (2012). Leadership and Management in Higher Education: A Research Perspective, Maastricht School of Management's research seminar on Leadership and Management in Higher Education. <ftp://ftp.repec.org/opt/ReDIF/RePEc/msm/wpaper/MSM-WP2012-47.pdf>;

database of evidence shows that satisfaction and performance at work are indeed factors in a complex cause and effect relationship.

Not surprisingly, Ghazzawi (2008) suggests that one of the most important determinants of job satisfaction is the very nature of the work. Hence, organizational literature indicates that many factors such as the physical work environment, the quality of interactions between colleagues, as well as the way in which the organization treats its employees all influence job satisfaction.²⁷

Ways for creating comfortable organizational culture at the organization

The following ways exist in order to create comfortable organizational culture at the organizations:

- Using The Organizational Culture Assessment Instrument (OCAI) - developed by American professor Kim Cameron and his colleague Robert Quinn and is a validated research method to examine organizational culture;
- Minnesota Satisfaction Questionnaire (MSQ) - The purpose of this questionnaire is to give you a chance to tell how you feel about your present job, what things you are satisfied with and what things you are not satisfied with;
- Leadership Style Questionnaire – To identify which of the above mentioned leadership style is in the organization;
- Moral Development Stage Revealing Assessment Questionnaire – To reveal at what stage of moral development is an employee (according to Kolberg).

Conclusion/Recommendations

Based on above discussed issues the following conclusion can be done, that there exists multiple influential factors on the organization, that there is an obvious link among them which as a whole affects on creating comfortable working environment in the organization serving as a prerequisite of organization performance. Considering these factors organizations should work hard to select and hire the right people with the acceptable levels of leadership and place them in the right places that reflect their performance. They should do their best to create maximally comfortable working environment to the employees, as person serves as the driving force of the organization that determines its effectiveness. Organizations that do not pay attention to improve these conditions might face serious challenges.

²⁷ Ghazzawi Issam (2008). Job satisfaction among information technology professionals in the U.S.: An empirical study. The Journal of American Academy of Business, 13 (1), 1-15.



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Main Conditions for Creating Comfortable Working Environment at the Organization

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ABSTRACT

The core objective of this paper is to understand the importance of organizational culture serving as a prerequisite of organizational effectiveness and its successful performance as well. It focuses on revealing the crucial aspects and conditions for creating convenient and comfortable organizational culture driving employees, as key workforce striving to obtain profit for organization. Paper also suggests review of wide range conducted researches on assessment of organizational culture in the organizations their findings and ways for changing or improving existing organizational culture by issued recommendations. It also sheds the light on the originality of the topic and ways for implementing the most suitable organizational culture at the organizations in order to advance in highly competitive environment, mainly it suggests conducting the following surveys in the organization and on the basis of outcomes act accordingly:

- ✓ The Organizational Culture Assessment Instrument (OCAI) - developed by American professor Kim Cameron and his colleague Robert Quinn and is a validated research method to examine organizational culture;
- ✓ Minnesota Satisfaction Questionnaire (MSQ) - The purpose of this questionnaire is to give you a chance to tell how you feel about your present job, what things you are satisfied with and what things you are not satisfied with;
- ✓ Leadership Style Questionnaire - To identify which of the above mentioned leadership style is in the organization;
- ✓ Moral Development Stage Revealing Assessment Questionnaire - To reveal at what stage of moral development is an employee (according to Kohlberg).

Key words: *Organizational culture, Organization performance, Leadership style.*

DECISION SUPPORT SYSTEM IN THE PUBLIC AND PRIVATE COMPANIES



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Introduction.

Nowadays it is necessary to organize information flows in companies in order to maintain sustainability. Organizing information flows requires using Decision Support Systems (DSS). DSS are gaining an increased popularity in various domains, including business, engineering, the military, and medicine. They are especially valuable in situations in which the amount of available information is prohibitive for the intuition of an unaided human decision maker and in which precision and optimality are of importance. DSS can aid human cognitive deficiencies by integrating various sources of information, providing intelligent access to relevant knowledge, and aiding the process of structuring decisions. They can also support choice among well-defined alternatives and build on formal approaches, such as the methods of engineering, economics, operations research, statistics, and decision theory. DSS could also employ artificial intelligence methods to address heuristically problems that are intractable by formal techniques. Proper application of decision-making tools increases productivity, efficiency, and effectiveness and gives many businesses a comparative advantage over their competitors, allowing them to make optimal choices for technological processes and their parameters, planning business operations, logistics, or investments [7]. However, the flow of data to information and information to decision can get quite long and complicated. This complexity arises from the interaction of the complex and uncertain subsystems of logistics. DSS already taking advantage of the components of the existing databases, that will integrate decision-makers' information with a synergistic way and using data models, to reduce the complexity and be able to deliver the solutions to the problems [1]. Consequently, the relevance of the chosen topic is obvious, but it requires further application of the DSS and the formation of such criteria.

The aim of the paper is to develop criteria for the efficiency of DSS.

Research questions of the paper are:

- what DSS are?
- how DSS can influence the process of decision making in the public and private companies?
- how to measure the efficiency of DSS?



In the paper will be demonstrated theory and brief literature review DSS, their components, characteristics and efficiency.

It is necessary point out that plenty of scientific papers are about decision support system. Arnott & Pervan, Vaisman (2005, 2007), Klein and Methlie Shim et al. (1995) identify DSS. Andrew P. (1991) Turban (1995), Asemi, Safari, & Asemi Zavareh, (2011) give components and characteristics of DSS. Steven Alter proposed a taxonomy of DSS. In spite of all approach scientists it is necessary to show how DSS can influence the process of decision-making in the public and private companies and measure efficiency of DSS.

Main Body.

Decisions support systems in the companies: definition, characteristics, categorization, efficiency.

1. What Decisions support systems are?

The concept of DSSs was introduced, from a theoretical point of view, in the late 1960s. [18]. The DSSs has evolved in two types of computer supports; In the Management Information System providing reports for the required needs and database consulting, the second support is related to the option of examining a database [16]. Decision Support Systems (DSS) are a specific kind of Information Systems that focus on “integrating data and models in order to improve the decision-making process” [6, 16]. Klein and Methlie define a DSS as a computer information system that provides information in a specific problem domain using analytical decision models as well as techniques and access to databases, in order to support a decision maker in taking decisions effectively in complex and ill-structured problems [12]. Thus, the basic goal of a DSS is to provision the essential information for making-decision, in order to maintenance function system as well. The main feature of DSS is the orientation not to the process, but to the set of opportunities that are chosen by the manager in an interactive communication. DSSs must have database, database editor, logical conclusion program, system of explanations. Shim et al. (2002) emphasized the components of a classic DSS tool design as: sophisticated database management capabilities with access to internal and external data, information, and knowledge, powerful modeling functions accessed by a model management system, and powerful and simple user interface designs that enable interactive queries, reporting, and graphing functions [14].

Andrew P. Sage points out that there are three fundamental components of DSSs [4]:

1. **Database management system (DBMS).** A DBMS serves as a data bank for the DSS. It stores large quantities of data that are relevant to the class of problems for which the DSS has been designed and provides logical data structures (as opposed to the physical data structures) with which the users interact. A DBMS separates the users from the physical aspects of the database structure and processing. It should also be capable of informing the user of the types of data that are available and how to gain access to them [4].
2. **Model-base management system (MBMS).** The role of MBMS is analogous to that of a DBMS. Its primary function is providing independence between specific models that are used in a DSS from the applications that use them. The purpose of an MBMS is to transform data from the DBMS into information that is useful in decision making. Since many problems that the user of a DSS will cope with may be unstructured, the MBMS should also be capable of assisting the user in model building [4].

3. **Dialog generation and management system (DGMS).** The main product of an interaction with a DSS is insight. As their users are often managers who are not computer-trained, DSSs need to be equipped with intuitive and easy-to-use interfaces [4].

The most important characteristics of decision support systems can be summarized as follows (Al-Tai, 2005)

1. The system provides support to the manager. The system cannot replace the manager and cannot be a substitute for the decision maker. Rather, it focuses on the non-routine parts of the problem in order to gain support in the decision-making process.
2. The decision support system and computer tools must be distinguished from the software and hardware that make this system possible. The decision support system is to put these programs and devices into practice.
3. The decision-making support system does not enrich the use of judgment and personal judgment, since the entire decision-making process cannot be subject to quantitative analysis.
4. Effective decision is taken through interaction between the decision-maker and the regime, and this is accompanied by dialogue between them [3].

According to Turban [14], a DSS has four major characteristics: it incorporates both data and models; it is designed to assist managers in their decision processes in semi structured (or unstructured) tasks; it supports, rather than replaces, managerial judgment; and its objective is to improve the effectiveness of decisions, not the efficiency with which decisions are being made. The five types of DSS are:

1. Communications-Driven DSS – uses network and communications technologies to facilitate collaboration and communication [7];
2. Data-Driven DSS – emphasizes access to and manipulation of a time-series of internal company data and sometimes external data [7];
3. Document-Driven DSS – integrates a variety of storage and processing technologies to provide complete document retrieval and analysis [7];
4. Knowledge-Driven - intended to suggest or recommend actions to managers. These DSSs are personal computer systems with specialized problem-solving expertise [7];
5. Model-Driven DSS or Model-oriented DSS – emphasizes access to and manipulation of a model, e.g. statistical, financial, optimization and/or simulation. Simple statistical and analytical tools provide the most elementary level of functionality [7].

Asefeh Asemi & Asemi Zavareh point out that DSS has a number of characteristics, which include following [5]:

1. **DSS provide support for decision maker** mainly in semi structured and unstructured situations by bringing together human judgment and computerized information. Such problem can not be solved (can not be solved conveniently) by other computerized systems, such as MIS.
2. **DSS attempts to improve the effectiveness** of decision-making (accuracy, timeliness, quality) rather than its efficiency (cost of making the decision, including the charges for computer time).



3. **DSS provides support to individuals as well as to groups.** Many organizational problems involve group decision-making. The less structured problem frequently requires the involvement of several individuals from different departments and organizational levels.
4. **Advanced DSS are equipped by a knowledge component,** which enables the efficient and effective solution of very difficult problems.
5. **A DSS can handle large amount of data for instance** advanced database management package have allowed decision makers, to search database for information. A DSS can also solve problems where a small amount of data is required.
6. **A DSS can be developed using a modular approach.** With this approach, separate functions of the DSS are placed in separate modules - program or subroutines-allowing efficient testing and implement of systems. It also allows various modules to be used for multiple purposes in different systems.
7. **A DSS has a graphical orientation.** It has often been said that a picture is worth a thousand words. Today's decision support systems can help managers make attractive, informative graphical presentations on computer screens and on printed documents. Many of today's software packages can produce line drawing, pie chart, trend line and more. This graphical orientation can help decision makers a better understanding of the true situation in a given market place.
8. **A DSS support optimization and heuristic approach.** For smaller problems, DSS has the ability to find the best (optimal) situation. For more complex problems, heuristics are used. With heuristic, the computer system can determine a very good-but not necessarily the best- solution. This approach gives the decision maker a great deal of flexibility in getting computer support for decision-making activities.
9. **A DSS can perform "what – if" and goal – seeking analysis.** "What – if" analysis is the process of making hypothetical change to problem data and observing impact of the results. In with" what – if" analysis, a manager can make changes to problem data (the number of automobiles for next month) and immediately see the impact on the requirement for subassemblies (engines, windows, etc.).

It necessary point out that in 1977, Steven Alter proposed a taxonomy of DSS. Alter's taxonomy is based on the degree to which DSS output can directly determine the decision. The taxonomy is related to a spectrum of generic operations that can be performed by DSS. These generic operations extend along a single dimension, ranging from extremely data-oriented to extremely model-oriented. DSS may involve retrieving a single item of information, providing a mechanism for ad hoc data analysis, or providing prespecified aggregations of data in the form of reports or "screens." DSS may also include estimating the consequences of proposed decisions and proposing decisions [13].

Alter's idea was that a DSS could be categorized in terms of the generic operations it performs, independent of type of problem, functional area, or decision perspective. Alter conducted a field study of 56 DSS that he categorized into seven distinct types. These include:

1. **File drawer systems** that provide access to data items. Examples include real-time equipment monitoring, inventory reorder, and monitoring systems. Simple query and reporting tools that access OLTP fall into this category.
2. **Data analysis systems** that support the manipulation of data by computerized tools tailored to a specific task and setting or by more general tools and operators. Examples in-

clude budget analysis and variance monitoring, and analysis of investment opportunities. Most data warehouse applications would be categorized as data analysis systems.

3. **Analysis information systems** that provide access to a series of decision-oriented databases and small models. Examples include sales forecasting based on a marketing database, competitor analyses, and product planning and analysis. OLAP systems fall into this category.
4. **Accounting and financial models** that calculate the consequences of possible actions. Examples include estimating profitability of a new product; analysis of operational plans using a goal-seeking capability, break-even analysis, and generating estimates of income statements and balance sheets. These types of models should be used with “What if?” or sensitivity analysis.
5. **Representational models** that estimate the consequences of actions on the basis of simulation models that include causal relationships and accounting definitions.
6. **Optimization models** that provide guidelines for action by generating an optimal solution consistent with a series of constraints. Examples include scheduling systems, resource allocation, and material usage optimization.
7. **Suggestion models** that perform the logical processing leading to a specific suggested decision for a fairly structured or well-understood task. Examples include insurance renewal rate calculation, an optimal bond-bidding model, a log-cutting DSS, and credit scoring.

An understandable taxonomy like Steven Alter’s helps reduce the confusion for managers who are investigating and discussing DSS. The taxonomy also helps users and developers communicate their experiences with DSS.

2. The role of the DSS in the process of decision making

In the 1950s, Herbert Simon and James March for the first time introduced a different decision making framework for understanding organizational behavior [8]. Although they labored on the bureaucratic model by emphasizing on individual work in rational organizations and thus behaving rationally, their model added a new dimension: The idea that a human being’s rationality is limited. By offering a more realistic alternative to classical assumption of rational in decision-making, this model supported the behavioral view of individual and organizational functioning [5].

In the context of services, decision-making process activities are strongly based on knowledge sharing and involve different actors, the service users being the most important. To complete the analysis of decision-making processes it is necessary to consider the context where decisions are made, and also other variables influencing the decision processes. These variables can be different in public or private contexts [11].

Following the “public-private differences” stream of research begun by Rainey, Backoff and Levine (1976), Nutt found differences in their approaches to decision-making (Nutt, 2005) [11]. He states that “organizations with public features are seen as being constrained in ways that limit what they can do when making strategic choices.” As Rainey puts it “public organizations should have distinct decision-making processes because of factors different from those faced by private organizations, such as political interventions and constraints and more diverse, diffuse objectives” [11]. In fact, decision-making processes in public organizations involve a variety of stakeholders, such as political officials, technical experts, interest groups, organizations, administrators, and citizens.



DSS exploitation in the public sector for supporting several activities, including:

1. E-management.
2. Preparing budgets in order to plan and control the financial management
3. Maintenance economic, ecological and social safety.

In a nutshell, DSS are useful for providing data that facilitate the understanding of the organization's internal and external environment. Internally, many solutions are the same those in private organizations: resource allocation, operations. On the external level: understanding of the social, cultural, economic, legal environment [11]. In the manufacturing context, a DSS supplies the relevant information to offer guides to a decision that commits people at the various levels of a manufacturing operation in providing resources to do work. This spans the whole manufacturing cycle of a customer order: pre-production planning, production planning, production execution and post-production activities [17]. Typical decisions in a manufacturing company are presented in the table 1.

Table 1. Typical decisions in a manufacturing company [17]

Department	Function	Decision
Product design and engineering	Plan the final state of production	Design changes
Production planning	Plan the physical means of manufacturing	Routing and plant layout
Production control	Plan materials supply and processing	Schedule of materials requirements
Purchasing	Order from suppliers Cost reduction	Deliveries Purchases
Production	Execute production control plan	Detail scheduling
Stock control	Control and monitor materials, WIP, products	Stock replenishment
Marketing	Identify markets Estimate	Sales plan Forecast, product volume
Maintenance	Maximize utility of machinery	Preventive maintenance
Finance	Cash flow planning and control	Budgets Invoicing Payment

In the private sector, DSS users were more mostly at the top management level, whereas in public organization DSS users were more likely to be found at the lower levels of the managerial hierarchy. In a private organization, the bottom line is generally easier to understand. Thus, private organizations know more or less what they expect from a DSS (reaching more customers, finding new opportunities, better knowledge of the firm's competitive environment). A DSS can help a company identify strategies to enlarge its customer base. In the private sector efficiency and effectiveness measures are ultimately related to profit maximization and to profitability for stakeholders. Therefore, in the private sector a classic performance metric is the return on investment (ROI) and the set of related indicators. However, the public sector has not profit maximization as main objective, but rather it focuses on policy and service outcomes improvement. Unfortunately, outcomes indicators are hard to identify since they are strictly domain dependent, and they are affected by the complex set of factors influencing the customer perception and service satisfaction, both in short and long terms [7].

3. Effectiveness of DSS

One of the key differences between DSS and other information systems is its measure on system effectiveness, rather than efficiency alone. System efficiency is easily defined and consequently relatively easy to estimate and evaluate; e.g. efficiency, in an operational sense, is formally defined as output divided by input. Inputs are usually money, time, and other resources, whereas outputs are normally the processed information (e.g., reports and listings) Evans [9].

Information flows should be evaluated to ensure the effectiveness of the DSS. Evans & Riha (1989) emphasize that efficiency for a DSS would focus on the speed of decisions or the cost of the decision-making process. Effectiveness in DSS asks whether we are making better decisions. Thus, effectiveness is concerned with using the correct information or procedures in arriving at a decision, and whether the decisions are beneficial to the organization. With this distinction, it is apparent that evaluating these must be accomplished in different ways, because the relevant criteria are usually quite different. For example, the criteria of importance in evaluating efficiency are normally objective and more easily measured, such as time, money, and the number of reports or the lines of data processed and printed. In contrast, the criteria normally associated with effectiveness are not objective and measurable; they tend to be subjective and thus rely on judgment of the users (table 2) [9].

Table 2. Basis of System Evaluation Criteria [9]

Efficiency	Effectiveness
Throughput (I/O)	Availability
Productivity	Accuracy of outputs
Utilization	Reliability
Cost (Time & Money)	Timeliness of outputs Quality of the outputs
Objective Criteria (Quantifiable measures)	Subjective Criteria (Judgment measures)
System oriented assessment	User oriented assessment

Evans points out that a more effective decision does not imply that it is more efficient. In fact, in some instances a more effective choice may be less efficient in the short or the long run, since the goal may be more quality oriented than profit oriented (i.e., higher reliability but reduced throughput). Other aspects of system effectiveness include using correct information in decision making, involving the appropriate individuals and groups, following the expedient political trajectory, and incorporating individual manager's decision making style. Each of these involve variables that are difficult to identify and quantify. Consequently, an integrated and comprehensive DSS evaluation methodology must address both effectiveness and efficiency [9].

According to our research, we use the principles of information entropy to evaluate information flows as a criteria efficiency of DSS. The coordination of information flows are influenced by the bandwidth of the network communication channel in the system. In particular, for comparison, the speed of speech or reading is 120-200 words per minute that is 2-3 words per second. Assuming that the words on the average consist of 5 sounds (letters) that can be coded automati-



cally by 8-bit code, we find that the information bandwidth of the audio channels (for example, voice telephony in terms of the transfer of useful information) is $3 * 5 * 8 = 120$ bps. That is, the telephone connection is extremely inefficient for the transfer of large amounts of management information. Paper mail correspondence is even less effective as the bandwidth of this channel decreases in proportion to the increase in the time of sending correspondence [1].

The optimal information bandwidth management network of the company will be achieved when:

- 1) communication is between all system's elements;
- 2) minimization the number of intermediaries in the system;
- 3) entropy is proportional to the width of the channel [1];
- 4) maintenance safety in the information system.

Today it is necessary measure effectiveness of the DSS. Thus, the practical (applied) results must be a model of optimization information flows of the DSS.

According to such criteria optimization model will be as:

$$Op = (P, Vk, Kr, Kt) \quad (1)$$

P – is the ratio of the solution to the case-law;

$$Vk \text{ (k bit /t)} \rightarrow \max \quad (2)$$

$$Vk = (8 * k) / t, \quad (3)$$

where Vk is the bandwidth

k is the characters quantity in a message

t is the transmission time of messages (s) [1].

$$Kr = (Vr.r / Vt.i) \rightarrow \max \quad (4)$$

where Kr is the reliability

$Vr.r$ is volume information from reliability recourses

$Vt.i$ is total volume information.

$$Kt \rightarrow \min \quad (5)$$

where Kt is the number that have not been avoided.

In order to increase speed of management decision making, installation of fast communication channels in the company should be combined with specialized centers with qualified staff that can provide consultations on legal, economic and management issues.

Conclusion. To sum up, DSS is crucial in the process of decision making DSS is based computer technology solutions, which can be used to support complex decision making and sort out problems. There are three main components of DSSs: Database management system (DBMS); Model-base management system (MBMS); Dialog generation and management system (DGMS). It is necessary point out that there are differences between public and private organizations which must be taking into account during making decisions and providing DSS. Today it is necessary measure effectiveness of the DSS. Scientists propose basis of system evaluation criteria efficiency and effectiveness. The principles of information entropy use to evaluate information flows as a criteria efficiency of DSS. It is help to coordinate information flow. The practical (applied) result is the model of optimization information flows of the DSS.

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Decision Support System in the Public and Private Companies

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ABSTRACT

Purpose – This study aims to establish role decision support system (DSS) in the public and private companies, emphasize criteria optimization model DDS. The main feature of DSS is the orientation not to the process, but to the set of opportunities that have been chosen by the manager in an interactive communication. It is necessary to show how DSS can influence the process of decision-making in the public and private companies and measure efficiency of DSS

Design/methodology/approach – In the paper have been demonstrated theory and brief literature review DSS, their components, characteristics and efficiency for elaborating criteria optimization model DDS.

Findings – DSS is crucial in the process of decision making DSS is based computer technology solutions, which can be used to support complex decision making and sort out problems. There are three main components of DSSs: Database management system (DBMS); Model-base management system (MBMS); Dialog generation and management system (DGMS).

Research limitation/implications – There are differences between public and private organizations which must be taking into account during making decisions and providing DSS. DSS exploitation in the public sector for supporting several activities, including: E-management, preparing budgets in order to plan and control the financial management, maintenance economic, ecological and social safety. Private organizations know more or less what they anticipate from a DSS. Today it is necessary measure effectiveness of the DSS.

Originality/value - Scientists propose basis of system evaluation criteria efficiency and effectiveness. The principles of information entropy use to evaluate information flows as a criteria efficiency of DSS. The optimal information bandwidth management network of the company will be achieved when: communication is between all system's elements; minimization the number of intermediaries in the system; entropy is proportional to the width of the channel; maintenance safety in the information system. It is help to coordinate information flow. The practical (applied) result is the model of optimization information flows of the DSS.

ENHANCEMENT OF THE BUSINESS TRANSPARENCY AND CORPORATE RESPONSIBILITY AS ONE OF THE PRIOR TENDENCY OF EUROPEAN INTEGRATION



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This study aims to show the European Integration's one of the most tangible issues of the economic section, particularly, the private sector's objective to achieve the Sustainable Development Goals as creating transparent, and environmental and social management system. To achieve this latter one, the European Union made an Action Plan on Modernizing Company Law and Enhancing Corporate Governance among the EU member countries in 2003. Thus, the World Trade Organization and International Finance Corporation play an essential role in the making and implementing sustainability policy as creating, strengthening environmental and social management system.

This reporting objects to draw attention on the European Union's approach with the corporate governance, regulations in this regard, the role of the non-financial reporting in private sectors and the regulations on the legal basis, as directive 2013. Thus, the role of the WTO and the IFC in the process of developing the sustainability, additionally on the IFC and EU relations. Hence, relations among the EU, the IFC and Georgia, there binding and non-binding regulations and volunteering activities in regard as non-financial reporting. Moreover, the rules regulating as statutory norms in Georgia, it's voluntary character for private sector entities and issues in this regard.

Georgia, currently as one of the Eastern Partnership Country and family member of the EU in the future, has obligation to pursue to the generally recognized standards and regulations appointed by the EU, and make the all domestic regulations in harmony with the EU system. Currently, one of the most tangible challenge arises exactly in the economic sector particularly, in Georgia developing Business Institutions recognized that not only the financial benefit is important, but simultaneously, the environmental and social benefits are essential for the whole society and by strengthening these, companies can develop their businesses better, increase the investments from all around the world and live in the secured environment. Georgia currently strives for achieving the Environmental and Social sustainability as an important priority in all its investment operations.

At this time, private institutions' objective comprises with aims to maintain financial stability and recognition of recent trends with respect to items of non-financial information that com-



panies may include on a voluntary basis. There exists the presumption that Companies that do good by the environment, their labor force, and communities, do well financially, exactly, this approach has recently shared and fulfilled by Georgia's developing institutions. Thus, IFC plays an essential role in the making and implementing sustainability policy as creating environmental and social management system. Sustainability Framework helps the clients do business in a sustainable way. It promotes sound environmental and social practices, encourages transparency and accountability, and contributes to positive development impacts.

The non-financial statement was legitimated on June 8, 2016, in the Law of Georgia On Accounting, Reporting, and Auditing, in particular, the nature of that statement was expressed in the Article 7, which states Management Report under EU directives and comprises the following:

Article 7 – Management Report

1. PIEs and the first and second category enterprises shall prepare and file management report to the Service. Procedure for preparation and filing management report with consideration of respective EU Directives shall be defined by the Service.
2. Management report shall include:
 - a) Review of the entity's activities;
 - b) Corporate Governance Statement;
 - c) Non-financial statement.

To define the non-financial statement legislators provided information for in Paragraph 2 (c) of this Article, in accordance with it

“The Non-financial statement reflects at least essential information on development, outcome, and position of the company's activities with respect to environmental, social, human rights, anti-corruption and anti-bribery issues”

Hence, non-financial indicators associated with the entity's activities including employment and environmental aspects should be described with annual financial statements.

Except for the legislated norms, the successful story exists made by the National Bank of Georgia, particularly, one of the positive steps was implemented on September 26, 2018, by the National Bank of Georgia and IFC, a member of the World Bank Group. National Bank of Georgia and IFC have signed a cooperation agreement to enhance environmental, social, and corporate governance standards in the private sector and help commercial banks and companies improve performance, develop competitiveness, and attract investment. To kick off the cooperation and share global and regional experiences, IFC, The Sustainable Banking Network (SBN), and the National Bank hosted Tbilisi's first sustainable finance workshop, this conference was held for the 50 participants from Georgia's financial sector, the SBN, and central banks from the region.

“The National Bank of Georgia aims to enhance the role of the financial system in managing environmental, social, and governance risks and mobilizing capital for green investments in Georgia. The support of IFC and the SBN will be important in helping us develop a sustainable finance framework”

Trade and environment have close ties with each other, while there does not exist the specific agreement dealing with the environment, under WTO rules members can adopt trade-related measures aimed at protecting the environment provided a number of conditions to avoid the

misuse of such measures for protectionist ends are fulfilled. The WTO is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the numerous of the world's trading nations. The goal is to ensure that trade flows as freely, smoothly and predictably as possible. WTO was established in 1995 and currently, has 164 member countries, Georgia joined to the WTO on 14 June 2000.

The fundamental goals of the WTO comprise with the Sustainable development and protection, and preservation of the environment. General principles are enshrined in the Marrakesh Agreement, which established the WTO, and in accordance with the WTO's objective is to reduce trade barriers and eliminate discriminatory treatment in international trade relations. Doha Development Agenda plays a key role in the protection and preservation of the environment, The Doha Agenda includes specific negotiations on trade and environment and some tasks assigned to the regular Trade and Environment Committee. Thus, The WTO contributes to protection and preservation of the environment through its objective of trade openness, through its rules and enforcement mechanism, through work in different WTO bodies, and through ongoing efforts under the Doha Development Agenda. The WTO sustainable development principles are very well enshrined in the IFC and EU law.

IFC is a sister organization of the World Bank and a member of The World Bank Group, it is the largest global development institution focused exclusively on the private sector in developing countries. IFC is a guide to Corporate Governance practices in the European Union since 2015 and creates markets, which address the biggest development challenges of our time. The Corporation provides financing and knowledge on the private sector for the development and sustainable investments. Thus, development partners are foundations and charitable organizations, connecting them with businesses to fill critical gaps in the areas of environmental sustainability and social entrepreneurship, simultaneously, health and education, rural development. Georgia became an IFC member and shareholder in 1995, it is important to pay attention that on developing the private sector IFC has provided approximately, \$1.64 billion in long-term financing, of which \$774 million was mobilized from partners, in projects associated with the financial services, agribusiness, manufacturing, and infrastructure.

IFC plays a key role in highlighting the importance of the private sector in achieving the Sustainable Development Goals in regard as the environmental and social development process, the Corporation was modifying its approach in different years, for instance, in 1998 IFC adopts new environmental and social review procedures and safeguard policies. After 3 years in 2001, IFC makes environmental and social sustainability an important priority in all its investment operations. In 2003 Leading commercial banks launch the Equator Principles, modeled on IFC's own standards and set new environmental and social development terms for commercial project finance lending. In 2015 IFC plays a key role in highlighting the importance of the private sector in achieving the Sustainable Development Goals. IFC is a global corporate governance market leader and brings expertise and significant experience in tackling governance challenges faced by companies, financial institutions, and markets around the world that are aligned with the realities of the private sector.

The Sustainable Banking Network (SBN) is the core of the sustainable development, SBN is a knowledge and capacity-building platform of financial regulators, banking associations, and environmental regulators from emerging markets committed to developing sustainable finance frameworks based on national context and priorities, as well as international good



practices. IFC's Performance Standards, which are part of the Sustainability Framework, have become globally recognized as a benchmark for environmental and social risk management in the private sector.

IFC acts as the Secretariat of the Network, playing the role of facilitator and technical adviser to provide the works and strengthen the SBN. Hence, IFC also has a Sustainability Policy, which was first implemented in 2006, the Policy was revised in 2012. Therefore, in accordance with the Assessment and Management of Environmental and Social Risks and Impacts (2012) IFC requires investment clients to have a sustainability policy as part of clients' overall environmental and social management system. To make the IFC's Sustainability Framework there were involved stakeholders all around the world, works were done since 2012 and it was extended during 18-months consultation processes. It also discusses implementation challenges and opportunities for continued learning and partnerships in both the financial and non-financial sectors.

The Sustainability Framework consists of

- o The Policy on Environmental and Social Sustainability, which defines IFC's commitments to environmental and social sustainability.
- o The Performance Standards, which define clients' responsibilities for managing their environmental and social risks.
- o The Access to Information Policy, which articulates IFC's commitment to transparency.

The updated 2012 edition of IFC's Sustainability Framework applies to all investment and advisory clients whose projects go through IFC's initial credit review process after January 1, 2012. IFC conducts its environmental and social due diligence for the business activities involving direct investments, investments through financial intermediaries, and Advisory projects.

IFC promotes the adoption of corporate governance's best practices and standards in countries where they are most needed, it works with companies and financial institutions to analyze, and then improve, corporate governance practices, by providing tailored advice and assisting with the implementation of recommendations. Thus, it makes the activities for the building capacity of local institutions, including institutes of directors, associations, universities, and others, to provide corporate governance services and advice. Furthermore, it assists in the adoption and implementation of the Corporate Governance Development Framework; and raises awareness through the media, conferences, and roundtables as well as the sharing of best practices.

As I mentioned above, one of the best example of the activities in Georgia, was held in 2018 by the IFC, when on September 26 IFC signed a cooperation agreement with the National Bank of Georgia to enhance environmental, social, and corporate governance standards in the private sector and help commercial banks and companies improve performance, enhance competitiveness, and attract investment. The National Bank joined the SBN in late 2017 and is an active member of its Green Bond Working Group.

To date, 17 SBN countries have released finance policies and principles that integrate environmental, social, and corporate governance into investment projects and increase capital flows to green projects and assets. At this time, IFC's environmental, social, and corporate governance policies are widely adopted as market standards.

July 2014 was one of the most important years in developing the Narrative non-financial reporting because the European Commission launched a public consultation on the impact of

International Financial Reporting Standards in the European Union. In particular, the Commission's aim was to examine whether the adoption of the International Financial Reporting Standards (IFRS) has improved the efficiency of the EU capital markets by increasing the transparency and comparability of financial statements.

According to the Narrative non-financial reporting large European listed and unlisted companies (The large European listed companies are deemed to be more than 500 employees) are required to extend their diversity and non-financial reporting activities on a comply-or-explain basis (European Parliament in 2014), it means that matters associated with non-financial statement must be disclosed in the following way:

- Diversity Policy in the board of directors;
- Environmental aspects;
- Social and employee-related aspects; and
- Respect for Human Rights.

Corporate Governance standards and practices are very much important in their financial performance. Generally, Corporate governance is defined as the structures and processes by which companies are directed and controlled. The standard of good corporate governance helps companies operate more efficiently, improve access to capital, mitigate risk, and safeguard against mismanagement. It makes companies more accountable and transparent to investors and gives them the tools to respond to stakeholder concerns. Transparency is one of the most essential parts of the Sustainability Framework, which consists and expresses in the Access to Information Policy, that articulates IFC's commitment to transparency.

Law of Georgia On Accounting, Reporting, and Auditing aims to facilitate financial transparency and economic growth through an approximation of accounting and auditing regulation with the norms of the European Union Directives. Good corporate governance helps companies operate more efficiently, it makes companies more accountable and transparent to investors and gives them the tools to respond to stakeholder concerns. The Performance Standards, which define clients' responsibilities for managing their environmental and social risks; and the Access to Information Policy, which articulates IFC's commitment to transparency. Early Disclosure: For projects or investments with potential significant adverse environmental or social risks and/or impacts, the disclosure of the ESIA should occur early in the environmental and social due diligence process where possible.

The Board has its own responsibility with the Company itself, with shareholders and stakeholders. Transparent and disclosure policy makes the things happen easily and makes the development of the companies, more investments because when the stakeholder is informed during the negotiation processes and knows the risks associated with particular company and investment, a stakeholder can manage the risks and make investments rightly. Thus, not only the disclosure of all information is important, prior is to invest in the business which will make sustainable business and the best guarantee for this is to make the investment in the company, which makes the Environmental and social impact in a positive way. Georgia strives for enhancing of the business transparency and corporate responsibility among the private institutions and some successful examples are the proof of the illumination for the whole society itself.



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Enhancement of the Business Transparency and Corporate Responsibility as One of the Prior Tendency of European Integration

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ABSTRACT

Purpose – This study aims to pay attention to one of the most actual and tangible issues of the European Integration associated with the economic sector, in particular developing institutions approach comprises not only by the motivation to strengthen the businesses, simultaneously, private institutions' goal is to define what impact could the companies have on the outside world and these institutions can only achieve their aims by making the Sustainable Development Goals as creating transparent, and environmental and social management system. Georgia in the process of the European Integration strives for enhancing of the business transparency and corporate responsibility among the private institutions. Directive 2013/34/European Union consolidates non-financial information reporting requirements, with the aim to make transparency and performance on environmental and social matters. The companies that do good by the environment, their labor force, and communities, do well financially.

Design/methodology/approach – This study used Directive 2013/34/European Union, regulations of The World Trade Organization and The International Finance Corporation and statutory norms in The Law of Georgia On Accounting, Reporting, and Auditing.

Findings – Developing Business Institutions recognized that not only the financial benefit is important, but simultaneously, the environmental and social profits are essential for the whole society and by strengthening these, companies can develop their businesses better and live in the safe environment.

Research limitations/implications – The main obstacle is that generally, this issue is an innovation in the way of the European Integration, consequently, Georgia does not have many examples from the private institutions, but some successful stories makes the things happen and motivate others. There does not exist the books and the main literature.

Originality/value – This research paper is the first of its nature to draw attention on the new regulations established for the private institutions for Georgia through the European Integration process, currently with the volunteering, but soon may as binding nature.

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