RAIS Journal for Social Sciences

Vol. 6, No. 1 | Year 2022
ISSN 2574-0245 (Print) | 2574-1179 (Online)
Editor: Julia M. Puaschunder

RAIS Journal for Social Sciences
Vol. 6, No. 1 l Year 2022

Research Association for Interdisciplinary Studies (RAIS)
Beltsville, MD, 20705, USA
www.journal.rais.education
rais.education@email.com

Editor-in-Chief: Julia M. Puaschunder, PhD

LIBRARY OF CONGRESS * U.S. ISSN CENTER

ISSN 2574-0245 (Print)
ISSN 2574-1179 (Online)

Copyright © 2022 Authors

This publication reflects the views only of the authors, and RAIS Journal cannot be held responsible for any use that may be made of the information contained therein.

The publication is licensed under a Creative Commons Attribution (CC-BY) license.

Published by Research Association for Interdisciplinary Studies (RAIS), Beltsville, Maryland, 20705, USA.

CONTENTS

Title	Page	Author(s)
Entrepreneurship in Public Institutions	1	*Denisa Maria VÎLCEANU*
Respect for the Right of the Defence in the Romanian Criminal Process from the Perspective of European Union Law and Internal Criminal Procedural Law	7	*Nicoleta-Elena HEGHEȘ, Bogdan BUNECI*
Romanian Public Sector Innovation from an Educational Perspective in the Context of the COVID-19 Pandemic	21	*Mihaela-Gabriela APOSTOL*
Twins Taboo in Mananjary: An Ancestral Tradition of the Dead that Strongly Dominates the Lives of the Living	26	*Marcel SAITIS*
Reopening of Criminal Proceedings in Romania in Case of a Trial in Absentia	37	*Bogdan BUNECI*
Operative Judicial Photography	47	*Cosmin BUTURĂ*
"Our Air is Biscuit": Victims' Perspective of Factory Pollution in Oluyole, Ibadan	52	*Olajumoke Elizabeth ADEMUYIWA, Ikem Godspower UJENE, Babatunde Michel IDOWU, Felix M. NWANKWO*
The Social Problem of Suicide: A Theological Perspective	61	*Nicolae CRETU*
The Educator as a Role Model within the Community: An Analysis of the Leader's Speech in the Book of Samuel	70	*Samuel Florin BÎRLE*
Integrated Management System in Education	76	*Salome CHKHEIDZE*
A Century-Old Yet Topical Controversy - Euthanasia	84	*Angela VLAD (CHIRVĂSUȚĂ)*

EDITOR IN CHIEF

Julia M. Puaschunder, PhD
The New School, The Schwartz Center for Economic Policy Analysis, USA

EDITORIAL BOARD

Dilip Dutta, University of Sydney, Australia
Marian Gh. Simion, Harvard University, USA
Maila Dinia Husni Rahiem, Uin Syarif Hidayatullah Jakarta, Indonesia
Salam Omar, Abu Dhabi University, UAE
Kamal Hattab, Kuwait University, Kuwait
David Ononogbu, University of Nigeria, Nigeria
Adrian Vladimirov Alexandrov, St. Clement of Ohrid University of Sofia, Bulgaria
Alina Livia Nicu, University of Craiova, Faculty of Law, Romania
Barnali Chetia, Indian Institute of Information Technology, India
Nadir Ali Kolachi, University of Fujairah, UAE
Abdelkader Toumi, ENS Bouzaréah High College for Teachers, Algeria
Edson Pontes Pinto, Catholic University of Rondônia, Brazil
Syed Aftab, University of Sargodha, Pakistan
Nicoleta-Elena Heghes, "Dimitrie Cantemir" Christian University of Bucharest, Romania
Konstantin Pantserev, St. Petersburg State University, Russia
Titus Corlatean, "Dimitrie Cantemir" Christian University of Bucharest, Romania
Djilali Benabou, University of Mascara, Algeria
Muma Eric Che, Justus Liebig University Giessen, Germany
Zorica Triff, Technical University of Cluj-Napoca; North University Center from Baia Mare, Romania
Wu Chih-Wen, National Chung Hsing University, Taiwan
Neerja A Gupta, Gujarat University, Ahmedabad, India
Emilia Vasile, Athenaeum University, Romania
Abdurezak Abdulahi Hashi, International Islamic University Malaysia
Ciprian-Raul Romițan, Romanian-American University, Romania
Ibanga Ikpe, University Of Botswana, Gaborone, Botswana
Samuiel Bâlc, Bucharest Baptist Theological Institute, Romania
Naira Hakobyan, National Academy of Sciences of the Republic of Armenia
Megbowon Funmilola Kemi, University Of Fort Hare, South Africa
Manolache Stelian, University Ovidius, Constanta, Romania
Nina Corcinschi, „Ion Creangă" State Pedagogical University; Institute of Philology of the Academy of Sciences of Moldova
Emilian M. Dobrescu, Romanian Academy, Bucharest, Romania
Xiao-Guang Yue, College Consultant of Rattanakosin International College of Creative Entrepreneurship (RICE), Rajamangala University of Technology Rattanakosin, Thailand
Ion Stancu, General Manager, Institute for Financial Study (ISF), Bucharest Academy of Economic Studies, Romania
Tatyane Ferreira, IESB University Center, Brazil
Mihail Dimitriu, Centre for Financial and Monetary Research of the Romanian Academy – Victor Slăvescu, Bucharest, Romania
Otilia Manta, Centre for Financial and Monetary Research of the Romanian Academy – Victor Slăvescu; Instituto di Ricerca di Dr. Arioli S.a.s., Turin, Italy

RAIS Journal for Social Sciences | VOL. 6, No. 1, 2022
ISSN 2574-0245 (Print) | ISSN 2574-1179 (Online) | DOI: 10.5281/zenodo.6574758

Entrepreneurship in Public Institutions

Denisa Maria VÎLCEANU

PhD (c), National School of Political and Administrative Studies, Bucharest, Romania
denisa_vilceanu@yahoo.com

ABSTRACT: The theory of public administration has recently been divided into three branches. The three branches are the theory of public administration, the new theory of public management, and the theory of postmodern public administration. Each of these three branches study public administration from a different perspective. These types of theories are some of the ways in which an administrator can understand them and can exercise their duties as a public administrator. The theory cannot simply be derived from empirical observation of facts; it must be constructed using value judgments that direct our empirical observations and then guide the interpretation of these observations. Values are essential for the construction of theories of public administration, as they take into account the significant ethical principles and philosophies of a culture that provides a theoretical and practical basis.

KEYWORDS: management, public sector, private sector, entrepreneurship, economy

This article's main objective is to highlight that the theory of public administration is a mixture of history, organizational theory, social theory, political theory and scientific studies based on the meanings, structures and functions of the public service in all its forms. Public administration theorists such as Max Weber have expressed the importance of values in the development of public administration theory (Chevallier 1987, 94). The theories of public administration are put into practice or taken into account by several distinct strategies: Parallel, Transfer or Collaboration, known as the practice of theoretical differences. This practice is used to transfer knowledge between practicians and researchers (Ionescu 1997, 82). The new public management is an integral part of the massive intrusion of freemarket values into the public space, which threatens to exclude all political values. It is worth noting that, in this sense, the new public management is the radical opposite of the notion of migration of political values in private space, in the interest of a future democratizing society. However, the new theory of public management fails to address policy issues in a meaningful way. This theory concerns the public administration from the roots of capitalism and is drawn from the perspective of global capitalism (Iordan 2003, 47). Intentionally or not, the new public administration served the interests of the elites, especially the pro-government elites, degraded the government's ability to address the public interest, and served as a vehicle for raising the apolitical governance of free trade and other supranational organizations, which have fully embraced the political philosophy of economic rationalism and the new managerialism. Even when we understand the theory of postmodern public administration, it is important to differentiate between postmodern theory and postmodern epoch, presumably and to differentiate postmodernism (theory / philosophy) from postmodernism. Postmodern public administration refers to the internal functioning of any existing government entity. The idea of public administration is broad enough to encompass all government positions that affect the public. The difference between the private sector and the public sector is the budgetary process and the ideology,

which gave rise to a meeting of interest. The following elements are commonly considered key structural aspects of a public procurement system: an appropriate legislative framework, supported by regulations that address procedural issues that are not normally covered by primary legislation, an adequate institutional and administrative infrastructure, an effective review and accountability regime, an efficient sanctions regime, and adequate human, financial and technological resources to support all elements of the system (Vararu 1928, 91).

The defense of the public service and the fear of questioning are recurring themes in the political debate. The difficulty lies in the fact that the field of application of this concept varies over time and depends on the population and the political power. In addition, the term public service means two different elements: a mission, which is an activity of general interest, presumably and an organizational structure, directly or indirectly, to support these activities of general interest by public people (state, local authorities, public institutions) or private, but under the control of a public person (Hintea and Mora 2003, 33).

Although the private sector is indeed more efficient and effective than the public sector in providing those services, the public sector should consider adopting the principles of the private sector. However, there are fundamental differences between the goals of the private sector and the public sector, and an investigation is not necessary before deciding on the adoption of the principles of the private sector or outsourcing. The formal comparisons between the practices, the principles and the efficiency of the public and private sector began in 1976. The researchers found that the objectives and roles of the private and public sectors differed considerably for each other. The private sector is more efficient in the areas of risk tolerance, procurement, marketing, technology and innovation (Tosterud 1999). Specifically, because the content of the decision is so different between the public and private sectors, in the sense that the decisions in the public sector are open, transparent, organized in comparison with the company, support, they are also different.

Entrepreneurship results (companies appearing in public institutions)

Supporting sustainable change in society requires an association of actors, and this is the place in which the public entrepreneur can play an unconventional and mobilizing role. The work in the sector is not a natural function of the government or the civil servants, but the infrastructure and incentives tend to constrain it. Public entrepreneurs will have to play a particularly important role in the developing world, where there is underdevelopment or undermining the inability of states to act through corruption. In developed countries, the role of the public entrepreneur will be crucial in further unlocking the potential of citizens in the design and co-provision of public services. A critical function of the public entrepreneur is to find new ways to finance public service and development interventions. This could mean partnering with budgets, searching public-private partnerships, using digital technology or experimenting with new models of social finance and tax investments (Leitao and Baptista 2009, 22). Public entrepreneurs are part of a system, rather than an organization or a department. While social entrepreneurs are people outside the government, public entrepreneurs act within the government and, within them, are a mixture of two different roles: that of a civil servant and that of a public servant (Shane and Venkataraman 2000, 217-226). As the challenges for public services and society become more acute and complex, a concept rooted in the 1960s is increasingly revised, as public leaders try to implement entrepreneurship and innovation in traditional government structures and processes.

The concept of entrepreneurship is often confused with the term small business or used interchangeably with that term. While most entrepreneurial businesses start as

small businesses, not all small businesses are entrepreneurial, in the strict sense of the term. Many companies are operations with the sole owner or have a small number of employees and many of these small companies offer an existing product, process or service and do not aim for economical growth. But, entrepreneurial enterprises offer a product, a process or an innovative service, and the entrepreneur usually has the goal of enlarging the company by adding employees, in terms of international sales, process that is funded by venture capital investments and investments (Thompson 2002, 412-431). Successful entrepreneurs have the ability to lead a business in a positive direction by planning wisely, adapting to changing environments, and understanding their own strengths and weaknesses. An entrepreneurial resource is any good owned by a company that has the skills to create economical values. The economical value that creates both tangible and intangible sources is considered to be an entrepreneurial resource. The economical value of these generates activities or services through the mobilization of entrepreneurs. Entrepreneurial resources can be divided into two fundamental categories: tangible and intangible resources. Communication is essential in the role of entrepreneurship, as it allows leaders to convince potential investors, partners and employees about the feasibility of an adventure. Entrepreneurs need to practice efficient communication both within the company and with external partners and investors in order to launch and develop a business that will allow it to survive. An entrepreneur needs a communication system to link company staff and make them available to companies and external clients.

The concept of entrepreneurship in the public sector has emerged recently in the main literature of entrepreneurship, as defined by the process of creating values for citizens by bringing together public and private opportunities. Public entrepreneurs are persons who carry out activities intended for the initiation, maintenance or aggregation of one or more of the organizations in the public sector and provide a practical description of the company. The emergence of the entrepreneurial phenomenon in the public sector has generated an interesting debate in the literature on the democratic accountability of public managers and politicians. The differences between the private sector and the public sector do not allow the adoption of the entrepreneurial model for public organizations. Entrepreneurship includes anti-democracy characteristics, such as a strong dependence on domination and coercion, a preference for revolutionary change, and a lack of respect for tradition. In the management literature on entrepreneurship, community entrepreneurs are seen as local facilitators of entrepreneurship events (Parlagi 2004, 104). Community entrepreneurs have worked at the local community level to create a context for self-employed entrepreneurs to inspire them to start their own business and help them through their extensive networks. Both community and virtual entrepreneurs have a goal of regional development and coordinate their activities within the broader local community, as opposed to a relatively notion, but in a more restricted way, of a politic and public entrepreneurs who have a (public) goal of organizational performance, a similar manner that corporate entrepreneurs exercise for and within a corporation. There are similarities between public sector entrepreneurship and large corporation entrepreneurship, as both types of organizations have formalized hierarchies, established stakeholder groups with competing requirements, deeply rooted cultures and procedures to guide operations, a desire for power and security, and rigid systems of financial controls, budgeting and employee rewards. In addition, managers in both types of organizations have increased job security, less personal responsibilities, and access to a resource base.

Success factors

The similarities and differences between the two have been elaborated and analyzed on the basis of certain concepts of the organization which include objectives, goods and services, resources, structure and design of the organization, the organization, making decisions, the culture of the organization. The reason why these concepts are applied to the detriment of others is the fact that these concepts are fundamental to the analysis of the organization and have a greater applicability to understand the characteristics of the public and private organizations in a systematic way.

Researchers suggest that the private sector and public organizations differ significantly in their objectives or achievement of objectives. (Amo and Kolvereid 2005, 7-19). One of the interesting anomalies about the comparison between the public sector and that of private organizations is the complexity of the objectives and the ambiguity. Private organizations aim for a single profit. Public organizations, on the other hand, have vague, intangible and multiple goals. Public organizations are exposed to much more external oversight and responsibility, and their goals are often in conflict or are confronted. At present, the private sector is progressing faster, because it promotes quality, not quantity. All in all, there are some obvious areas where the goals of public and private organizations can align. For example, many public corporations / institutions are projected to make a profit and make a contribution to the country's economic development, to support other organizations for resources (Sadler 2000, 25-43). The goods and services of private organizations depend on the market situation and follow the mechanism of demand and supply. Private companies are owned by entrepreneurs or shareholders who own property and resources and receive direct monetary benefits. The involvement of the private sector in state ownership or the provision of public services is a global trend. The fundamental differences between the public and private sectors are centered around the ambiguous objectives of the public sector and the large number of stakeholders, which is due to a lack of focus and clear decision-making processes, the resource used to consult the various stakeholders. The studies compared the differences between the public and private sectors in terms of decision-making, performance management, staff performance, motivations, risk tolerance, procurement, marketing, technology and innovation. Although the applicants may agree that the private sector is more efficient or more effective, in a number of areas, there are fundamental differences between objectives and the operating environment, which affects the ability of the public sector to apply private sector principles.

Difficulties and challenges (legislation / mentality)

Entrepreneurship within the organization is common to the public sector. However, internal entrepreneurship exists in all types of organizations in the public sector, depending on time, location and situation. On the other hand, the public sector operates in circumstances that differ fundamentally from that of the private sector in various fields. Public entrepreneurs run their own private companies or government (Khan, Munir and Willmott 2007, 1055-1077). In both cases, they borrows from the skills, strategies and private entrepreneurial skills and adapts the best practices in contexts with a high level of involvement and public and political interests and control. Public sector entrepreneurship is defined as the promulgation of innovative initiatives in the field of public policy that generates greater economic prosperity through the transformation of a more economical and stable status-quo into one more conducive to economical units engaged in creative activities in the face of uncertainty. In today's economy, entrepreneurship in the public sector is undergoing this transformation primarily by increasing the efficiency of knowledge networks; in addition,

by increasing the heterogeneity of the experiential links between the economic units and by the inability of these economical units to exploit such diversity. Through policy initiatives embedded in public sector entrepreneurship, there will be more developments in new technologies and, as a result, more innovations across the economy. The public sector, with a wide range of organizations, plays a key role in our society. Regardless of whether these organizations in the public sector should or should not promote entrepreneurial management in order to fulfill their legal mandate, it is an ongoing debate between researchers and practitioners. Entrepreneurial managers can create public value by analyzing public needs and implementing creative ideas. Unlike the private sector, innovation and the means to improve organizational performance do not come naturally to the public sector. Common incentives in the private sector, such as profit sharing, are not available to employees in the public sector. While the possibility of privatizing a public service function may be an incentive to improve services, the government is usually in a monopolistic position, so that insufficient support is necessary for a high level of service performance. The professional training of the civil servant is a way of European integration and a key concept for this millennium; in this context, European integration is seen as a dynamic process of forming competent structures for integration at the level of civil society. Vocational training institutions and structures demand a new existence from the state and the local community.

Vocational training was added to the last constitutional revision. Currently, special emphasis is placed on training programs for trainers, as these are the ones that allow the creation of officials capable of training specialists, in relation to the present and future requirements of the citizens. A systematic and acceptable training project (Rotaru 2011, 5-10) is necessary to provide concrete and complete information as well as convincing arguments in order to be implemented.

Conclusions

Innovation and entrepreneurship are necessary in society and in economics, in institutions and in business, because innovation and entrepreneurship are done step by step, they are not planned, they are necessary.

Innovation and entrepreneurship do not produce the desired effects, they are more pragmatic than dogmatic and rather modest rather than grandiose, they promise to keep the flexibility and the new in the company, business, industry, economy or in public service. They got it what Jefferson hoped to get it too in every generation, without bloodshed, wars, economic catastrophes, but with an aim, a direction and under control.

We need an entrepreneurial society in which innovation and entrepreneurship are normal and run smoothly. In this way, management has become a body specific to all contemporary institutions and an integrative element of its organization, so innovation and entrepreneurship must become an activity that support life in organizations, in economy, in society.

This work can be done with the help of people who are passionate about innovation and entrepreneurship and make it a normal work and a new phenomenon, a daily activity applied in their work from the organizations in which they take part.

The priority when it comes to government and public policy measures is to define what will not work. Planning is a term incompatible with an economy and an entrepreneurial society. Innovation must have an aim, and entrepreneurship must be admired. But innovation needs to be decentralized, ad hoc, autonomous, specific, and economically sound. Opportunities for innovation do not come at once with the storm, but with the murmur of the breeze.

References

Amo, B.W., and L. Kolvereid. 2005. "Organizational strategy, individual personality and innovation behavior." *Journal of Enterprising Culture*, vol. 13, no. 1.

Chevallier, J. 1987. *Le service public. Que sais-je?* Paris: Presses Universitaires de France.

Hintea, C., and C. Mora. 2003. "Management public." *Revista Transilvana de Stiinte Administrative,* vol. 5.

Ionescu, C. 1997. Constitutional law and political institutions. General theory of political institutions. Bucharest: Lumina Lex, vol. 1.

Iordan, N. 2003. Managementul serviciilor publice locale (Local Public Sevices Management). Bucharest: C.H. Beck Publishing House.

Khan, F., Munir K.A., and Willmott, H. 2007. "A dark side of instiutional entrepreneurship: Soccer Balls, child labour and postcolonial impoverishment." *Organization Studies,* vol. 28, no. 7.

Leitao, J., and Baptista, R. 2009. *Public Policies for Fostering Entrepreneurship: A European Perspective.* Springer Science and Business Media.

Parlagi, A. 2004. Dictionar de Administratie Publica (Public Administration Dictionary). Bucharest: Economica Publishing House.

Rotaru, I. Gh. 2011. "Educaţia – prin prisma ideilor unor filosofii moderne" (Education - through the ideas of modern philosophies"). *Educaţie. Educaţie specială (Education. Special education)*, no.1.

Sadler, R.J. 2000. "Corporate entrepreneurship in the public sector: the dance of the Chameleon." *Australian Journal of Public Administration,* vol. 59, no. 2.

Shane, S., and Venkataraman, S. 2000. "The promise of entrepreneurship as a field research." *Academy of Management Review,* vol. 25, no. 1.

Thompson, J. 2002. "The World of the Social Entrepreneur." *International Journal of Public Sector Management* 15(5): 412-431.

Tosterud, R. 1999. "Innovation process, economic growth and public policy." *Congressional Research Service*, Washington D.C.

Vararu, M. 1928. *Drept administrativ roman (Romanian Administrative Law).* Bucharest: Socec Publishing House.

RAIS Journal for Social Sciences | VOL. 6, No. 1, 2022
ISSN 2574-0245 (Print) | ISSN 2574-1179 (Online) | DOI: 10.5281/zenodo.6574772

Respect for the Right of the Defence in the Romanian Criminal Process from the Perspective of European Union Law and Internal Criminal Procedural Law

Nicoleta-Elena HEGHEȘ[1], Bogdan BUNECI[2]

[1] *"Acad. Andrei Rădulescu" Legal Research Institute of the Romanian Academy, Bucharest, Romania, nicoleta.heghes@icj.ro*
[2] *Ecological University of Bucharest, Romania, Law School, bogdanbuneci@yahoo.ro*

ABSTRACT: Given that the right to a defence is guaranteed both in international documents and in European Union law, normative acts have been developed over the years concerning the European standard of protection of the right to defence, the time necessary for the preparation of the defence, the facilities necessary for the defence, the information of the accused on the right to defend himself or to be assisted by a chosen defence counsel at all stages of the criminal proceedings. In this respect, Romanian legislation has also adopted essential regulations in line with European provisions on the subject, starting with the fundamental law - the Romanian Constitution, other special laws and expressly the provisions of the Code of Criminal Procedure on the right to defence.

KEYWORDS: right of defence, Code of Criminal Procedure, fair trial, chosen counsel, compulsory legal assistance, public defender, right to consult the file, preparation of defence

1. Legal provisions referred to in international legal acts and European Union law on the respect of the right of defence

Considering it is essential that human rights be protected by the rule of law, the United Nations adopted the Universal Declaration of Human Rights on 10th December 1948, which states in Article 11 that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense under international or national law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal act was committed.

After the establishment of the European Community and subsequently the European Union, the Charter of Fundamental Rights of the European Union was adopted [published in the Official Journal of the European Union No C 326/391 of 26.10.2012 (hereinafter referred to as "the Charter")], with express reference to the provisions of Articles 47 and 48; the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "ECHR"), referring to Art. 6; the International Covenant on Civil and Political Rights (hereinafter "ICCPR") enshrining the right to a fair trial and guaranteeing respect for the right of defence.

To begin with, we shall refer to Article 6 paragraph (3) of the ECHR, which states that any accused person has, above all, the right:

a. to be informed promptly, in a language he understands and in detail of the nature and cause of the charge against him;

b. to have adequate time and facilities for the preparation of his defence;

c. defend himself in person or through legal assistance of his own choosing and, if he does not have sufficient means to pay for legal assistance, a public defender should represent him free of charge in cases where the interests of justice so require;

d. to hear or call witnesses for the prosecution and to obtain the attendance and examination of witnesses for the defence under the same conditions as witnesses for the prosecution;

e. to have the free assistance of an interpreter if he does not understand or speak the language used at the hearing.

Thus, the European Court of Human Rights states that the guarantees expressly set out in Article 6 paragraph (3) illustrate the concept of a fair trial in the sense of guaranteeing or contributing to guaranteeing the fairness of the criminal proceedings as a whole, and that in criminal matters accurate and complete information about the charges against an accused person, and therefore about the legal position which the court might take against him, is an essential condition of the fairness of the proceedings - Art. 6 paragraph 3 letter a) (see to this effect *Pelissier and Sassi v. France, paragraph 52; Sejdovic v. Italy, paragraph 90*). This information must actually be received by the accused, as a legal presumption of receipt is not sufficient, and this obligation to inform the accused is entirely incumbent on the prosecution and cannot be passively fulfilled by providing information without warning to the defence. The information must be adequate and full and, with regard to any change in the charge, he must have the necessary time and facilities to react to these changes and to organise his defence on the basis of any new information or allegations (*Mattoccia v. Italy, paragraph 60; Bäckström and Andersson v. Sweden*).

In situations where it is shown or there is reason to believe that the accused does not have sufficient knowledge of the language in which the information is communicated, the authorities must provide the accused with a translation (*Brozicek v. Italy, paragraph 41; Tabaï v. France*).

With regard to the provisions of Article 6 paragraph (3) letter (b) of the Convention - the ECHR looks at two elements of a genuine defence, relating to the question of facilities and that of time in that the activities relating to the defence of the accused must include "*everything necessary*" for the preparation of the trial (*Can v. Austria, paragraph 53; Gregačević v. Croatia, paragraph 51*) as well as the facilities and time granted to an accused to be assessed in the light of the circumstances of each case (*Iglin v. Ukraine, paragraph 65; Galstyan v. Armenia, paragraph 84*). The appropriate time limit must not be detrimental to the procedural rights of either party, but must take into account the nature of the trial, the complexity of the case and the stage of the proceedings (*Gregačević v. Croatia*).

With regard to the necessary facilitation, any accused must have access to the evidence in the case file throughout the proceedings in order to prepare a defence (Huseyn and Others v. Azerbaijan, paragraph 175), that the remand prisoner must have conditions of detention which allow him to read and write with a reasonable degree of concentration and for his lawyer to make observations, the facilities which the accused must have for consultation with his lawyer, and the fact that this right under Article 6 paragraph (3) letter (b) overlaps with the right to be assisted by a lawyer under Article 6 paragraph (3) letter (c) of the Convention (see, for example, *Lanz v. Austria, paras. 50-53; Öcalan v. Turkey (MC), para. 148; Trepashkin v. Russia (no. 2), paragraphs 159-168*).

With regard to the provisions of Article 6 paragraph (3) letter (c) governing particular aspects of the right to a fair trial guaranteed in paragraph 1 (*Correia de Matos v. Portugal (dec.); Foucher v. France, paragraph 30*) and three distinct rights of the accused are set out: the right to defend himself, to be assisted by a lawyer of his own choosing and to be assisted free of charge by a lawyer (*Pakelli v. Germany, paragraph*

31). As regards the right of self-defence, it allows the accused to defend himself, but it is not absolutely guaranteed because it is within the discretion of the Contracting State to appoint a lawyer to guarantee his right of defence (*Croissant v. Germany, paragraph 27; Lagerblom v. Sweden, paragraph 50*).

The fundamental elements of a fair trial are the right of any accused person to be effectively defended by a lawyer, and when they are detained or remanded in custody, they must have access to a lawyer from that moment. This right also derives from the fact that the accused may participate effectively in his criminal trial, but also includes the right to be assisted by a lawyer if necessary, and the mere presence of the lawyer cannot compensate for the absence of the accused (*Dayanan v. Turkey, para. 31, Lagerblom v. Sweden, paragraph 49, Zana v. Turkey (MC), paragraph 72*). If an accused who has been lawfully summoned does not appear for trial even without justification, he should not be deprived of the right to be defended by a lawyer (*Van Geyseghem v. Belgium (MC), paragraph 34, Krombach v. France, paragraph 89*), and in order for the right to legal assistance to be practical and effective and not merely theoretical, its exercise must not depend on the fulfilment of excessively formal conditions (see in this respect also *the Guide to Article 6 of the Convention - Right to a fair trial - criminal side - https://www.echr.coe.int/*).

The last right set out in Art. 6 paragraph (3) letter (c) concerning the right to legal aid must fulfil two conditions:

- To prove that he does not have sufficient financial means (some indications);
- Contracting States are only obliged to provide legal aid *"if the interests of justice so require" (Granger v United Kingdom, paragraph 46*).

With regard to the *"interests of justice"* the European Court in its practice has decided that the complexity of the case as well as the personal situation of the accused must be taken into account. This right to legal assistance must be *"concrete and effective"* in the sense that the accused has the right to discuss in private with the lawyer, the effective assistance of a lawyer to which the accused is entitled must not be prevented, and the obsessive limitation of the number and duration of visits by the defendant's lawyers must not be hindered, as these are further possible violations of the right to effective assistance (*Sakhnovskiy v. Russia (MC), paragraph 102, Öcalan v. Turkey (MC), paragraph 135*).

It should be pointed out that the case law of the European Court of Human Rights has led to the adoption of directives implementing the principle of mutual recognition of decisions in criminal matters and the right to information in criminal proceedings. Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (published in the Official Journal of the European Union No L 142/1 of 01.06. 2012), which covers both suspects and accused persons in criminal proceedings and persons subject to a European Arrest Warrant and states in Article 3 that they must be informed promptly of the following procedural rights as they apply under national law, in order to ensure that those rights can be exercised effectively: *(a) the right to be assisted by a lawyer; (b) any right to free legal advice and the conditions for obtaining such advice; (c) the right to be informed of the charge in accordance with Article 6; (d) the right to interpretation and translation; (e) the right to remain silent*.

This information shall be in plain, accessible language and shall be provided orally or in writing. The Directive also indicates the right of access to case material of arrested persons or their lawyers, where a person is arrested and detained at any stage of the criminal proceedings, material in the possession of the competent authority which is essential to effectively challenge, in accordance with national law, the lawfulness of the arrest or detention.

Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in proceedings relating to the European Arrest Warrant, as well as the right of a third person to be informed after deprivation of liberty and the right to communicate with third persons and consular authorities during deprivation of liberty (published in the Official Journal of the European Union No. L 294/1 of 6.11.2013) which lays down minimum rules on the rights of suspects and accused persons in criminal proceedings *to have access to a lawyer*, setting out in Article 3 these rights, namely:

(a) Before being questioned by the police or other law enforcement or judicial authority;

(b) In the course of an investigative or evidence-gathering exercise by law enforcement or other competent authorities in accordance with paragraph 3 letter (c);

(c) Without undue delay after deprivation of liberty;

(d) Where they have been summoned to appear before a court competent in criminal matters, in good time before they appear before that court.

This right of access to a lawyer consists in the fact that suspects or accused persons have the right to have their lawyer present and participate effectively when they are questioned, in accordance with procedures under national law, but provided that such procedures do not prejudice the effective exercise and the substance of the right concerned.

Similar rights also apply when a person is wanted in the executing Member State after arrest pursuant to a European Arrest Warrant.

Once the suspected or accused person has been informed of the rights of access to a lawyer (in writing or orally), he or she has the opportunity to waive them, which is voluntary and unequivocal and can be done in writing or orally.

Similar provisions on ensuring the right of defence can be found in Directive (EU) 2016/343 of the European Parliament and of the Council of 9th March 2016 on strengthening certain aspects of the presumption of innocence and the right to be present at trial in criminal proceedings (published in the Official Journal of the European Union L 65/1 of 11 March 2016), in Article 8 on the right of suspects and accused persons to be present at their own trial, that they may be represented by a mandated lawyer, who shall be appointed either by the suspect or accused person or by the State.

In order to comply with Directive 2013/48/EU on suspects and accused persons in criminal proceedings, those who are arrested under a European Arrest Warrant and who: are deprived of their liberty; must be assisted by a lawyer in accordance with Union or national law; must or may be present at an investigative or evidence-gathering act, Directive (EU) 2016/1919 of the European Parliament and of the Council of 26th October 2016 on free legal assistance for suspects and defendants in criminal proceedings and for persons wanted for questioning in proceedings under the European Arrest Warrant (published in the Official Journal of the European Union L 297/1 of 4. 11.2016).

It should be noted that without prejudice to the right to a fair trial, the following situations *do not constitute deprivation of liberty* within the meaning of the Directive: the identification of the suspected or accused person; the determination of whether an investigation should be initiated; the verification of the possession of weapons or other similar security-related matters; the carrying out of investigative or evidence-gathering acts other than those explicitly mentioned in this Directive, such as body searches, physical examinations, blood tests, alcohol tests or similar tests, or the taking of photographs or fingerprints; the bringing of the suspected or accused person before a competent authority in accordance with the rules laid down in national law.

Free legal assistance means the funding by a Member State of legal advice by a lawyer and applies to suspects and accused persons who do not have sufficient resources to cover the costs of legal advice by a lawyer. Here the criterion of material status is taken into account, subject to certain relevant and objective factors such as income, family situation of the person concerned, costs of legal assistance, standard of living in the Member State, and sometimes the *criterion of merits* is also applied, taking into account the seriousness of the offence, the complexity of the case, the severity of the sanction in question, to see whether the interests of justice require that free legal assistance be granted. Such assistance shall be granted only for the purpose of criminal proceedings in which the person concerned is suspected or accused of having committed a criminal offence, similarly free legal assistance shall also apply from the moment of arrest under a European Arrest Warrant until they are surrendered or until the decision refusing surrender becomes final.

The European Union has also established procedural safeguards for children (persons under 18 years old) by adopting Directive (EU) 2016/800 of the European Parliament and of the Council of 11th May 2016 on procedural safeguards for children who are suspected or accused persons in criminal proceedings (published in the Official Journal of the European Union L 132/1 of 11.05.2016).

This Directive applies to children who are suspects or accused persons in criminal proceedings until it is finally established that the suspected or accused person has committed a criminal offence, including, where applicable, until a conviction has been handed down and any appeal has been determined. If during the proceedings the child was under the age of 18 and has subsequently reached that age, this Directive shall apply taking into account all the circumstances of the case, including the maturity and vulnerability of the person concerned. Member States may decide not to apply this Directive to the person concerned when he or she has reached the age of 21 and they must ensure in national law the effective legal assistance of the child to be assisted by a lawyer pursuant to Article 6 of the ECHR. This legal assistance must be provided without undue delay, inform children that they are suspects or accused persons and must be provided with the compulsory assistance of a lawyer from any of the following points in time: *before being questioned by the police or other law enforcement or judicial authority; when an investigative or evidence-gathering act is carried out by the investigating or other competent authorities; without undue delay after deprivation of liberty; if they have been summoned to appear before a court having jurisdiction in criminal matters, in good time before they appear before that court*. Private interviews of the child and communication with the child's lawyer, including prior to questioning by the police or other law enforcement authorities, must be ensured when they are present before a judge or court competent to rule on detention at any stage of the proceedings as well as during detention.

2. Domestic legal rules on criminal proceedings for the right of defence

In view of the universal validity of the right to defence, Romania has also adopted this right in its domestic law through various normative acts and here we refer to Article 24 of the Romanian Constitution where the *right to defence* is guaranteed and the parties during criminal proceedings have the right to be assisted by a lawyer, elected or appointed ex officio; Law no. 51/1995 on the organization and exercise of the legal profession (republished in the Official Gazette, Part I, no. 440 of 24 May 2018), with reference to the legal assistance and representation before the courts, prosecution bodies of the parties (accused, civil party, civilly liable party) and the main subjects of proceedings (injured party, suspect) in criminal proceedings by lawyers; Code of Criminal Procedure (Law no. 135/2010, published in the Official Gazette, Part I, No.

486 of 15 July 2010), where the fundamental principles of the right of defence are expressly provided for in Article 10, in the provisions setting out the rights and obligations of the parties regarding legal assistance and representation (Articles 88 - 96), in the taking of preventive measures provided for in Articles 202 - 244, as well as during the trial and during ordinary and extraordinary appeals.

We must expressly point out that all these provisions relating to the right to defence respect both the treaties ratified by Romania, the rights and freedoms interpreted and applied in accordance with the Universal Declaration of Human Rights, and the European Union's Community regulations which are binding, taking precedence over contrary provisions in domestic laws, in compliance with the provisions of the Accession Treaty.

From an examination of the provisions of Article 10 of the Code of Criminal Procedure, we note that the parties and the main accused have the right to defend themselves or to be assisted by lawyers, and that both they and their lawyers have the right to have the time and facilities necessary for the preparation of their defence, and that the judicial authorities are obliged to inform the suspect immediately and before he is heard of the offence for which criminal proceedings are being conducted and its legal classification. The same rights are enjoyed by the accused against whom criminal proceedings have been brought and the legal framework of the case, as he is a party to the criminal proceedings and both the suspect and the accused are advised that they have the right not to make any statement. This right of defence must be *fully and effectively* exercised by the parties and the principal subjects of the proceedings throughout the criminal proceedings, and must be exercised in *good faith* in accordance with the purpose for which it has been recognized by law.

The criminal procedure provisions in Articles 88 - 96 of the Code of Criminal Procedure provide for issues related to the lawyer who assists or represents the parties or the main litigants in the criminal proceedings, under the conditions of the law, being obliged to do so when he is chosen or appointed ex officio to provide legal assistance, and when the parties or the litigants have contrary interests, they cannot be assisted or represented by the same lawyer.

Both the suspect and the accused have the right to be assisted by one or more lawyers throughout the criminal proceedings (*during the criminal prosecution, the pre-trial proceedings and the trial - merits, ordinary or extraordinary appeals*), and the judicial bodies are obliged to inform them of this right. If a person is detained or arrested, he or she has the right to contact the lawyer, with the right to confidentiality of communications, subject to the necessary visual surveillance, security and security measures.

The legislator has also provided for situations in which legal assistance is mandatory - Article 90 of the Code of Criminal Procedure:

a) When the suspect or defendant is a minor, interned in a detention centre or in an educational centre, when he/she is detained or arrested, even in another case, when against him/her the security measure of medical internment has been ordered, even in another case, as well as in other cases provided by law;

b) If the judicial body considers that the suspect or accused person would be unable to defend himself or herself;

c) In the course of proceedings in the pre-trial chamber and in the course of the trial in cases where the law provides for life imprisonment or imprisonment for more than five years for the offence committed.

In Romanian judicial practice, the question has been raised whether the provisions of Art. 90 lit. c) of the Criminal Procedure Code on the mandatory legal assistance of the accused is only provided for natural persons or is also for legal persons. The High

Court of Cassation and Justice - *The Panel for Preliminary Ruling on Questions of Law* (the resolution of questions of law by the High Court of Cassation and Justice are binding for the courts from the date of publication of the decision in the Official Gazette of Romania, Part I - Art. 477 para. 3 of the Code of Criminal Procedure) by Decision no. 21/2016 ruled on the mandatory legal assurance in the case of a legal person, on the following grounds:

In the case law of the *European Court of Human Rights, the case of Fortum Oil and Gas Oy v. Finland was identified, in which it was held that Article 6 applies to legal persons to the same extent as it applies to natural persons and that a legal person may be considered as "accused of committing a criminal offence" in the autonomous sense that this expression has in the meaning of Art. 6 of the Convention, and the case of PayKar Yev Haghtanak Ltd v. Armenia, in which the European Court of Human Rights reiterated that, when remedies are regulated, Contracting States must ensure that legal and natural persons within their jurisdictions continue to enjoy the same guarantees of Art. 6 before courts of appeal as before courts of first instance.*

The legal text, Article 90 of the Code of Criminal Procedure, which regulates the mandatory assistance of the suspect or defendant, in the provisions of letter (c) does not distinguish between the accused as a natural person and the accused as a legal person, nor does it limit the application of these provisions to the accused as a natural person.

According to Article 82 of the Code of Criminal Procedure, the defendant is the person against whom criminal proceedings are brought and may be either a natural person or a legal person. Thus, where the text of the law does not distinguish, neither must the court distinguish (ubi lex non distinguit, nec nos distinguere debemus). Whenever the legislator has wished to distinguish between a natural person defendant and a legal person defendant, it has expressly referred to one of these concepts [e.g., Article 90 letter (a) of the Code of Criminal Procedure].

Interpreting grammatically the text of Art. 90 letter c) of the Code of Criminal Procedure, it follows that what was taken into account is the penalty prescribed by law for the offence committed, in the meaning set out in Article 187 of the Criminal Code, i.e. the penalty prescribed by the text of the law incriminating the offence committed in its completed form, without taking into account any possible causes for reduction or increase of the penalty, so that compulsory legal aid is required by law in view of the seriousness of the offence.

Any solution to the contrary would lead to unequal treatment of the different parties to the proceedings and to an unjustified distinction in interpretation which the procedural law does not allow.

Moreover, this is not the only legal provision in the case of legal persons, where the penalty provided for in the rules of criminal procedure is taken into account, in the sense of Article 187 of the Criminal Code, the same reasoning being found in the determination of the fine for legal persons (Article 137 of the Criminal Code) in the case of the application of the additional penalty of dissolution of the legal person (Article 139 paragraph (1) letter (b) of the Criminal Code), and in the matter of the limitation of criminal liability of legal persons (Article 154 of the Criminal Code).

It is true that the penalties that may be imposed on a legal person do not include the penalties referred to in Article 90 letter (c) of the Criminal Code, as these are specific to the treatment of penalties applicable to natural persons, but this fact is not such as to lead to interpretations such as the exclusion of compulsory legal aid for legal persons.

The criminal liability of a legal person has certain particularities, which may also be reflected in the specific sanctions that can be applied to it.

The main penalty is a fine, which the legislator has opted for because the legal person is identified with its assets, and a financial penalty, which is well proportioned, affects its financial interests, has the desired deterrent effect and ensures a public sense of fairness.

It follows, therefore, that in determining the need for compulsory legal aid to be provided to a legal person, in the context of Article 90 paragraph (1) letter (b) of the Criminal Code, it is necessary to take account of the fact that the defendant is a legal person. c) of the Code of Criminal Procedure, the penalty applicable to the legal person under Article 136 of the Criminal Code should not be taken into account, since the text of the law makes no reference to the subject of the proceedings concerned by the penalty of life imprisonment or imprisonment for more than 5 years, but only to the seriousness of the offence committed, reflected in the penalty provided for by law.

The Romanian Code of Criminal Procedure regulates in the provisions of Articles 489 - 503 the procedure for holding a legal person criminally liable, stating that in the case of offences committed by legal persons where the main penalty is the fine provided for in Article 136 of the Criminal Code, in carrying out the object of activity in the interest of or on behalf of the legal person, from which there are no derogations regarding the mandatory legal assistance of the accused legal person, and the provisions of the preliminary chamber and trial procedure apply accordingly, as to the natural person.

The phrase *'duly applied'* in Article 90 letter c) of the Code of Criminal Procedure cannot be interpreted to the detriment of the legal person, in the sense of excluding the accused legal person from compulsory legal assistance.

To interpret the *'proper application'* of the provisions of Article 90 letter (c) of the Code of Criminal Procedure as meaning that the legal aid applicant is not entitled to be excluded from the scope of the legal aid of the Code of Criminal Procedure to the effect that they relate to the penalties applicable to the legal person under Art. 136 paragraph (2) and (3) of the Criminal Code, and not to the penalties provided for in the incriminating rules, to which Article 187 of the Criminal Code refers, is to exclude the legal person from compulsory legal aid, by way of interpretation, without a legal basis.

Accordingly, Article 489 of the Code of Criminal Procedure establishes the corresponding application of Article 90 letter c) of the Code of Criminal Procedure to the accused legal person, in the sense of referring these provisions to Article 187 of the Criminal Code.

The provisions of Art. 91 of the Criminal Procedure Code and the cases when the suspect or defendant has not chosen a lawyer, and if legal assistance is mandatory, the judicial body must take measures for the appointment of a lawyer ex officio, when: *the chosen lawyer is unjustifiably absent, fails to provide a substitute or unjustifiably refuses to defend, although the exercise of all procedural rights has been ensured, the judicial body shall arrange for the appointment of a lawyer of its own motion to replace him, giving him a reasonable time and facilities for the preparation of an effective defence, and shall mention this in the minutes or, where appropriate, in the closing of the hearing. In the course of the trial, where legal assistance is compulsory, if the chosen lawyer is absent without justification at the trial date, fails to arrange for a substitute or refuses to conduct the defence, even though the exercise of all procedural rights has been assured, the court shall arrange for the appointment of a lawyer to replace him, giving him at least three days to prepare his defence. The appointed public defender is obliged to appear whenever requested by the judicial body, ensuring a concrete and effective defence in the case.*

The criminal procedure law provides for the rights of the suspect's and defendant's lawyer to attend any act of criminal prosecution with some exceptions, to

request to be informed of the date and time of the criminal prosecution or the hearing by the judge of rights and freedoms and to participate in the hearing of any person in the case, to formulate complaints, requests and briefs. Once the case has reached the stage of trial, the defendant's lawyer shall have the right to consult the case file, to assist the defendant, to exercise the defendant's procedural rights and to be given the time and facilities necessary for the preparation and conduct of an effective defence. An essential right is also the right to consult the file in the sense that this can be done both by the lawyer of the parties and of the parties to the proceedings. This is done objectively, in the sense that the lawyer may note down data or information from the file, obtain photocopies at the client's expense, and in some cases, during the criminal proceedings, the prosecutor may restrict consultation of the file for up to 10 days (if criminal proceedings have been initiated), giving reasons.

The lawyer of the injured party, the civil party or the civilly liable party has rights similar to those of the suspect and the accused during *the criminal proceedings*, in the sense of the right to be present at any act of the criminal proceedings, the right to consult the documents in the file and to make requests and submit pleadings.

Also, *during the trial*, the lawyer of the injured person, the civil party and the party civilly liable shall exercise the rights of the person, assisted except for those which he or she exercises in person, the right to consult the file, and there are also situations in which legal assistance is mandatory if the injured person or the civil party is a person who lacks capacity or has limited capacity. It is possible for the judicial body to decide whether, for certain reasons, the persons referred to above are unable to defend themselves and to appoint a lawyer of its own motion.

Throughout the criminal proceedings, the suspect, the accused, the other parties and the injured party may be represented by a lawyer, except in cases where their presence is mandatory or deemed necessary by the prosecutor during the criminal proceedings or by the judge or the court during the trial.

In order to respect the right of defence when taking preventive measures (Art. 202 paragraph 4 of the Code of Criminal Procedure - detention; judicial control; judicial control on bail; house arrest; preventive arrest), it is mandatory that the suspect or defendant be assisted by a lawyer, chosen or appointed ex officio. This participation of the defendant's lawyer is mandatory so that the judicial bodies are obliged to take measures in this respect, being in line with Directive 2013/48 EU of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and proceedings relating to the European Arrest Warrant. The legislator has provided in the provisions of Article 224^1 of the Code of Criminal Procedure for information on the special conditions of execution of detention and preventive arrest ordered against a minor who, together with the information of the prosecution, is also informed of the right to special conditions of execution. This information is made not only to the minor (the person under 18 years of age) but also to the parents, or, where appropriate, to the guardian, curator or person in whose care or supervision the minor is temporarily placed. If these listed persons could not be found, or if informing them would affect the best interests of the minor or the conduct of the criminal proceedings, the information shall be given to another adult who is designated by the minor and accepted as such by the judicial body. If the juvenile does not designate another adult or is not accepted by the judicial body, the information shall be made by another person chosen by the judicial body, taking into account the best interests of the juvenile. It should also be pointed out that even where medical security measures are provisionally applied, the suspect or defendant is heard by the court only in the presence of a lawyer chosen or appointed by the court. This obligation of the judicial body to ensure the defence also

exists in the case of the measure of compulsory medical treatment or provisional medical detention.

During the criminal prosecution phase, when a person is made aware of his status as a suspect, before his first hearing, when he is presented with the legal classification of the offence, he is informed of the provisions of Article 83 of the Code of Criminal Procedure, among which we can mention the right to have a lawyer of his choice, and if he does not appoint one in cases of compulsory assistance, the right to have a lawyer appointed by the court, the right to be informed of the offence for which he is being investigated and its legal classification. The same applies to respect for the right of defence and when criminal proceedings are initiated by the prosecutor under Article 309 of the Code of Criminal Procedure.

Ensuring the defence is also essential at the trial stage, so that the injured person, the defendant and the other parties can hire a lawyer and prepare their defence, including the provision of the necessary facilities for the preparation of an effective defence which must be in compliance with the reasonable time limit of the criminal proceedings. The provisions on the defence are similar not only in the first instance trial, both in the ordinary appeals (appeal and appeal) and in the extraordinary appeals (appeal for annulment, appeal in cassation, review and reopening of the criminal proceedings in the case of trial in default of the convicted person), since the provision of defence is made according to Article 356 of the Criminal Procedure Code throughout the trial, all the more so when legal assistance is mandatory.

3. Penalties for failure to respect the rights of the defence

For violation of the legal provisions regulating the conduct of the criminal proceedings (*any violation of the provisions regulating the criminal prosecution, the preliminary chamber procedure, the trial in first instance and in ordinary and extraordinary appeals as well as the execution of criminal judgments*), the legislator has established sanctions that may lead to the nullity of the act under the conditions expressly provided for by the provisions of the Code of Criminal Procedure - art. 280-282, i.e. *relative nullities* concerning the non-compliance with the legal requirement that has brought a damage to the rights of the parties or the subjects of the proceedings that can only be removed by the dissolution of the act. This may be invoked: until the close of the preliminary chamber proceedings if the infringement occurred during the criminal proceedings or in the course of those proceedings; until the first trial date with the procedure legally completed, if the infringement occurred during the criminal proceedings, when the court was seized of an agreement to plead guilty; until the next trial date with the procedure completed if the infringement occurred during the trial. This relative nullity shall be covered if the person concerned has not invoked it within the time limit prescribed by law or has expressly waived it. From the perspective of *absolute nullity* they cannot be removed in any way (e.g. assistance by a lawyer of the suspect or defendant according to the provisions of Article 90 letter (c) of the Code of Criminal Procedure - mandatory legal assistance); they can be invoked at any stage of the criminal proceedings - in the prosecution phase, in the preliminary chamber procedure or during the trial (first instance, appeal or extraordinary appeal); they can be invoked by any party, main procedural subject, by the prosecutor or ex officio by the court. According to Art. 281 of the Code of Criminal Procedure, absolute nullities are applied when the provisions concerning: a) the composition of the trial panel, b) the material competence and personal competence according to the quality of the person of the prosecution body and the courts, c) the publicity of the trial session; d) the participation of the prosecutor, when his participation is mandatory according to the law; e) *the presence of the suspect or the accused* when his participation is mandatory

according to the law; f) the assistance by the lawyer of the suspect or the accused as well as the other parties when the assistance is mandatory. This absolute nullity shall be established ex officio or upon request, and the violation of the provisions of Article 281 paragraph (1) letters a) - d) may be invoked at any stage of the criminal proceedings. The provisions of paragraph 1 letters e) to f) paragraph 4 must be invoked: a) before the end of the preliminary chamber proceedings if the violation occurred during the criminal proceedings or in the preliminary chamber proceedings; b) at any stage of the trial if the violation occurred during the trial; c) at any stage of the trial, regardless of the moment when the violation occurred, when the court has been seized with a plea agreement.

We consider, along with other authors (see in this regard Mateuț 2019, 1004) that the criminal procedural regulation establishes a discriminatory regime between the provisions set out in art. 281 paragraph 1 letter a) - d) and those provided for in paragraph 1 to letter e) - f) relating to the presence of the suspect or defendant when participation is mandatory, or the assistance by the lawyer of the suspect and the other parties when the assistance is mandatory under Article 90 of the Code of Criminal Procedure. For this reason, with reference to the provisions of Art. 281 para. 4 in which the way of regulation limits the term in which the absolute nullity of the procedural acts drawn up in the course of the criminal prosecution with violation of the right to defence, as well as in the preliminary chamber procedure, can be invoked, the Constitutional Court was referred to the Court because this was a minimization of this fundamental right, guaranteed and protected both by the Romanian Constitution and by the Convention for the Protection of Human Rights and Fundamental Freedoms. During the preliminary chamber procedure (which aims at verifying, after the committal for trial, the competence and legality of the referral to the court, as well as the legality of the administration of evidence and the performance of acts by the prosecution bodies), according to Article 344 paragraph (3) of the Code of Criminal Procedure, in the cases provided for in Article 90 of the same act, the preliminary chamber judge shall arrange for the appointment of a defence counsel ex officio and shall determine, depending on the complexity and peculiarities of the case, the time limit within which the defence counsel may submit written requests and exceptions regarding the legality of the court's referral, the legality of the administration of evidence and the performance of acts by the prosecution bodies. Failure to appoint a public defender is punishable by absolute nullity under Article 281 paragraph (1) letter f) of the same code. The Constitutional Court has ruled that *"nullity is an extreme procedural sanction, which intervenes only when other remedies are not possible".* Thus, the significance of the protected public interest is circumscribed by the right to defence of the persons in the legal hypothesis described, for which the legislator has provided by mandatory rule, on the one hand, the provision of legal assistance ex officio and, on the other hand, the sanction of absolute nullity in the event of non-compliance.

From an analysis of the text of the law under criticism, namely Article 281 paragraph (4) letter (a) of the Code of Criminal Procedure, it follows that the violation of the right to legal assistance of the court of first instance during the preliminary chamber proceedings may be invoked only until the conclusion of the preliminary chamber proceedings. The author of the exception considered that, despite the particular importance given to this right - highlighted by the application of the maximum sanction, i.e., *absolute nullity*, in the event of its non-observance by the preliminary chamber judge, the text of the law limits the right to claim absolute nullity, even at the end of the phase of the criminal proceedings in which the accused did not enjoy this right. Thus, entitled to a lawyer of his own motion, the defendant will not have access to the defence and will not have the possibility to invoke nullity at a later stage, since the time limit for

the lapse of time has expired. In this respect, the right to a lawyer of the court of first instance at the stage of the preliminary proceedings is devoid of content, which affects both the fundamental principle of legality and the fundamental right to a defence provided by a lawyer of the court of first instance in the cases expressly provided for by law, all the more so since, in cases of absolute nullity, the procedural harm is presumed *iuris et de iure*, there being no requirement to prove its existence.

The Constitutional Court by Decision No. 88/2019 (published in the Official Gazette, Part I, No. 499 of 20.06.2019) admitted the exception of unconstitutionality of the provisions of Article 281 para. 4 letter a) of the Code of Criminal Procedure in relation to Art. 281 para. 1 letter f of the same normative act, with the following reasoning: *in the case of violation of a provision subject to the sanction of absolute nullity, there is always the procedural harm required by law, that the existence of such harm does not need to be proven, as well as its non-existence cannot be proven, the occurrence of harm being therefore under the power of a legal presumption juris et de jure. However, a sanction which always implies the existence of an injury which cannot be removed in any way can protect only those provisions which guarantee to the highest degree the establishment of the truth or which ensure the effective realization of the rights of the parties. In the case of absolute nullity, therefore, all the provisions subject to that sanction are provisions which, by the will of the law, guarantee the establishment of the truth or ensure the rights of the parties, without it being necessary to assess and argue whether the unlawfulness of the judgment under appeal falls within that ground for setting aside. Absolute nullity is characterized by the fact that the harm is based on absolute legal presumptions, the violation of the law having serious and direct consequences for the achievement of the purpose of the criminal proceedings. The Court finds that the exercise of the right to a defence, enshrined in the constitutional provisions of Article 24, must be effective, which means that in certain cases the presence of a lawyer is a necessary element in establishing the effectiveness of that right. This is because the 'assistance' of the defendant by the lawyer means not only the physical presence of the defendant in the cases provided for by law, but also the 'provision of legal assistance', i.e. the giving of advice to the defendant on what to do in the proceedings and the exercise of the defendant's procedural rights. However, the Court considers that, by regulating a case in which legal assistance is mandatory, the legislature has presumed that the right to a defence can be exercised effectively only in the presence of a lawyer. The Court finds that the legislature presumed that it was in the interests of justice to make legal aid compulsory in the cases expressly provided for by law, since infringement of the provisions relating to compulsory legal aid would result in infringement of the right to a fair trial. In that context, the Court observes that by legislating a time-limit within which absolute nullity may be pleaded in the event of non-attendance by a lawyer, even though the law provides that it is mandatory, a contradictory situation arises. Thus, the legislator establishes a time-limit which limits the possibility of invoking absolute nullity, even though it is absolutely presumed that the person present at the hearing requires the assistance of a lawyer in order to be able to make an effective defence, a defence which includes invoking nullity. However, even in the case law of the courts, it has been held that the right to an effective defence is central to the criminal trial, its importance being that all other rights would remain derisory without procedural guarantees, and the judicial authorities are obliged to ensure this right. Effective defence is a guarantee, a sure prerequisite for the objective and complete investigation of evidence, a sine qua non for the discovery of the truth, the defence of the legal rights and interests of the accused, creating the necessary conditions for the delivery of a legal and sound judgment. In those circumstances, the Court finds that, by introducing a time-limit within which the plea of absolute nullity*

may be raised in the event of non-attendance by a lawyer at the preliminary chamber stage, even though the law provided that that was mandatory, the legislature renders meaningless the very fundamental right to a defence, which is guaranteed by the assistance of a lawyer appointed by the court of its own motion in the cases expressly provided for by law. Thus, although the legislature imposes absolute nullity on the judicial body for failure to comply with that obligation, the applicable sanction appears to be ineffective if a time-limit is imposed (conclusion of the preliminary ruling procedure) within which the absolute nullity arising from the failure to comply with the provision concerning the obligation to be assisted by a lawyer at the preliminary ruling stage may be invoked.

Conclusions

From the above, it is clear that the legal provisions mentioned in the European Union law and the Romanian domestic legal provisions on the right of defence, give to the parties and defendants the right to defend themselves or to be assisted by a lawyer, the right to be given the time and facilities necessary to prepare their defence, to be informed immediately of the acts committed, the legal framework, and that this right is fully and effectively exercised by the parties and the main defendants throughout the criminal proceedings. We also consider it necessary to regulate the *legal assistance of witnesses* in criminal procedure legislation, as in other foreign legislation (France, the Anglo-Saxon system), because in many cases those who are called as witnesses to give declarations to *judicial bodies* (criminal investigation body, prosecutor, courts) want to be assisted by a lawyer. It should be noted that the Romanian Code of Criminal Procedure does not prohibit the witness to be assisted by a lawyer, in most cases both in the criminal investigation and in court the judicial bodies accept the witness to be heard in the presence of the chosen lawyer, but by legislating legal assistance to the witness, the provisions of Article 6 of the ECHR would be fully respected also for other procedural subjects of which the witness is part (Article 34 of the Code of Criminal Procedure).

References

Charter of Fundamental Rights of the European Union, published in the Official Journal of the European Union No C 326/391 of 26.10.2012.

Code of Criminal Procedure (Law No 135/2010, published in the Official Gazette, Part I, No 486 of 15 July 2010).

Constitutional Court - Decision no. 88/2019, published in the Official Gazette, Part I, no. 499 of 20.06.2019.

Convention for the Protection of Human Rights and Fundamental Freedoms. Council of Europe Treaty Series 005. Strasbourg: Council of Europe.

Decision No 21/2016 of the High Court of Cassation and Justice published in the Official Gazette, Part I, No 884/04.11.2016.

Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on free legal aid for suspects and accused persons in criminal proceedings and for persons wanted for European Arrest Warrant proceedings (published in Official Journal of the European Union L 297/1 of 4.11.2016).

Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on strengthening certain aspects of the presumption of innocence and the right to be present at trial in criminal proceedings (published in Official Journal of the European Union L 65/1 of 11.3.2016).

Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (published in Official Journal of the European Union L 132/1 of 11.05.2016).

Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (published in the Official Journal of the European Union No L 142/1 of 01.06.2012).

Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in proceedings relating to the European Arrest Warrant, as well as the right of a third person to be informed following deprivation of liberty and the right to communicate with third persons and consular authorities during deprivation of liberty (published in the Official Journal of the European Union No L 294/1 of 06.11.2013).

International Covenant on Civil and Political Rights. United Nations. 1966.

Law No 51/1995 on the organisation and practice of the legal profession (republished in the Official Gazette, Part I, No 440 of 24 May 2018).

Mateuț, Gheorghiță. 2019. *Criminal Procedure - General Part.* Bucharest: Universul Juridic Publishing House.

RAIS Journal for Social Sciences | VOL. 6, No. 1, 2022
ISSN 2574-0245 (Print) | ISSN 2574-1179 (Online) | DOI: 10.5281/zenodo.6574780

Romanian Public Sector Innovation from an Educational Perspective in the Context of the COVID-19 Pandemic

Mihaela-Gabriela APOSTOL

National School of Political and Administrative Studies, Bucharest, Romania
mihaela.gabrie@yahoo.com

ABSTRACT: The article addresses the issue of the innovation capacity in the Romanian public sector from an educational perspective in the context of the COVID-19 pandemic. The aim of this article is to present how the public education sector has adapted to the new pandemic times and managed to continue the education and training process in the midst of the pandemic. This article was based on the illustration of the changes that occurred in the education system, both at European and national level, in the wake of the COVID-19 pandemic. Due to the fact that the education system sought new solutions to carry out the education and training process and adapted to the new changes, it survived the impact of the pandemic.

KEYWORDS: innovation, public sector, education, digitalization

Introduction

With the onset of the COVID-19 pandemic, both on a national and European (and global) level, the education systems underwent major changes (Rotaru 2020, 71-82). Thus, educational institutions have moved from face-to-face classroom activities to online activities. Of course, these changes have brought both advantages and disadvantages.

Among the advantages of going online is that people who have access to education can be "in two places at once" (both in the virtual classroom and at home). Another idea that is facilitated by online education is that students are "together but separate". The disadvantages of going online are that people can be distracted from the educational process, and the teacher's interaction with them encounters a communication barrier that can be characterized by a lack of physical interaction and a lack of close eye contact.

The pandemic has profoundly affected education and exacerbated already existing social inequalities, and the closure of schools has visibly disrupted the education process for students (UNICEF 2020, 4). It is precisely for this reason that the Romanian administration wants to become as innovative as possible and remove the educational barriers that have been created in the wake of the pandemic.

Theoretical aspects

To better understand the innovation of the education system, it is necessary to highlight and define certain concepts.

The public sector - is a necessity for any state economy and performs the following functions: the allocation function, which emphasizes the state's involvement in the market mechanism to determine the type and quality of a public service (Apgar and Brown 1987, 292); the income distribution function (refers to how the state is involved in the market through the process of adjusting the income and wealth

accumulated from economic transactions) and the stabilization function (ensures and protects public and private economic transactions). The public sector has a huge impact on each and every one of us, as it is a daily and undeniable presence (Miroiu and Rădoi 2002, 50-100) and it relates to the totality of decisions taken by the powers of the state as well as the ways in which these decisions evolve. The public sector is present in the economic life under many aspects such as public (state) education, public goods, public expenditure, public interest, public services, etc.

Education is a psycho-social activity, which is designed at the level of pedagogical goals and which aims to achieve the function of human formation-development (Cristea 1998, 186-190).

Innovation is the commercial or industrial application of something new, a new product, process or method of production, a new market or source of supply, a new form of business or financial organization (Schumpeter 1993, 353-363). The trend today, with regard to the innovation process, is a trend towards greater integration of technical, organizational and social innovation (Popescu 2016, 15).

Law 324/2003 defines innovation as an activity aimed at generating, assimilating, and exploiting the results of research and development in the economic and social sphere (Law 324/2003 approving Government Ordinance No. 57/2002 on scientific research and technological development 2003).

Innovation is a broad and complex concept, and as far as the education system is concerned, it refers to the use of new technological and methodological research and the replacement of outdated standards. Innovation in the education system emphasizes the development of educational processes so that the activities carried out within the educational process are learned in a quick and enjoyable way by those who have access to education.

As mentioned above, new barriers have recently appeared that make the educational process more difficult, but this does not mean that the original barriers have disappeared, on the contrary, they have become more important. Such barriers can be represented by educational conflict, surrounding noise, the effect of liveliness, the theory of perseverance, stereotypes, the lack of harmony between verbal and non-verbal communication, the incorrect use of paralanguage, as well as emotional blockages and others (Lesenciuc 2017, 22-23).

Innovative education system solutions from an EU perspective

Due to the pandemic situation, the education system has undergone a multitude of changes. This is why the European Union has stressed the importance of the Digitalization Strategy. According to the European Commission, the aim of the EU's digital strategy is to make this transformation work for citizens (European Commission 2019). At the same time, the strategy has also acquired new aspects concerning the digitalization tools used, because when human interactions are limited and restrictions are imposed, all activities, regardless of their nature, become digitalized. Digitalization is the process through which information undergoes a transformation into a digital format.

The European Union supports Member States in their efforts to provide citizens with the best education and training and also contributes to language teaching and learning by encouraging the mobility of students, trainees, teachers and young people.

To achieve the objectives set out in the education and training framework, the EU implements policies in various sectors, including educational institutions; vocational education and training; higher education; adult education and early childhood education and care.

The European Union has created a set of values on education, training, and delivery for the pandemic period, because it is absolutely necessary that during the

acceleration and development of digital change, education systems adapt. The European Union's values on training and educational attainment are:

a) Digital education must respect the principle of social inclusion and be a strategic objective for all education and training institutions;

b) In an era of digitalization, education must also become digitalized;

c) Ensuring access to digital education for different categories of people;

d) Digital education should play a key role in increasing equality and inclusion;

e) All teachers must have digital skills;

f) Digital literacy is essential for life in a digitalized world.

Investing in high quality education and training creates various benefits for both citizens and economic agents in society, and in order to achieve educational outcomes, it is necessary that the resources allocated to the educational process are adequate and appropriate.

The European Commission has adopted two initiatives that will strengthen education and help the European Union recover from the coronavirus crisis (European Commission 2020). The two initiatives regard the creation of a European education area and the creation of an action plan for digital education.

The creation of a European education area means that by 2025 there should be much closer cooperation between Member States so that all people benefit from quality education and training, and *the creation of an action plan for digital education* means mapping out a high-performance digital education ecosystem.

An innovative solution to ensure continuity in education and training activities refers to accessing online materials such as: online platforms, EU funded projects, Stay at Home Digital Toolkit, SELFIE - free tool to help schools make the most of digital technologies, Coding from home.

According to Save the Children (2020a), financial pressures on parents have led to an increased risk of child poverty, as follows:

Table 1. Child poverty in the European Union based on COVID-19

	Estimated number of children at risk of poverty	Percentage of children at risk of poverty in the total population of children
Sweden	200.000	10%
Spain	2.100.000	24%
Finland	112.000	11%
Italy	2.100.000	20%
Romania	**1.300.000**	34,6%
Kosovo	approx. 125.000	20,7%
Albania	approx. 160.000	20%

Source: Save The Children International (2020a)

Innovative education system solutions applied on a national level

Romanian education can be considered a European education due to certain aspects, among which we can mention: the quality of the value system it promotes; the type of educational institutions, as well as its legislative basis (Tudorică 2004, 43). The preparation for Romania's accession to the European Union involved making the education system of our country compatible with the European education system.

Due to the COVID-19 pandemic, the educational process has largely taken place in the online environment, where Romanian educational institutions have encountered

difficulties regarding lack of predictability; existence of a marked digital divide between educational establishments; insufficiently developed digital skills for the efficient organization of the teaching process in the online environment and reduced access to technology (Ministry of Education and Research 2021).

Currently, the integrated approach to all aspects of digitalization of public services, including education, is ensured by the provisions of the National Strategy for the Digital Agenda Romania 2020.

The objectives of the Strategy for the digitalization of education are in line with European initiatives and programs on the role of digital technology in the development of education and training systems (Ministry of Education and Research 2021) and are represented by:

▪ European Commission Communication on the new Action Plan for Digital Education 2021-2027 - "Resetting Education and Training for the Digital Age";

▪ European Commission Communication on the creation of a European Education Area by 2025;

▪ New European Skills Agenda for sustainable competitiveness, social equity, and resilience;

▪ Council Recommendation on education and training for sustainable competitiveness, social equity, and resilience;

▪ UNESCO Recommendation on Open Educational Resources.

The impact of online education in Romania

According to a study by Save the Children (2020b), the following issues have been identified regarding the situation in Romania:

- 47% of children used their mobile phone to take part in online courses,
- 27.2% of children had school subjects not covered during the school suspension,
- 47.5% felt bored during online classes, 32.7% felt tired, 27.1% felt angry,
- 57.4% of children said that playing games on their phone, tablet or computer was their main recreational activity,
- 54.7% of children mention internet addiction as the main threat.

According to the European Commission (2019), digital infrastructure in schools is underdeveloped, especially in rural areas. Very few schools are extremely well equipped and digitally connected. Only 14% of Romanian pupils in primary education (EU average: 35%), 16% in lower secondary education (EU average: 52%) and 31% in upper secondary education (EU average: 72%) study in such schools.

Conclusions

With the adoption of the National Strategy on the Digital Agenda, Romania has progressively integrated digital technology elements into its policies, curricula and training programs and, although major investments have been made at national level, the absence of monitoring and support mechanisms has resulted in a lack of sustainability of many of these initiatives.

The background of those receiving education and training has a significant influence on their performance, as it affects the inequality of opportunities. Even if measures have been taken to mitigate the impact of COVID-19, there is still a possibility that the move to e-learning in education will exacerbate existing inequalities.

Even though the shift to online learning and training activities has positive aspects (Rotaru 2016, 326-334), the negative ones tend to predominate through the emergence of boredom, the creation of addiction to Internet use, the use of online games, etc. Moreover, the shift to online has visibly disfavored people who do not have access to an

Internet connection tool, which leads to absenteeism caused by the inability to connect to online classes.

Even though Romania's spending on education remains among the lowest in the EU, the country has sought to become as innovative as possible in this respect and has tried to adapt to the new situation caused by the COVID-19 pandemic.

References

Apgar, William and James Brown. 1987. *Microeconomics and public Policy.* Illionis: Scott Foresman & Company.

Cristea, Sorin. 1998. *Dicționar de termini pedagogici (Dictionary of pedagogical terms).* Bucharest: Didactica and Pedagogica Publishing House.

European Commision. 2019. *O Europă pregătită pentru era digitală (A Europe fit for the digital age).* Bruxelles.

European Commision. 2020. *Educație și formare: competențe de bază și digitale esențiale pentru educație, muncă și viață (European Commission, Education and training: basic and digital skills essential for education, work and life).* Bruxelles.

Law 324/2003 approving Government Ordinance No 57/2002 on scientific research and technological development.

Lesenciuc, Adrian. 2017. *Teorii ale comunicării* (*Communication theories).* Brasov: "Henri Coandă" Air Force Academy Publishing House.

Ministry of Education and Research. 2021. *Strategia privind digitalizarea educației din România 2021-2027(Strategy for the digitalization of education in Romania 2021-2027)*. Bucharest: SMART-Edu. Modern, Accessible School, based on Digital Resources and Technologies

Miroiu, Adrian, Mirelle Rădoi Zelean & Marian Zulean. 2002. *Analiza politicilor publice* (*Public policy analysis*). Bucharest: Politeia Publishing House.

Popescu, Maria. 2016. *Managementul inovării (Management of inovation).* Brasov: University of Brasov Publishing House.

Rotaru, Ioan-Gheorghe. 2016. "The use of digital information sources to composition and teaching the course of history and philosophy of religions in the 'Timotheus' Brethren Theological Institute of Bucharest, Romania." In *Religions, laicités et sociétés au tournant des humanités numériques,* Stefan Bratosin, Mihaela Alexandra Tudor (eds.), Les Arsc, France: Editions IARSIC et ESSACHESS.

Rotaru, Ioan-Gheorghe. 2020. "Spiritual lessons observed through the Coronavirus Crisis." *Dialogo. Issue of Modern Man,* vol. 6, no. 2. Zilina: EDIS - Publishing Institution of the University of Zilina.

Save The Children International. 2020a. *The impact of Covid-19 on children in Europa.* Save the Children in Europe.

Save The Children International. 2020b. *The impact of Covid-19 on children in Romania.* Save the children in Romania.

Schumpeter, Joseph. 1993. *The Theory of Economic Development.* USA: Harvard Economic Studies.

Tudorică, Roxana. 2004. *Dimensiunea europeană a învățământului românesc (The European dimension of Romanian education)*. Iasi: Institute of European Studies.

UNICEF. 2020. *Building resilient education systems in the context of the COVID-19 pandemic: Considerations for national, local and school-level decision-makers.* Switzerland: UNICEF Regional Office for Europe and Central Asia.

RAIS Journal for Social Sciences | VOL. 6, No. 1, 2022
ISSN 2574-0245 (Print) | ISSN 2574-1179 (Online) | DOI:10.5281/zenodo.6574783

Twins Taboo in Mananjary: An Ancestral Tradition of the Dead that Strongly Dominates the Lives of the Living

Marcel SAITIS

PhD student, "Aurel Vlaicu" University of Arad, Romania,
saitis.marcel@gmail.com

ABSTRACT: On the southeast coast of Madagascar there was an ancestral tradition called *fady kambana* or *the taboo on twins*, which placed a curse on twins born in the Antambahoaka ethnic group. In the past they were exterminated, now they are only abandoned, but with a very high mortality rate due to abandonment. This paper is a study on this Antambahoaka taboo. This group could be accused of serious crimes against humanity if they were not understood in their context. That is why we want to understand what a taboo means in the Malagasy context. We will probe the historical roots of this taboo and the consequences of not respecting it in Antambahoaka society. We will have a look at the twins' side to see what terrible trauma they are experiencing because of this curse on them. Internal pressure from other ethnic groups and international pressure from certain child protection agencies has led to the issue of Law 23/2007, which we will analyze in relation to the abuse of twins. Finally, we will analyze the long-term solutions to this long-standing conflict between ancestral tradition and civil law on the taboo on twins.

KEYWORDS: fady kambana, taboo, twins taboo, Malagasy context, ancestral laws, Antambahoaka, Madagascar, abandonment, abandoning twins, Manajary, protecting twins

As a European living in Madagascar for nine years, I have encountered various customs during my travels to the ethnic groups on the Big Island. I like research, so the habits and approach to life in the Malagasy tradition have often piqued my curiosity and attention, especially since their ancestral traditions are on the border between physical and spiritual, two worlds that strongly intertwine. One of my recent travels took me to the Mananjary region, on the Indian Ocean coastline, consisting of the small towns of Nosy-Varika – Manajary – Manakara – Vohipeno – Farafangana. Cyclones Batsirai and Emnati hit the east coast of Madagascar in February 2022, leaving huge damage behind. So, a group of us flew to the area to provide humanitarian and spiritual assistance to our coastal friends. After the cyclones, people were left with few things, with their houses demolished, waiting for the water to drain and for life to return to normal. But 'normal' will mean a period of famine for the next three to six months, according to Pasqualina Disirio, director of *WFP Madagascar* (Al Jazeera English 2022) due to limited rice resources, with recent crops being damaged (Al Jazeera 2022).

The trip to this region led our team to interesting discussions, filled with curiosity and seriousness, about the ancestral traditions of the groups settled in these places in two stages over the last two thousand years (Campbell 2005, 873). Looking at the history of Madagascar, we found that Gabriel Ferrand, French orientalist researcher, had made a monograph of this area in the 19th century, describing the populations that inhabited it (Ferrand 1893, 20; Ferrand 1896, 14). "The population of Manajary is

composed mainly of Antambahoaka, to which some Hova and Betsimisaraka are added, as well as people from the south (Antaimorona, Antaifasy and Antaisaka), temporary Betsileo and Tanala residents, and some Europeans and French, English and German creoles" (Ferrand 1893, 20-21).

Among all these ethnic families, however, Ferrand has a special interest in the *Antambahoaka* people because of a very intriguing *taboo*: the abandonment of newborn twins (Ferrand 1893, 20-21). This practice is known as *fady kambana* and "has been practiced in the last decades because of economic and social difficulties", according to Malagasy sociologist Gracy Fernandes (Fernandes et al. 2010, 12). *The New Humanitarian* wrote in 2011 about several incidents, including a case where twins were found near a landfill, in a box (The New Humanitarian 2011). *The Huffington Post* has also published several cases of abandonment (King 2014).

Writings from the earlier history of Madagascar record this taboo as having existed for hundreds of years, not only recently, being linked to ancestral traditions. "In times gone by, twins were disposed of…" claims J.S. von Dacre, journalist and researcher of the phenomenon. "…twins were disposed of by being left in cowsheds to be trampled on; in the wildness to be eaten by wild animals, or even by being physically smothered. Hundreds of babies lost their lives over the years in this way" (Dacre 2019). In his book, *Les Musulmans à Madagascar et aux Iles Comores*, Gabriel Ferrand describes an aspect related to the birth of Antambahoaka twins: "When a woman among the Antambahoaka in the southeast of the island gives birth to twins, her mother and the midwife who helped her immediately move away to make room for the witchdoctor to strangle them; the family then enters after the departure of the witchdoctor (*mpamosavy*) and mourns the death of the children; they also get rid of the babies by throwing them into a swamp in broad daylight, where they quickly sink and do not return to the surface. The Antambahoaka claim that these children would not live anyway, that they would be mad or would later threaten the lives of their parents." (Ferrand 1893, 21).

All these things are intriguing and, at first glance, seem to speak of some very cruel and ruthless people. "Every culture has a right to their own beliefs" as Khanyo O. Mjamba states in an article. "Beliefs differentiate and bring variety among the people who live on this continent ('Africa' – author's note) and on this planet. Beliefs usually exist for a reason, even if they may be outdated and irrelevant to today's society. Some cultural practices, however, are impossible to justify" (Mjamba 2014).

The research of this article focuses on this taboo on twins in the Antambahoaka community, which has caused many contradictory discussions due to the interference of civil and criminal law (Law 23/2007) with the old Malagasy traditions, passed on by the village elders, as protectors of these traditions, from gods and ancestors (Chaudhuri 2019). This taboo on twins has attracted the attention of the local authorities in Mananjary since the 1970s, who tried implementing weak countermeasures, and then it came to the attention of international organizations that protect children's rights, such as UNICEF, which started much more complex and sustained proceedings for the eradication of this tradition only in 2007[1].

This study on the *prohibition of twins* consists of five parts. In the first part we seek to understand what a taboo means in the Malagasy tradition, and why it is stronger than civil and criminal law (The New Humanitarian 2011). Then we explore the ancestral practices of abandoning children born under a cursed fate in Madagascar. Here we also look at legends that were the basis for the formation of this tribal custom related

[1] The report written by a group of Malagasy researchers (Ignace Rakoto, Nelly Ranaivo Rabetokotany and Gracy Fernandes) on this abusive tradition against twins was published in the book *Les jumeaux de Mananjary: entre abandon et protection*, published by UNICEF in 2010.

to the abandonment of twins, but also the implications of not respecting it in the understanding of the kings responsible for traditions in the Antambahoaka group. How this ban affects twins and what the long-term effects are is the subject of the trauma caused by *fady kambana*. We then analyze the legal steps that have been taken to protect twins and to oppose this tribal tradition. Finally, we evaluate the solutions planned by the national and local authorities of Madagascar to eradicate this interdiction, including a case study similar to that of the Antambahoaka people, in the village of Fanivelona.

Taboos and their importance in the Malagasy context

One of the specific features of Africa and widespread in Madagascar is the sacred interdiction, called taboo. Jørgen Ruud, anthropologist who studied taboos for over twenty years in Madagascar, put together all his research on taboos in the book Taboo: A Study *of Malagasy Customs and Beliefs* (Ruud 1960). He defines the taboo as an interdiction (*fady* in Malagasy), referring to things that one is not allowed to do, objects that one is not allowed to come in contact with, words that one is not allowed to say, places that one is not allowed to enter and food that one is not allowed to eat (Ruud 1960, 280). All these things become *fady* actions (forbidden), *fady* words, *fady* places, to which both locals and foreigners must comply. *Fady* is a warning sign which indicates that it is very dangerous to deal with something that is forbidden (Ruud 1960, 280). The extent of conforming to these tribal taboos shows the respect for ancestors and deities with whom people identify, as well as respect for the community in which they live (Lambek 1992, 253, 255). If one disregards these ancestral taboos, one dishonors the ancestors, which will lead both to isolation from the community and to enduring the various curses that may come from the ancestors and from the 'supernatural powers' that guard the community (Ruud 1960, 265-267). On a personal level, desecration usually brings fear and illness, the most feared being leprosy, or even death, according to Brown (1978, 16). The desecration of taboos brings various disasters to the community, which can take the form of famine, cyclones, and disease (Ruud 1960, 267).

Arnold van Gennep, ethnographer specializing in the study of rites of passage in different cultures, considers taboo to be one of the fundamental elements of social and individual life among the people of Madagascar. It controls the daily life of all social categories on the Island, addressing both the poor and the noble, the head of the family and the whole tribe (Gennep 1904, 12). There are taboos related to all important aspects of life, from birth to death. Community life is strongly permeated by taboos at every level: family, sexual, religious, political, economic and relational. "The taboo can decide the parenthood and the way of life of the child to be born; it raises barriers between young people and limits or requires the territorial extension of the family; it sets the manner of work and the strict distribution of labor; it even dictates the menu of the people; it isolates the sick, it estranges the living from the dead; it preserves the power to the chief, and the goods to the owner; it ensures the worship of great fetishes, the perpetuation of ritual acts, the efficacy of medicines or amulets" (Gennep 1904, 12).

Because taboos are tied to faith, they are stronger than state laws, according to Ruud, noting the superiority of traditions over civil laws. While the state can punish the guilty with imprisonment or fines or forced labor, when one violates a taboo enforced by the ancestors (ny *manota fady*), one is placed in the situation of being severely punished and cursed by them, but especially by the supernatural forces, which means extreme danger not only for the individual, but also for the family and even the community, as well as one's future destiny (Ruud 1960, 266).

Because of this, the Antambahoaka people consider it more important to respect the ancestral culture than the state law, even if the latter can accuse them of child

murder. It is an extremely delicate and difficult to manage situation, which requires a lot of wisdom and knowledge of both parties involved. Accepting twins into Antambahoaka families means accepting the curse of the ancestors and gods over the community, which is clearly understood by any Malagasy familiar with traditional thinking. In a documentary made by *Unreported World*, one of the kings (*mpanjaka*) responsible for keeping the tradition explained in clear terms why it was difficult to lift the taboo on twins: “As long as we are alive, we will not dilute our ancestral culture. If you destroy your culture, you can no longer ask the ancestors to bless you” (Dacre 2019). Another *mpanjaka*, Nicole, from *Tranobe Satrokefa*, said with great determination: “If we do not keep this taboo, we will all die.” (France 24 English 2010). Kiki King, reporter for the Huffington Post, is outraged: “In the 21st century, in a village called Mananjary, twins are still seen as a curse. In this village, the dead ancestors are believed to be the ones that make the rules for the living!” (King 2018).

Ancestral practices and legends which were at the basis of the twins taboo in the Mananjary region

This custom of abandoning children is not just an isolated case in Madagascar. It is present all over the world, in different cultures in Africa, America and Asia. Ferrand gives some examples concerning the Lonny group on the west coast of Africa, where twins are buried alive. In Vancouver, among some of the First Nations, one of the twins is sentenced to death, and in Calabar, in the Guinea Gulf, they are considered deities of hell and are massacred immediately after birth (Ferrand 1893, 21).

Moreover, the habit of abandoning children in Madagascar is not only related to twins and it is not only related to the Antambahoaka group. It has existed in various forms in all of the ethnic groups in the past. It was related to the *vintana*, every person’s destiny, and the Malagasy astrological calendar of good, bad and cursed days (Ruud 1960, 28). Ruud explains how the days of the week and the time of birth determine a child’s immediate and distant future according to Malagasy astrologers’ thinking. If the child was born at a good time on a blessed day, the destiny, and implicitly the future, was going to be a good one for the child, the family and community. If the child was born at a cursed time, the family would have to get rid of him in various ways so as not to destroy their lives (Ruud 1960, 25-65). Lars Vig, missionary and researcher of Malagasy religious views, offers details about how these astrologers, *mpisikidy*, would remove a ‘cursed’ child from the family. In Hova and Betsileo communities, the baby was sacrificed either by pouring hot water over the child’s upturned face or by placing him on a termite mound, ending up being devoured by them (Vig 2001, 123). Etienne de Flacourt, French colonial governor and foreign historian of Madagascar, devotes an entire chapter to this custom, being greatly scandalized by these “wild practices of *ombiasy* (traditional healers), which advise fathers to abandon their children” (Flacourt 1661, 91-92).

Ignace Rakoto, former Minister of Education, claims that these are facts from the distant past of the Island and are no longer practiced in the Malagasy ethnic groups. He is very categorical when he states that these practices no longer represent the Malagasy. However, some customs remain, such as the taboo on twins in the Mananjary region, which is still preserved, despite western civilization influences in this part of the island. But this practice is about abandonment, not intentional killing. However, the taboo causes great suffering among Antambahoaka families (The New Humanitarian 2011).

There are two assumptions concerning the origin of the taboo on twins in the Antambahoaka kingdom, currently ruled by ten mpanjaka (kings), who strengthen the group’s cultural authority (The New Humanitarian 2011). The first assumption has to do with how twinning and the number two, which embody dualism, are understood in

Antambahoaka thinking. For certain ethnic groups, it can be a symbol of balance, but at the same time of opposition and can have potential threats in it (Fernandes et al. 2010, 15). There are ethnic families in Madagascar for whom the birth of twins is a blessing and a joy. Van Gennep quotes Durand as saying that among the Tanala people, the birth of twins was seen as a blessing from Zanahary, the supreme God (Durand 1898, 1275; Gennep 1904, 177). The Betsileo people blessed their children to multiply and have twins[2] (Dubois 1938, 373). On the contrary, for the Merina or the Antambahoaka, dualism represented rivalry, internal divisions, the weakening of a family's strength, revenge, antagonism, and the birth of twins was considered a curse (Fernandes et al. 2010, 15). The Merina did not abandon them both, but one of the twins was kept, and the other was given to another family from the extended family of the father of the twins (Gennep 1904, 176).

The second factor that influenced and strengthened the taboo on twins was the legends on which it is based. In their study on this phenomenon, Ignace Rakoto, Gracy Fernandes and Nelly Ranaivo Rabetokotany indicate three legends as a source, legends which have undergone various changes over the years (Fernandes et al. 2010, 27-29). The first legend is related to the Antambahoaka king called Raminia Rabevahoaka, who had twins (Cahudhuri 2019). His kingdom was attacked by enemies, another ethnic group from the island. Being heavily besieged, the king decided to retreat with his family to a safe place. The queen took her children and fled with the king. In the rush, however, one of the twins was lost on the way. Frightened that the child would be killed, the king returned with some of his soldiers to look for the child, which led to his massacre (Fernandes et al. 2010, 27). With her heart torn by grief over the loss of her husband and a large part of the family, the queen would have uttered a curse against all those who gave birth to twins: "It is forbidden for my descendants to have twins, and if they do, may the twins become robbers and may they succeed at nothing in life!" (Fernandes et al. 2010, 28). The second legend is related to the 'Muslim Antambahoaka ancestor' who came from around Arabia and settled on the island in the area of Ambodiaramy and Fanivelona, about 100km north of Mananjary. He found a wife whom he married and who bore him a child, and then twins. After giving birth to twins, she died unexpectedly. The Antambahoaka ancestor later married another woman, who gave birth to twins. After the birth of the twins, she died. He went through the same process with his third wife, which made him wonder. After thinking about the connection between the twins and the loss of his wives, the Antambahoaka ancestor swore an oath for himself and his descendants never to raise twins, an oath accompanied by curses for those who would break this taboo established by him (Fernandes et al. 2010, 28, 31). The third legend talks about an Antambahoaka king who had ten children, three pairs being twins. Due to the drought and famine that came over the coast, he made a curse oath that his descendants would no longer raise twins (Fernandes et al. 2010, 28).

All three legends have to do with crisis situations in life, in which the twins caused either the destruction of the family by massacre, the loss of a wife, or financial difficulties, and all three are connected to vows and curses made by ancestors. Because of this, the Antambahoaka kings who protect the tradition and perpetuity of the group, have imposed drastic restrictions on those who do not respect this custom on twins: they are not allowed to enter the *Tranobe* (Fernandes et al. 2010, 38), the place where the community leaders gather to judge various cases and to make decisions. Such is the case with Julia Raoarimanana, who, together with her husband, Auguste Tsimindramana,

---

[2] Dubois, Henry. 1938. *Monographie des Betsileo*. Paris: Institut d'Ethnologie, 373: "Maroa fara sy dimby; manaova kambalahy sy kambavavy!" (May you have may descendants: make twin boys and girls!).

opened the Center for the Reception and Transit of Abandoned Twins (CATJA) on July 27, 1987, who was denied access to the *Tranobe* (Fernandes et al. 2010, 45). Moreover, those who touch twins and seek their protection cannot be buried in the family tomb, which is of vital importance to any Malagasy, and that is a sign of ostracism and curse (The American 2021). If in the city of Mananjary, the taboo on twins is more relaxed because of the townspeople, in the villages the pressure and intimidation that is put on women and families who want to keep twins is very high, and they can be rejected even by their extended families.

Trauma of the abandoned twins and the families that abandoned them

The first complex study on abandoned twins was conducted in 2007 by CAPDAM (Center for Analysis and Perspectives concerning Madagascar's Development), administered by the Ministry of Justice of the Republic of Madagascar. It was called *L'étude sur les jumeaux de Mananjary (Study on the Twins of Mananjary)* (CAPDAM 2007) and had a part in the setting of Law 23 of 2007 on child rights and protection. Then UNICEF, through their office in Madagascar, developed a comprehensive study on this phenomenon in collaboration with Malagasy researchers Gracy Fernandes, Ignace Rakoto and Nelly Ranaivo Rabetokotany in 2008. Their report became the book *Les jumeaux de Mananjary, entre abandon et protection.*

In their report, they interviewed abandoned twins, some of them still children, some teenagers, and some adults, as well as their biological families and people who were willing to protect twins, to understand the suffering they went through. Thus, they found that the pressure imposed by the taboo on twins manifested itself in suffering on at least two levels (Fernandes et al. 2010, 5). The first suffering of the twins was of a *physical nature*. Twin babies were abandoned at birth. The mother no longer breastfed them and did not dress them for fear of the family repercussions. They were left at an orphanage or at a center for abandoned children if they were born in the city. If they were born in the country, they were placed at the base of a tree or on the side of a road or river, in a basket or in a box. Sometimes mothers would travel in a canoe for two to three days to abandon the children on the banks of the Pangalane River. During that time, they were deprived of medical care, the umbilical cord was untreated, and the two-to-three-day journey to the place of abandonment, as well as nakedness, lack of food, cold and shock, could all lead to the death of the babies (Fernandes et al. 2010, 49). Sylvester, Chief Executive Officer of CATJA Orphanage, in an interview to *SBS Dateline* said: "Usually, priests and nuns and local authorities bring them [twins] us. For example, we have one baby boy here who was found after two days. He was almost dead. His skin... it had completely dried out and was coming out." (Dacre 2019). In most cases, their life expectancy is dramatically reduced, and 25% of them die within three months due to malnutrition, dysentery, malaria, and other tropical diseases in the Pangalane river area (Fernandes et al. 2010, 50).

A second trauma that Gracy Fernandes and her colleagues found in the twins was *psychological trauma* or *social trauma* related to abandonment. Abandonment trauma manifests itself through a discriminatory lifestyle from society, as if they were not considered legitimate human beings. This puts a mark on their whole life (Fernandes et al. 2010, 50). If they live in a rural community, the rejection is very obvious, while in the urban community of Mananjary, the discrimination is less visible, but still felt by those who live it.

The Antambahoaka community forbids all twins, as well as those who care for them, to take part in three fundamental rituals. First, twins are not allowed to have *Sambatra*, the collective circumcision ceremony that takes place every seven years, every 'Friday year', and an uncircumcised Malagasy is considered *fady* for the

community. Next, the twins are forbidden to participate in the ritual celebration of trampling the rice fields of *mpanjaka* or *hosin'ny mpanjaka*. But the greatest discrimination and hurt is the prohibition of twins being buried in the family tomb, *fasaña*, which means that they will never be able to benefit from the status of ancestor and their name will never be invoked among the Antambahoaka ancestors who bring blessings to families and communities (Fernandes et al. 2010, 24).

To better understand the *psychological pain* that twins feel from society and the resentment that rejection produced in their lives, Fernandes gives an anonymous but representative case from among those they met and interviewed. A twin child was extremely hurt at the age of 12, when one of his relatives, in front of him, threw away the glass which he had used to drink, considering it dirty. Although at the time of the interview, he was 28 years old, married and had a family, that memory remained a bitter pain in his heart because it revealed the stigma he had in the Antambahoaka culture as a twin. He now works as a motorcycle mechanic and receives everyone who comes to him for repairs. However, the Antambahoaka who know him keep their distance and do not shake his hand, unlike the Betsileo who shake his hand and with whom he managed to build close friendships (Fernandes et al. 2010, 50).

Measures against the twins taboo and the protection of Law 23/2007 in Madagascar

The Mananjary community became split in two because of the taboo of twins. Some of the people in the city took action to protect the abandoned twins. CATJA (Center for the Reception and Transit of Abandoned Twins) was established in 1987 to receive these children and to provide them with a bed, food, clothing, medical care and access to education or vocational training for older twins (The New Humanitarian 2011). For newborn twins, adoption solutions were sought in the extended families of the women who gave birth to twins, in families from other ethnic groups in the same area, or internationally, in families in other countries. More than 300 pairs of twins were adopted by Malagasy and foreign families through CATJA over a period of about 25 years since their establishment (The New Humanitarian 2011).

Bringing the taboo of Mananjary twins to the attention of the international public opinion and the pressure of international organizations that protect children's rights finally led to the adoption of Law 023/2007 on August 20, 2007, concerning child rights and protection (Chaudhuri 2019). Law 023/2007 considered all the conventions and declarations related to international child rights from 1924 to 2007 (Wikipedia 2021), but incorporated the ten principles that give particular protection to children on the decisions of the *International Convention for Child Rights* in 1989 (Fernandes et al. 2010, 11). Among the principles that specifically address the issue of abandonment of twins, we mention principles 6 and 10. Principle 6 states that "the child, for the harmonious development of his personality must grow up in a family and in an atmosphere of happiness, love and understanding", and was introduced in Law 023/2007 Article 6: "Every child has the right to life, survival and the harmonious development of his personality." and Article 9: "The child occupies a privileged place in the family: he has the right to material and moral security as far as it is possible." Principle 10 (a) states: "The child shall be protected from practices which may promote racial, religious and any other form of discrimination." and is found in Article 4: "No child shall be subjected to any form of neglect, discrimination (abuse), exploitation, violence, cruelty and oppression."

Nelly Ranaivo Rabetokotany finds that Law 23 introduced some innovations compared to the principles of the International Convention on Child Rights. The innovations concern both the redefinition of 'child abuse' in Chapter III of the law,

Articles 66-68, which extends the definition of abuse to avoid any kind of child abuse, as well as “the obligation to signal cases of child abuse that are attempted on a child, by imprisonment and severe fines” (Fernandes et al. 2010, 54). In defining the term ‘abuse’, the first paragraph of Article 67 states: “Abuse is defined as any form of violence, assault or physical or moral brutality, abandonment or neglect, ill treatment or exploitation, which includes sexual violence on a child by his parents, legal representatives or any other person.” And with regard to fines for not reporting abuse, Article 62 stipulates imprisonment of between one month and three years and fines of between 72,000 Ariary (20 Euro) and 4,500,000 Ariary (1,000 Euro).

Once Law 23/2007 was enacted, a great barrier in its practice was evident because of those who respected the taboo on twins (parents of twins, communities and mpanjaka - kings or heads of families). The mpanjaka are not commonplace people, but traditional kings or heads of families, highly respected not only by the Antambahoaka group, but by all other ethnic groups, people with great influence in society and community. Called to give statements on television in December 2007, they firmly stated that they would not abandon their ancestral customs (Fernandes et al. 2010, 55). They were even more convinced that society, and especially foreigners, despised the ancestral traditions of the group, while they were appointed as guardians and keepers of the traditions by their Malagasy ancestors and gods.

These public disputes which could potentially lead to violent conflict situations, because of the high influence of the ten Antambahoaka mpanjaka, caused the public and judicial administration to become cautious. According to Dr. Ignace Rakoto, head of an association fighting against the taboo on twins, it is good to be flexible and wise in this persuasion battle, “using carrots and sticks, but more carrots than sticks”. A forceful attempt to lift the taboo on twins both by forcing the parents of twins to not abandon them and by forcing the *mpanjaka* to abandon this tradition of the curse of the twins would make matters worse (The New Humanitarian 2011).

Seeking multiple long-lasting solutions to lift the taboo on twins

Mananjary judicial authorities understand that the protection of twins and the removal of the taboo of the curse of twins is a long-term marathon that may last for a generation. Since 2007, when the law on child protection was passed until today, the law is preferentially applicable. The Malagasy state is still working to communicate with the traditional Antambahoaka leaders and to transform rural communities, so that they become more open-minded about the taboo on twins.

In the ‘battle’ against the curse of the twins, they sought different strategies to work from within on the mentality of the guardians of the custom (*mpanjaka*), to change the mentality in the Antambahoaka villages and communes that have this faith, and to change the hearts of parents who are often pressurized to submit to the taboo, despite the trauma they themselves go through by abandoning their own twins.

Through various meetings, conferences, and school lessons, they try to create collective mentality openness, so that people understand that twins are gifts from Zanahary (the Creator) and therefore they are good, not bad. As one of the *mpanjaka* from another ethnic group stated at the event organized by the Ministry of Justice on November 17-18, 2008: “Twins are born of divine will. Zanahary never gives evil fetuses” (Fernandes et al. 2010, 64).

Oleena Chaudhuri believes that the illiteracy rate and poverty keep people enslaved to superstitions and traditions, defying the dignity of human existence. She proposes that a good solution would be for Madagascar to take action to increase literacy and school development, to make the new generation aware that old beliefs,

although good, may contain abusive, immoral and even against humanity elements (Chaudhuri 2019).

On the other hand, public authorities need to address the issue from the outside as well, strengthening the applicability of Law 23/2007 through sanctions and imprisonment applied to those who abandon their children in a very visible way to the community, but also through other actions in which the State offers protection to children and families with twins, providing a support fund for the biological families of twins starting from the birth of the children until they reach adulthood (18 years old) (Fernandes et al. 2010, 58). The birth of a child brings costs. The birth of twins brings additional costs: milk packages, clothes, blankets, etc. (The New Humanitarian 2011). The parents of twins need to be helped, because they are under double pressure: one is the public disapproval of the community, due to disobedience to the ancestral Antambahoaka taboo; then there is the financial pressure of raising two children at once. Estimates of the cost of providing for twins began to be calculated in 2009, so that the Malagasy government could develop a government fund for the Mananjary taboo on twins. A group of about 50 people was considered, which included parents and twins who go to school, as well as assisting mothers who gave birth to twins with milk, clothes, blankets and other strictly necessary things. The one-year study found that the annual budget that the Malagasy state should allocate to each group of 50 people with twins would be $10,000 (Fernandes et al. 2010, 58).

In the battle to change the mentality of traditional chiefs and families with twins, the Malagasy state invited people from a neighboring region, the village of *Fanivelona*, about 100km north of Mananjary, who had eradicated the taboo on twins in 1982. According to legends, they are the descendants of a mixed family where the father belonged to the Zafindrohova clan (descendants of Rohova) and the mother was of the Antambahoaka clan, so the taboo of abandoning twins was part of the Fanivelona, Nosy-Varika, Ampômanitra and Ambodiaramy tradition for hundreds of years (Fernandes et al. 2010, 67). Although it brought pain to the families, it could not be abandoned, for fear of upsetting their gods and ancestors and inviting curses over their families. The years 1981 and 1982 proved to be very difficult economically in the region, due to the cyclones that swept the coast and due to political crises in the capital, which caused the Malagasy currency to be devalued by 15% (Fernandes et al. 2010, 69).

Under these conditions of poverty, the maternity hospital in Nosy-Varika was unable to keep the abandoned twins, and the doctor, midwife and nurse asked the traditional leaders to come up with a solution for families to keep their twins, lifting the ancestral custom. Aware of this ‘bad custom’ within the community, the 56 *mpanjaka* and six *mpanjaka-tangalemena*[3] gathered in a large gathering called *kabaro* (public discourse) and decided to lift this taboo on July 5, 1982, a day dedicated to the invocation of deities and ancestors around the sacred stone in the center of the village of Fanivelona.

On July 5, 1982, all the families of the four villages gathered at Fanivelona around the sacred stone and brought sacrifices to the gods and ancestors, slaughtering oxen and sprinkling their blood on the sacrificial stone, asking that they receive their sacrifice and allow them to abandon this taboo. Three of the *mpanjaka-tangalamena* publicly took the role of scapegoats, asking that in case the gods become upset over abandoning the custom, the curse (*tahiña*) would fall on them (Fernandes et al. 2010, 69). But they lived long and well, a sign to Fanivelona that the divine powers and ancestors were not upset by the decision. The written statement on this occasion says: “From this day on,

[3] Among the Southern Betsimisaraka, the *tangalamena* (lit. he-holding-the-red-staff) is the priest who invokes deities, ancestors, and spirits, while the *mpanjaka* is the chief of descendants. The two functions can be fulfilled by one and the same person or assigned to two different people.

Fanivelona is allowed to keep twin children, who are gifts from the gods" (Fernandes et al. 2010, 73). Thus, the taboo on twins in all these villages and communes was abolished, starting with Fanivelona, Nosy-Varika, Ampômanitra and Ambodiaramy.

Although more than 34 years passed since the Mananjary authorities took action and 14 years since Law 23/2007 was adopted, the taboo on the curse of twins still remains an unresolved dilemma. Some oppose the 'cruel' custom, often supporting twins through associations, others remain deliberately silent on the subject, and others clearly side with the ancestral laws. From time to time, world personalities, such as Miss World Madagascar 2020 (Nellie Anjaratiana), raise this issue to the public and openly offer their moral and financial support to help Mananjary associations that take care of abandoned children (Anjaratiana 2021). It is clear, however, that it may be a long time before this issue becomes a thing of the past. The best approach for now, it seems, is to be sensitive to all positions, but especially to the pain of abandoned children, providing long-term assistance on every level that these children have to endure: emotional, financial, legal and social. In Mananjary, children continue to be abandoned first by their parents and then by their country. There is so much to be done in Madagascar that the priority of abandoned children may return to the nation's agenda only when international organizations are scandalized again.

References

Al Jazeera English. 2022. „Madagascar cyclone: More extreme weather slams Southern Africa". Published on February 8, 2022. *Al Jazeera English*. https://www.youtube.com/watch?v=9MdS7xnWomI. Accessed on March 5, 2022.

Al Jazeera. 2022. „Madagascar: Death toll from Cyclone Batsirai rises to 120: Authorities struggle to accommodate about 30,000 people displaced by the storm as the number of casualties jumps". Published on February 11, 2022 by *Al Jazeera*. https://www.aljazeera.com/news/2022/2/11/madagascar-death-toll-from-cyclone-batsirai-rises-to-120. Accessed on March 5, 2022.

Brown, Mervyn. 1978. *Madagascar Rediscovered: A History from Early Times to Independence*. London: Damien Tunnacliffe.

Campbell, Gwyn R. 2005. „Madagascar: Prehistory and Developments to c. 1500". In *Encyclopedia of African History*, edited by Kevin Shillington, vol.3: 872-873. New York: Fitzroy Dearbon.

Capdam, 2007. *Etude sur les jumeaux de Mananjary*, Ministère de la Justice.

Chaudhuri, Oleena. 2019. "The Devil's Duplicates: The trouble twins of Madagascar." January 28, 2019. *Politheor*. https://politheor.net/the-devils-duplicates-the-trouble-twins-of-madagascar/. Accessed on March 1, 2022.

Dacre, J.S. von. 2019. "Why Twins in Madagascar are abandoned of left to die." October 5, 2019. *Insideover*. https://www.insideover.com/society/why-twins-in-madagascar-are-abandoned-or-left-to-die.html. Accessed on March 2, 2022.

Declaration of the Right of the Child, edited on November 23, 2021, at 00:13 (UTC). https://en.wikipedia.org/wiki/Declaration_of_the_Rights_of_the_Child.

Declaration of the Rights of the Child. 1959. United Nations: Human Rights – Office of the High Commissioner,https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/1DeclarationoftheRightsoftheChild(1959).aspx. Accessed on March 6, 2022.

Declaration of the Rights of the Child. https://cpd.org.rs/wp-content/uploads/2017/11/1959-Declaration-of-the-Rights-of-the-Child.pdf. accessed on March 6, 2022.

Dubois, Henry. 1938. *Monographie des Betsileo*. Paris: Institut d'Ethnologie.

Fernandes, Gracy, Rakoto Ignace and Rabetokotany, Nelly Ranaivo. 2010. *Les jumeaux de Mananjary: entre abandon et protection*. UNICEF.

Ferrand, Gabriel. 1893. *Les Musulmans à Madagascar et aux Iles Comores*. ParisŁ : Ernest Leroux.

Ferrand, Gabriel. 1896. Notes sur la région comprise entre les rivières Mananjary et Iavibola, Paris: Soc. Geogr.; Ferrand, Gabriel. 1893. Les Musulmans à Madagascar et aux Iles Comores, fasc. II, Paris: Ernest Leroux.

Film "Madagascar: the curse of twins." Published on April 21, 2010 on Youtube. *France 24 English*. https://www.youtube.com/watch?v=4GH48I8IQXk. Accessed on March 1, 2022.

Flacourt, Etienne de. 1661. *Histoire de la grand isle Madagascar*. Paris: Gervais Clovzier.

Gennep, Arnold van. 1904. *Tabou et Totémisme à Madagascar*. Paris: Ernest Leroux.

http://jafbase.fr/docAfrique/Madagascar/Loi%20droits%20et%20protection%20des%20enfants%20Madagascar.pdf. Accessed on March 8, 2022.

King, Kiki. 2014. "The Cursed Twins of Madagascar". Published on May 9, 2014. *Huffpost*. https://www.huffingtonpost.co.uk/kiki-king/unreported-world-twins-in-madagascar_b_5293247.html. Accessed on March 2, 2022.

King, Kiki. 2018. "Cursed Twins of Madagascar". Published on July 27, 2018. *FirstHand*. https://www.frsthand.com/story/cursed-twins-of-madagascar-. Accessed on March 10, 2022.

Lambek, Michael. 1992. "Taboo as a Cultural Practice among Malagasy Speakers". In *Man* 27(2): 245-266. DOI: https://doi.org/10.2307/2804053.

LOI N° 2007-023 DU 20 AOUT 2007 sur les droits et la protection des enfants, published by *Assemblée Nationale de la Republique Madagascar*. https://www.assemblee-nationale.mg/wp-content/uploads/2020/11/L-2007-023-Droits-et-protect%C2%B0-des-Enfants.pdf. Accessed on March 7, 2022.

Mjamba, Khanyo Olwethu. 2014. "Madagascar's 'cursed' twins taboo." May 8, 2014. *This is Africa*. https://thisisafrica.me/lifestyle/madagascars-cursed-twins-taboo/. Accessed on March 2, 2022.

Ruud, Jørgen. 1960. *Taboo: A Study of Malagasy Customs and Beliefs*. Oslo: Oslo University Press, New York: Humanities Press.

The American. 2021. „The fady kambana in Madagascar: a discriminatory custom". Published on July 9, 2021. http://theamerican.mg/index.php/destination-madagascar/item/264-the-fady-kambana-in-madagascar-a-discriminatory-custom. Accessed on March 10, 2022.

The New Humanitarian. 2011.„Twins taboo splits a community". Published on November 3, 2011. https://www.thenewhumanitarian.org/report/94124/madagascar-twins-taboo-splits-community. Accessed on March 2, 2022.

Vig, Lars. 2001. *Les Conceptions religieuses des anciens Malgaches*. Antananarivo: Ambozantany, Paris: Karthala.

RAIS Journal for Social Sciences | VOL. 6, No. 1, 2022
ISSN 2574-0245 (Print) | ISSN 2574-1179 (Online) | DOI:10.5281/zenodo.6574785

Reopening of Criminal Proceedings in Romania in Case of a Trial in Absentia

Bogdan BUNECI

Ecological University of Bucharest, Romania, Law School, bogdanbuneci@yahoo.ro

ABSTRACT: The reopening of the criminal trial in Romania in the case of trial in absentia of the convicted person is an extraordinary remedy of retrial whereby a final judgment of conviction will be retried if the person definitively convicted was not summoned to the trial and did not otherwise have official knowledge of it, thereby guaranteeing the right to a fair trial and, in particular, the exercise of the right of defence in a new trial cycle, which implies the possibility to be heard, to cross-examine witnesses or parties to the proceedings and to produce evidence in his defence, both as to the facts and the circumstances. If the retrial confirms the factual situation and the guilt of the defendant in the first trial cycle, when he was convicted in absentia, his request can be admitted only with regard to the individualisation of the sentence (if there are mitigating circumstances), with the consequence of pronouncing a new judgment than the one previously established.

KEYWORDS: trial in absentia, conviction, reopening of criminal proceedings, extraordinary remedy, appeal in the interest of the law

Short history

The regulation of the institution of reopening of criminal proceedings in the case of trial in the absence of the convicted person has a historical tradition in Romania, in the sense that it was regulated for the first time in the Code of Criminal Procedure of 1864 (in force from 2nd December, 1864 to 18th March, 1936), which stated in the provisions of Art. 203 and art. 483 of the Code of Criminal Procedure, that when judgments were handed down in absentia, they could be appealed by *"opposition"* within 15 working days, and if the convicted person had neither domicile nor known residence, the opposition period was counted from the day of publication of the sentence in the official gazette. Similar regulations were also found in the 1936 Code of Criminal Procedure (in force from 19th March, 1936 to 31st December, 1968), in the event of the accused's unjustified absence from court, he was tried in absentia, and if the last domicile or residence was unknown or the accused was abroad, the *ordinance* containing the facts committed and the *warrant of arrest* when issued was posted at the door of the jury room and published in one of the most widely read newspapers. There was the possibility that if it was established that the accused was not on the country's territory and that this absence was not due to the fact for which he was being tried or when it would be absolutely impossible for him to appear within the time-limit specified in the ordinance issued by the President of the Court, this court could, on request, grant another time-limit (*the time-limit could be extended if it was proved that the reason for his inability to appear had not ceased*). This procedure also applied to defendants on remand, when they did not appear for trial and could not be arrested under the provisions of the Code of Procedure of that time.

After the entry into force of the Code of Criminal Procedure of 1968 (published in the Official Gazette no. 145 of 12th November, 1968), this institution was transferred to the institution of recourse, and after the 1990s, when the remedy of appeal was also introduced, the convicted person could lodge an appeal or an recourse beyond the time

limit when he had missed all the trial periods as well as the reference of the judgment, but not later than 10 days from the date, as the case may be, of the commencement of the execution of the sentence or the commencement of the execution of the civil compensation provisions (Articles 365 and 385[3] of the Code of Criminal Procedure of 1968). Also in 2010, Article 522[1] on retrial of persons tried in absentia in the event of extradition was introduced into the provisions of this Code, to the effect that, on extradition or surrender under a European arrest warrant of a person *tried and sentenced in absentia*, the case could be *retried* by the court which had tried the case at first instance, at the request of the sentenced person.

Under Law No. 302/2004 on international judicial cooperation in criminal matters (republished in the Official Gazette, Part I, no. 411 of 27th May, 2019), where an European Arrest Warrant is issued on the basis of a conviction handed down in the absence of the defendant, and where it appears from the case file that the convicted person has not been personally served with the conviction, the issuing court shall inform the executing judicial authority that:

a) within 10 days from the reception of the surrendered person in the remand and pre-trial detention centres, if applicable, the judgment of conviction shall be served on him personally in accordance with the Code of Criminal Procedure;

(b) At the time of delivery of the judgment of conviction, the surrendered person shall be informed that he is entitled, as appropriate:

- To appeal in accordance with the Code of Criminal Procedure, or
- To a retrial in accordance with the Code of Criminal Procedure.

Given the difficulties created in practice by the provisions of Article 522[1] of the Code of Criminal Procedure of 1968 and to ensure the compatibility of Romanian legislation with the standards imposed by the case law of the European Court of Human Rights, the Code of Criminal Procedure of 2010 (Law no. 135/2010, which entered into force on 1st February, 2014) introduced as a *new extraordinary remedy* of retrial - the reopening of criminal proceedings in the case of trial in absentia of the convicted person. As stated in the explanatory memorandum of the current Code of Criminal Procedure, the defendant's appearance at the trial has a particular importance both from the point of view of the defendant's right to be heard and of the need to verify the accuracy of his statements, to respect the right of defence and at the same time to give the court the opportunity, on the one hand, to form a direct impression of the defendant and, on the other hand, to listen to the statements he intends to make.

The newly introduced institution stipulated in the provisions of Articles 466 - 469 of the Criminal Procedure Code (reopening of criminal proceedings in case of trial in absentia of the convicted person) is in line with Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, a person tried in absentia who has been definitively convicted must be guaranteed the right that, after conviction, the court may rule again, after hearing him on the merits of the charge in fact and in law, only if it is unequivocal that he has waived his right to be present in court and to appear or if he has not evaded the trial.

Moreover, the European Court of Human Rights recognises *the right to reopen proceedings* only if the judgment in absentia has not been the consequence of a voluntary waiver by the accused of the right to be present in court in order to prepare his defence.

Community rules on the rights of the accused person to be present in person at the trial and the right to a fair trial

The European Convention on Human Rights (signed on 4th November, 1950 in Rome and entered into force on 3rd September, 1953) establishes in Article 6 the right to a fair

and public hearing within a reasonable time by an independent and impartial court, to inform the accused promptly in a language which he understands about the nature and cause of the accusation against him, to *participate at the trial* and to be given legal assistance.

Similar provisions can be found in the Charter of Fundamental Rights of the European Union (published in the Official Journal of the European Union C326/391 of 26.10.2012), in Articles 47, 48 paragraph (2) and 53.

Subsequently, after the adoption of the Treaty on European Union (published in the Official Journal of the European Union C326/391 of 26.10.2012), it was adopted the Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, to consolidate the procedural rights of persons and encouraging the application of the principle of mutual recognition to *decisions rendered in the absence of the person concerned at the trial*. This decision strengthened the procedural rights of persons who have been absent when sentenced or when a European Arrest Warrant issued for the purpose of executing a custodial sentence or measure involving deprivation of liberty has been executed; the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union; the application of the principle of mutual recognition to judgments and probation decisions for the supervision of probation measures and alternative sanctions.

Thus, this framework decision strengthens the procedural rights of persons subject to criminal proceedings by laying down common rules for the recognition and/or enforcement in one Member State (*the executing Member State*) of judicial decisions rendered in another Member State (*the issuing Member State*) following proceedings at which the person concerned was not present.

In order to strengthen certain aspects of the presumption of innocence and the right to be present at trial in criminal proceedings, Directive 2016/343 of the European Parliament and of the Council of 9th March, 2016 (published in the Official Journal of the European Union No L65/1 of 11th March 2016) was adopted. According to Article 8 of this Directive, it states that suspects and accused persons have the right to be present at their own trial, they must be timely informed about the trial and the consequences of non-appearance, be represented by a legal counsel authorised to represent them, and a conviction may be handed down if the accused cannot be located despite reasonable efforts to do so. The same Directive provides in Article 9 for the right to a retrial in cases where the conditions set out in Article 8 have not been met, so that the persons concerned have the right to a retrial or to another remedy which *allows the merits of the case to be re-examined*, including the examination of new evidence, and which could lead to the original decision being quashed. Through this retrial, Member States shall ensure that suspected and accused persons have the right to be present, to participate effectively, in accordance with the procedures provided for in national law, and to exercise their right of defence.

Some considerations on the institutions of criminal procedural law related to the reopening of criminal proceedings in Romania in case of trial in absentia

In Romanian procedural law, the rules of criminal procedure regulate the conduct of criminal proceedings and other judicial procedures in connection with a criminal case. There is a separation of judicial functions, namely:

- The prosecution function, where the prosecutor and the criminal investigation bodies gather the evidence necessary to establish whether or not there are grounds for arraignment;

- The function of disposing of a person's fundamental rights and freedoms during the prosecution phase, which are disposed of by the judge of rights and freedoms when they are restricted;
- The function of verifying the legality of arraignment or non-arraignment, where the preliminary chamber judge is competent;
- The trial function, which is carried out by the court in legally constituted panels.

In the first phase of the criminal proceedings, *the criminal prosecution is carried out* with the aim of gathering the necessary evidence on the existence of offenses, identifying the persons who have committed an offense and establishing their criminal liability in order to ascertain whether or not it is appropriate to order the arraignment.

When it is established that the criminal investigation material shows that the offense exists, that it was committed by the accused and that he is criminally liable, the indictment shall be issued. There may be situations in which the case is classified when the essential substantive and formal conditions of the referral have not been met or one of the cases preventing criminal proceedings exists. The accused may be *released from criminal prosecution* for certain offenses where a fine or a prison sentence of up to 7 years is provided for, if the prosecutor finds that there is no public interest.

The prosecutor's referral to the court by indictment is made to the preliminary chamber of the courts, whose purpose is to verify, after referral, the competence and legality of the referral to the court, as well as to verify the legality of the administration of evidence and the performance of acts by the prosecuting authorities. If the preliminary chamber judge finds that the conditions provided for by the law are met after the submission of the requests and exceptions, he shall order the commence of the trial by a court resolution which shall be subject to appeal within 3 days of its communication.

The third phase of the criminal proceedings follows, namely *the trial on the merits* of the criminal facts, which is subject to ordinary *appeal* within 10 days of notification of the judgment.

The decision of the court of first instance may consist either in a conviction of the defendant, or a decision to waive or defer the sentence, or in some cases a suspended sentence under supervision.

After the decision of the appeal becomes final and can be enforced, it may also be subject to extraordinary remedies, such as an *appeal for annulment* (Art. 426 lit. a of the Code of Criminal Procedure when the appeal trial took place without the legal summons of a party or when, although legally summoned, the party was unable to be present and to inform the court of this impossibility), the *appeal in cassation* provided for by Art. 434 lit. b) Criminal Procedure Code, where the decisions rejecting the request for reopening the criminal proceedings in case of trial in absentia cannot be appealed, *the review* provided for in Articles 452 - 465 Criminal Procedure Code and the *reopening of the criminal proceedings in case of trial in absentia of the convicted person* (Articles 466 - 469 Criminal Procedure Code).

Conditions to be met for the reopening of criminal proceedings in the case of a sentenced person being tried in absentia

As stated in the provisions of Article 466 paragraph 1 and 5 of the Code of Criminal Procedure, a person who has been finally sentenced and has been tried in absentia may request the reopening of the criminal proceedings *within one month* from the day on which he became aware, by any official notification, that criminal proceedings have been conducted against him.

The purpose of reopening the criminal proceedings of the person convicted in absentia is to guarantee the right to a fair trial, as provided for in Article 6 of the

European Convention for the Protection of Human Rights and Fundamental Freedoms, of the person convicted in absentia, by respecting the principles of contradiction, equality of arms, the exercise of the right of defence in person, immediateness, the right to be heard and the knowledge of the truth, and the right to examine witnesses or parties to the proceedings.

The High Court of Cassation and Justice - *The Panel for Preliminary Ruling on Questions of Law, in decision no. 22/2015* states that the notion of "*criminal proceedings*" used in the name of the extraordinary remedy of reopening the criminal proceedings in the case of trial in absentia of the convicted person means the trial phase, using the method of restrictive interpretation, the legislator seeking to ensure the possibility of resuming, under the law, the trial of the case, from the analysis of the provisions of Art. 466 paragraph 1 and 5 of the Code of Criminal Procedure, it follows that only final criminal judgments may be subject to this extraordinary procedure: *convicting decisions, decisions waiving the application of the penalty and decisions postponing the application of the penalty*, by means of the application for the reopening of the criminal proceedings it is possible to criticize only final decisions resolving the substance of the case (conviction, waiver of the application of the penalty or postponement of the application of the penalty), the person convicted in absentia being able to challenge not only the final decision handed down in his case, but also the procedure for conducting the trial in his absence, thereby infringing the principles of contradiction, immediateness, which are basic rules of the trial. This appeal differs from an *appeal for annulment* or *revision* due to the fact, in these two extraordinary remedies, the court examines whether the formal conditions for verifying the merits of the application and the grounds supporting it have been met and not the existence of the act, the commission of it by the defendant, his guilt, his criminal liability or the legal status. Moreover, Article 466 paragraph 1 Criminal Procedure Code highlights the existence of a criminal trial with a criminal action set in motion, a situation specific to a case that is tried in first instance or in appeal, and by the way of regulation, the reopening of criminal proceedings cannot be extended to all categories of proceedings (appeal for annulment, revisions, other requests), the contrary interpretation leading to the overlapping of this special procedure over other procedures (categories), also of a special nature that would jeopardize the *principle of res judicata*.

The criminal procedural provisions of Art. 466 paragraph 2 of the Code of Criminal Procedure state that this extraordinary remedy is available to the convicted person tried in absentia who was not summoned to the trial and did not otherwise officially know about it, i.e., although he was aware of the trial, he justifiably absented from the trial and could not inform the court.

The summoning of a person to appear before the criminal prosecution body or the court is done by written summons, which may also be done by telephone or telegraphic note, and a record is drawn up (Article 257 of the Code of Criminal Procedure). This summons is made to the address where the suspect, the accused or the parties to the proceedings live, but the suspect and the accused are obliged to inform the judicial body of the change of address within 3 days.

The summons may also be served on other persons who live with the *suspect* or *defendant*, and when this cannot be done, the procedural officer shall draw up a report stating the circumstances found and shall forward it to the judicial body that ordered the summons. It is very difficult to believe that in a criminal case a person tried in absentia would not have been summoned to the trial, since the judicial authorities are obliged to do so, as provided for in Article 10 of the Code of Criminal Procedure - the right to a defence or in Article 307 when the person is informed that he is a suspect or when criminal proceedings are initiated under Article 309 of the Code of Criminal Procedure.

There are other legal provisions mentioned in the Code of Criminal Procedure that there may be a situation in practice where a suspect or defendant has never been summoned in criminal proceedings. As regards the lack of any formal notification of the trial, we consider this situation plausible, but there are several situations provided for in the Code of Criminal Procedure when the suspect or defendant is informed in any other way that he has this status in criminal proceedings. We are referring to situations where the suspect or defendant participates in the carrying out of acts of criminal prosecution or is actually informed of the procedural acts carried out in the case, in the case of flagrant offenses, when the police inform him of his status as a suspect, when the criminal prosecution order is served on him or when the indictment is served on him by the preliminary chamber judge, and finally when the criminal sentence is served on him.

In the course of the trial, the irregularity with regard to the summons is taken into account only if the party missing at the court date at which the irregularity occurred, invokes it at the next deadline at which he is present or legally summoned, the provisions on the sanction of nullity applying accordingly (Article 263 paragraph 1 of the Code of Criminal Procedure). It follows from reading this text that when the defendant who had knowledge about the court date was absent with justification and could not be summoned, the court may do so at the next term with the consequence of redoing the essential documents in conditions of adversarial conditions. If the defendant has not raised these matters, he may be deprived of this right and will not be able to raise them subsequently, either in an ordinary appeal or in an extraordinary appeal such as the reopening of criminal proceedings in the case of a judgment in absentia.

The same Article 466 paragraph 2 states that a convicted person shall not be deemed to have been tried in absentia if: he has appointed a chosen defence counsel or a representative, if they have appeared at any time during the criminal proceedings; after the sentence has been communicated in accordance with the law, he has not lodged an appeal, has waived the lodging of an appeal or has withdrawn the appeal.

The same situation is when the convicted person has requested a trial in absentia during the criminal proceedings. As the case law of the European Court of Human Rights has shown, there is no longer an obligation to retry when persons who have unequivocally waived their right to be present in court and to defend themselves, and national courts have rejected requests for retrial in absentia when they have found that the defendant, during the criminal proceedings, has left the country and absconded both in the course of the proceedings and at trial, and has been represented by a defence counsel appointed by the court during the criminal proceedings. The defendants who participated in the retrial in the first instance, appealed, participated in the first trial sessions, after which they were arrested in another country and no longer participated in the trial, and those who, before the referral to the court, left the territory of Romania without being able to claim that they were tried and sentenced in absentia, were not entitled to this remedy.

Moreover, in the case law of the European Court of Human Rights in R.R. v. Italy (2005), the Court insisted that the defendant must unequivocally waive his right to be present in court in order to be able to discuss compliance with Article 6 of the Convention in the event of a conviction in absentia. It has therefore been held that a sentenced person who cannot be said to have unequivocally waived his right to be present at his or her own trial is entitled to have the proceedings reopened.

When we have a person who has been finally sentenced in absentia and a foreign state has ordered his extradition or surrender on the basis of a European Arrest Warrant, the one-month deadline for reopening the criminal proceedings runs from the date on which, after bringing him into the country, he was notified of the sentence (Article 466 paragraph 3 of the Code of Criminal Procedure).

Referral to the court for reopening of criminal proceedings

A person tried in absentia may apply for the criminal proceedings to be reopened *within one month* of the day on which he became aware, by any official notification that criminal proceedings had been instituted against him, and shall apply to the court which heard the case at first instance.

The competent court is still the first court, even if at the time the application was lodged, due to the amendment of the provisions of the criminal procedure law, it no longer had jurisdiction to hear the merits of the case at first instance.

In cases where the person tried in absentia is deprived of liberty, the application may be lodged with the administration of the place of detention, which will immediately send it to the competent court. The request must be made in writing, stating the *factual and legal grounds* for the request, both with regard to the conditions laid down in Article 466 of the Code of Criminal Procedure, which specifies the conditions for the reopening of the criminal proceedings in the case of a trial in absentia of the convicted person, and may be accompanied by copies of the documents which the person tried in absentia intends to use in the proceedings, certified as being in conformity with the original (if they are written in a foreign language, they must be accompanied by a translation) - Article 437 paragraphs (3) - (4) Code of Criminal Procedure.

It is possible that the application does not meet the conditions laid down by law and the court will then ask the applicant to *complete* the application by the first court date or, where appropriate, within a short period set by the court.

Although there is no legal provision on the right of the person to *withdraw the request for reopening of the criminal proceedings*, we consider that in this situation it is similar to the resolution of requests for postponement or interruption of the execution of the prison sentence, revision and appeal against execution, but the court must take note of this manifestation of will by a request to this effect. (See in this respect also Appeal in the interest of the law No XXXIV of 6 November 2006 - published in the Official Gazette Part I No. 368 of 30th May, 2007).

The panel that will tackle this application to reopen the criminal proceedings is composed in the same way as the panel that solved the case at first instance. According to the legal provisions, as stated in Article 64 paragraph 3 of the Code of Criminal Procedure, the judge who participated in the trial of a case may no longer participate in the retrial of the same case in an appeal or in the retrial of the case after the decision has been set aside or quashed. In the same sense, the High Court of Cassation and Justice in its Decision No. 32/2019 in which it admitted the appeal in the interest of the law (the appeal in the interest of the law ensures the interpretation and uniform application of the law by all courts), establishing that: "*the judge who participated in the trial of a case may not participate in the trial of the same case in an extraordinary appeal (among which is also the reopening of the criminal proceedings in the case of the trial in default of the convicted person), at the stage of admissibility in principle (appeal for annulment, revision and appeal in cassation)*".

Prior to the hearing of the request for reopening the trial, the court must take some *preliminary measures* provided for in Article 468 of the Criminal Procedure Code, in the sense that upon receipt of the request for reopening the trial, a time limit is set for the examination of *admissibility in principle*, and the president orders the attachment of the case file, as well as the summoning of the parties and the main parties involved in the proceedings. If the person requesting the reopening of the criminal proceedings is deprived of liberty, even in another case, it is mandatory to inform him of the deadline and to make arrangements for his defence with a public defender, ensuring the presence of the person deprived of liberty at the hearing of the request for reopening of the proceedings.

In the *admissibility phase*, the court listens to the prosecutor's conclusions, the parties and the main parties and examines whether (Art. 469 letters a - c of the Criminal Procedure Code): the request was made in due time and by the convicted person, fulfilling the conditions of Art. 466 of the Criminal Procedure Code; the legal grounds for reopening the criminal proceedings have been invoked and the grounds on which the request is based have not been presented in a previous request for reopening the criminal proceedings which was finally judged. Such requests shall be examined as a matter of *urgency*, and if the sentenced person is serving the prison sentence imposed in the case for which retrial is requested, the court may *suspend the execution of the judgment*, in whole or in part, and may order the sentenced person to comply with one of the obligations provided for in Article 215 paragraphs (1) and (2) of the Criminal Code relating to judicial supervision. As the legislator intended, it is clear that this reasoned suspension of the enforcement decision is made at this stage of the admission in principle, because when the request to reopen the criminal proceedings is granted, art. 469 paragraph 7 of the Code of Criminal Procedure, the judgment handed down in the absence of the convicted person is automatically annulled and it would be illusory to provide for the suspension of a judgment of conviction as long as it no longer exists. In cases where enforcement of the imprisonment sentence has not begun, the court may order the preventive measure of judicial supervision with the fulfilment of one or more obligations.

Once it is established that the conditions of 469 paragraph 1 are fulfilled, a resolution shall be issued granting the request for reopening the criminal proceedings, in accordance with Article 469 paragraph (3) Code of Criminal Procedure.

With regard to this reopening, the High Court of Cassation and Justice, in its decision no. 13 of 3rd July, 2017, which ruled on an *appeal in the interest of the law* (decision binding upon publication in the Official Gazette), held that the admission of the request to reopen the criminal proceedings entails the automatic annulment of the judgment of conviction with the consequence of resuming the trial before the first instance court. The overrule of the judgment of conviction does not allow access to the pre-trial phase, which was definitively closed by a previous and separate judgment, which cannot be censured in a subsequent or subsequent procedural phase. This solution results from the application of the principle of the separation of judicial functions in criminal proceedings (Article 3 of the Code of Criminal Procedure), the function of verifying the legality of the committal for trial being distinct from the trial function and completed by a judgment which does not prejudge the outcome of the criminal proceedings and, as a result, there is no reason to extend to it the effects of the overruling in the procedure for reopening the criminal trial.

Given that the decision on the appeal in the interest of the law referred to above was binding on the courts, the Constitutional Court was seized of the exception of unconstitutionality of the provisions of Article 469 para. 3 in a case concerning the resolution of the request for reopening of the criminal proceedings, in the sense that after the request for reopening of the criminal proceedings has been admitted, according to the Decision no. 13/2017, the file cannot be assigned to the preliminary chamber judge but only to the court. The Constitutional Court by Decision No 590/2019 (published in the Official Gazette, Part I, No 1019 of 18 December 2019) stated that the resumption of the case from the first instance trial phase, on the occasion of the reopening of the criminal proceedings, under Article 469 of the Code of Criminal Procedure, as decided by Decision No. 13/2017 issued by the High Court of Cassation and Justice, and not from the *pre-trial chamber phase*, in the hypothesis where the defendant was not legally present at the aforementioned procedural stage or, although aware of the trial, justifiably missed the trial, violates the right to a fair trial and the

right to defence of the person in the hypothesis analyzed, who was convicted in absentia.

The Constitutional Court found that the provisions of Article 469 paragraph 3 of the Code of Criminal Procedure, as interpreted by Decision No. 13/2017 violates the provisions of Art. 21 paragraph 3 and Art. 24 of the Constitution, Art. 6 of the European Convention on Human Rights, creating a discrimination between persons tried in absentia, in respect of whom the reopening of the criminal proceedings is ordered, according to Art. 469 of the Code of Criminal Procedure, but who were not legally summoned and, therefore, did not have the opportunity to participate in the preliminary proceedings, and those who participate in all stages of the criminal proceedings, declaring unconstitutional this article.

Decisions given by the competent court on the application to reopen the criminal proceedings

After the admission in principle, the court may order by *resolution* either the admission of the request for reopening of the criminal proceedings, which has the effect of automatically dismissing the judgment rendered in the absence of the convicted person, or, if it finds that the conditions provided for in Article 466 of the Code of Criminal Procedure have not been met, it may order by *sentence* the dismissal of the request for reopening of the criminal proceedings (Article 469 paragraphs 3 - 4 of the Code of Criminal Procedure).

Admitting the request leads to the resumption of the case in the *first instance* trial phase (it also applies to the preliminary chamber phase if the person was justifiably absent from the trial and could not meet the court - according to the decision of the Constitutional Court no. 590/2019).

The legislator has envisaged in the provisions of Article 469 paragraph 5 and 6 of the Code of Criminal Procedure that the *resolution* by which is admitted the request for reopening the criminal proceedings may be appealed together with the merits, and the *decision* rejecting the request for reopening the criminal proceedings is subject to the same appeal as the decision rendered in the absence of the convicted person, i.e. the appeal.

It is possible for the person convicted in absentia to either waive the appeal or to withdraw the appeal, which requires a positive expression of will by making an express declaration to that effect. If, in the case of a person convicted in absentia, more than one person has been investigated and tried, the legislator has provided in the provisions of Article 469 paragraph 8 of the Code of Criminal Procedure that the reopening of the criminal proceedings may be extended to the parties who have not made a request, and may also decide on them without creating a more difficult situation for them.

It follows from this legal provision that not only the parties who have not made a request will not be made worse off by the request for reopening, but even the holder of the request for reopening of the criminal proceedings cannot be given a harsher sentence than the one previously imposed by the default judgment.

Moreover, it should also be mentioned that the extension with regard to the parties who did not make the request must also meet the conditions set out in Article 466 for the reopening of the criminal proceedings in the case of a trial in absentia of the convicted person and not for those who were present at the outcome and sentencing in the criminal proceedings.

Once the request for reopening of the criminal proceedings has been granted, the court, ex officio or at the request of the prosecutor, may order to be taken against the accused one of the measures referred to in Article 202 paragraph (4) letter b) - e) on judicial supervision; judicial supervision on bail; home detention or pre-trial detention.

After the application for reopening of the criminal proceedings of the person tried in absentia is granted, the trial is resumed in the first instance from the preliminary chamber stage, and the trial is conducted in accordance with the trial provisions of Articles 371 - 425 of the Code of Criminal Procedure.

References

Charter of Fundamental Rights of the European Union, published in the Official Journal of the European Union C326/391 of 26.10.2012.

Code of Criminal Procedure of 1968, published in the Official Gazette No. 145 of 12th November, 1968.

Constitutional Court - Decision No. 590/2019, published in the Official Gazette Part I No. 1019 of 18th December, 2019.

Criminal Procedure Code of 2010, published in the Official Gazette, Part I, No. 486 of 15th July, 2010.

EU Directive 2016/343 of the European Parliament and of the Council of 9th March 2016, published in the Official Journal of the European Union No. L65/1 of 11 March, 2016.

High Court of Cassation and Justice - Appeal in the interest of the law No XXXIV of 6th November 2006, published in the Official Gazette Part I No. 368 of 30th May, 2007.

High Court of Cassation and Justice - Appeal in the interest of the law No. 13/2017, published in the Official Gazette Part I No 735 of 13 September 2017.

High Court of Cassation and Justice – The Panel for Preliminary Ruling on Questions of Law in Decision No. 22/2015, published in the Official Journal No 486 of 2nd July, 2015.

Law No. 302/2004 on international judicial cooperation in criminal matters, republished in the Official Gazette, Part I, No. 411 of 27th May, 2019.

Treaty on European Union, published in Official Journal of the European Union C326/391 of 26.10.2012.

RAIS Journal for Social Sciences | VOL. 6, No. 1, 2022
ISSN 2574-0245 (Print) | ISSN 2574-1179 (Online) | DOI:10.5281/zenodo.6574789

Operative Judicial Photography

Cosmin BUTURĂ

Romanian Association of Forensic Sciences, Bucharest, Romania
cosminbutura@yahoo.com

ABSTRACT: Photography is the combination of two sciences that transpose the real moments spent into a single image. The first science, namely the exact science, physics, comprises the use of the lens designed to focus objects or people in a frame defined by the device, with the help of an electronic image sensor. With each pixel produced, the sensor manufactures an electrical charge, which is then processed and stored in a digital image. Towards the end, due to chemical development, a visible image appears, either positive or negative, representing the finished product emitted by the camera. The second science is the science of art, more precisely, the art of graphics, which outlines in an image all the elements that appear within the device's lens. From a graphical point of view, we understand that the device copies all the positive and negative details of objects, elements, people, and phenomena occurring within it. Globally, photography has remained a key aspect of society, influencing human thinking. In most cases, the photos are taken to keep unique moments, which we currently spend with our friends or family members, but which will well-dispose us in the future when we become nostalgic. However, in other cases, the photos remained a balance that supports the truth and lies in their rocking chair. The cameras were and are key technical equipment of the criminal investigation officers because they can accurately show the reality that happened at that time, serving in the confrontation with the statements of the suspect or the defendant. This equipment entered and in possession of the police has evolved, within the legal framework, to the middle rank in the court files from those times and today. So, at present, legally speaking, photos are used on the speed detection devices means of evidence in files that involve different criminal or financial (such as money) offenses, on the sharing of a property (such as urban or extra-urban land), etc. Within this article, the author will treat the art of photography in the field of forensics as follows: on-site shooting procedures, orientation photography, sketching photography, main objects, detail photography, special shooting procedures, corpse shooting procedures, and photographic measurements.

KEYWORDS: art, investigation, tactics, photography, equipment, forensics, dynamism, science

Introduction

This study will analyze the technique of photography used in the criminal field by criminals and investigated together with the judicial bodies. In general, judicial photography is operative because it is used in places where crimes have occurred, crimes against the assets of the owners, and offenses against the private or state financial system. These operations are of fixed importance to the results of the investigations, thus being a precious annex to the criminal case. According to the specialized literature, the camera can no longer be used in the field of forensics without fulfilling certain conditions from a technical point of view. Specifically, a camera must technically satisfy, processing all circumstances or details that can provide a hint in criminal investigation at higher image quality. Furthermore, will be listed the shooting

procedures applied on the spot, according to the specialized literature: orientation photography, sketching photography, main objects photography, detail photography, photography of traces and photographic measurements.

Orientation photo

As the name is, the photo serves to incorporate the image on the spot, in an indicative assembly, meant to identify the area in which the crime was committed. Specifically, orientation photography has the role of capturing in an image all the elements on the spot that could help the judicial research bodies, starting from the neighboring buildings to different objects, different types of landscapes conferred and different types of road infrastructure such as paths, rough terrain roads or paved roads (Buzatu 2013, 40). We must understand that the points of orientation are not cardinal points but in fact are the assemblies of buildings, factory constructions, various road infrastructure constructions, more precisely any element that has a fixed character in the respective location that is not changed from day to day. This aspect is part of the photographs taken in the open places, in terms of closed places, the orientation photo captures the neighboring elements, for example: in the case of a crime committed in the room of a hotel, the neighboring elements that will be captured by the camera (Golunski 1961, 53).

Regarding the technique of making photos, the camera comes to complement it with different accessories that the police and criminals use. One of the accessories of the device is the objective, so the authorities use super-garde and rotary goals, but it can also be opted for a normal goal. Depending on the place of the deed, criminals use other accessories, such as, telephoto lenses, which are used in cases of buildings or explosions, so that the specialized team is not injured. With the advancement of technology, the police departments, especially the criminal department, opted for the purchase of cameras in the air with the help of drones. In this case, we can say that the photos taken in the air offer a larger ensemble in terms of orientation and, at the same time, a new investigation is added, respectively the pathological determination of the suspect (Stancu 2015, 88-89).

Photo sketch

This procedure refers to the photography from the eye level, 1.60 m, having properties similar to orientation photography. They are divided into four categories such as:

1. *unitary sketch photography:* represents the fully rendering of the place of the deed captured in a single image. In principle, the point of station is chosen and implicitly of the focused distance, favorable to the totality of the elements that define the place and circumstances where the deed has been committed.

2. *panoramic sketch photography:* this feature is considered to be similar to orientation photography, according to some specialists in the field, being in fact an alternative to unitary playback for the place of deed, if we talk about a large coverage area and that would be impossible to made in one photo. According to the specialized literature, the panel sketch photography is divided as follows: linear panoramic photography and circular panoramic photography.

3. *pketch photography on sectors:* this technique plays portions from the place of deed, made in several photos but under similar conditions and with the same accessories. This technique is used for example in apartments, office buildings, hotels, etc.

4. *cross-sketch photography:* this technique unites the photos used in the same place but prevented by places with dead angles in which certain details could not come out of a single photo, we speak here of: dark corners, furniture, doors that open only at 90°, etc. (criminalistic.ro, Silviu Predescu).

Photography of main objects

The technique of photographing the main objects is the surprise, with the help of the camera, to some elements from which certain traces left by the perpetrator. In this technique is the photography of the corpse, the furniture objects, different foods, etc. Even if in the photo, the element is present, the need to double the element in another image is important, because in duplicated photography, the element will be highlighted in detail (Costache 2010, 3-4).

These aspects are often neglected by investigators, which is why they appear unclear in the photograms made, such as traces of hands overcome on the coffee table that would indicate that an object in the house has been manipulated by the suspect (the glass), but that object is missing from the overall image of the place. For this reason, it is difficult to prove that the suspect would have put his hand on the glass to use him in different intentions, as long as the photos taken, this action would not have happened. According to specialists in the field, investigators must photograph each object, from a perpendicular position using adequate light, and then mark it with a number. Near these objects, a measuring instrument is attached to determine its size but also the distance from certain edges on its support, such as a graded tape, ruler or centimeter (Manea 1991, 68).

Detail photo

This technique focuses on the dynamism of the research on the spot, where it is the possibility of moving the objects in order to highlight as many characteristic details, the traces but also the way they were placed in the space of the place. The detailed photographs are made at a larger scale, there is also a consistent amount of light arranged behind the device and on its sides, to allow the game of shadows in order to highlight traces left by the suspect. In the forensic technical reports, a difficult differentiation is made between the detailed photography and the actual photography of the traces (Stancu, 2015, 90).
The procedure for conducting detail photo consists of:

- an objective that satisfies the dimensions of detail;
- films with chromatic sensitivity, with a strong contrast and high resolution;
- filters for highlighting details with a color close to the real colors;
- artificial light sources for natural light control.

Special shooting procedures on the spot

Within the special shooting procedures on the spot were used several categories of photographs, having the role of making different images that differ in purpose and way of achievement. To begin with, we are talking about photographing the traces, which are part of the first category of photographs within the procedures, being captured in pictures, the upper and lower limbs of the corpse. In this sense, we must mention that the taking of these photographs will be taken in compliance with the technical conditions. The weapons and different objects used to commit the deed are part of another category within the procedures (Neagu 1993, 376-377).

The process consists of installing the device on a flat surface but parallel to the trace or means of evidence or any element that has as a test role in the research file. As I specified above, the light sources must be arranged on the sides and back of the camera, to allow the game of shadows and direct the natural light. Finally, before the photograph will be available, the measuring instrument that will identify the size of the object and its distance from the initial position and to the final position in which it was found, or from the initial position and its together (O'Hara 1976, 66).

Digital photography

As we specified from the beginning, the photo went through an important modernization process, evolving to this day, more precisely from simple non-color images that could not include in detail elements that are the subject of the sample, until Capturing images with an impressive resolution that can enlarge the image to 50x ultra-laryn angle zoom. Thus, the cameras have come to work on ultra-performances, the images made being easily analyzed computer science, more precisely, they can be easily enlarged, selected, contrasting, etc.

Another positive aspect, made by the intervention of state-of-the-art technology, is to connect the camera to Smart phones with Android or Apple processing system, with the help of Bluetooth or Wi-Fi. This aspect allows the criminals to send the pictures taken on the spot to the forensic laboratories, who can make with the help of the calculation technique, a first report on the content of the photography. For example, according to species, digital traces can be transmitted and processed by the poster-200 system, realizing in a few minutes (Manea 1991, 68-69).

Photographic measurements

This process has the role of establishing the dimensions and distances between the different objects at the scene. There are four categories of photographic measurements such as:

1. the photographic measurement with the help of the graded ruler: in the specialized literature, this method is also called two -dimensional photography, which has as its work object, the determination of the linear dimensions of the traces or objects. The ruler is arranged along the object, starting from the lower side (for example: in the case of the victim's foot, the ruler is placed from its sole). This technique is also allowed to use a centimeter (Mircea 1971, 31-33). The measuring instrument is positioned parallel to the object and at the same time as possible in it and in the same plane. In the case of a profile on the floor, the centimeter is placed on the height of the profile to measure its depth. Subsequently, the camera is placed perpendicular to the following, and the above-mentioned lighting will ensure the clear playback of all the details that can lead to new indications in judicial investigation (Vîlceanu 2013, 4-5).

2. *the photographic measurement with the help of the graded tape*: according to the data of the specialists, this process presents good results in forensic research. The way of use is appreciated in measuring the distances between objects, measuring large or gauge objects (braking traces from a car), being applied at the time of the photos and the photos of the main objects. The graded tape is made of plastic, with a width of 10 cm and a length that supports up to 10 meters. It is divided into segments of 10 cm, distinguished into black and white non-colors, and sometimes they can be found and numbered. The segment represents a multiple of the focal distance of the device (for example: if we have a focal length of 5 cm, the 10 cm segment will result in the focal distance). The tape is placed on the floor, along the optical axis of the device, the starting point being the one below the objective. This point is marked with the help of the lead thread. The distances of the objects are established by the segments of the graded tape, for example, if between the device and the object at the scene are 30 segments, then it is equivalent to 60 focal distances, according to the formula mentioned above. From this equivalent of 60, the reduction coefficient will decrease, thus resulting in a dimension of 295 cm. There are also other methods of determining the specific dimensions, such as the method of graded milestones that are placed at a distance of 10 m from each other. The method of the floor with equal sides is among the methods of determining the dimensions, this being done with the help of a square floor with the 1-meter side, which is placed at the lower edge of the frame. (O'Hara, 1976).

3. tridimensional measurements: these are achieved by using special floors, and the phenomenon is stereophotography. With the help of two objectives, photographers from police departments and forensic laboratories can achieve measurements. According to the researchers, in the future, with the help of holography, the imaginary obtained by the laser radiation can allow a spatial visualization of the objects on the spot.

4. *photogrammetry:* this method is performed in topography, being adapted and implemented in the investigations of the judicial organs, because reconstructions can be made and the surfaces, forms and positions of the objects can be measured. According to the specialists, currently the only scientific method for making dimensional photographic measurements, at a precise level, is photogrammetry. This is based on the principle of stereophotography, which with the help of a device, allows simultaneously to make two images of the same object or surfaces, from two different angles. Subsequently, the two photographs are processed by the return, in order to make the sketch of the criminal field. The device used by judicial research crews is of a Wild type equipped with two rooms arranged at a distance of 40 or 100 centimeters (Vîlceanu 2013, 4).

Conclusions

In conclusion, I emphasize the importance of the camera in judicial practice, because the objects that can demonstrate the guilt of the main suspect would have not been used as a concrete means if they were not photographed in the positions found by investigators on the spot.

Judicial photography has led to the resolution of numerous criminal files and, at the same time, to reduce judicial errors. We can say that the camera has now become the eye of the correct justice, whether we are talking about judicial photos or photos from simple citizens who, at the time of photography, caught an event of criminal character or a person who was in general pursuit of crews, by police. However, we can remain at the positive side of the photo, namely, the capture of the unique and beautiful moments, together with the loved ones, in a single camera.

References

Buzatu, N.E. 2013. *Forensics.* Bucharest: Pro Universitaria Publishing House.

Costache, M. Hilda-Cristina. 2010. *Criminal-photography procedures used during the on-site research.* Bucharest: Bioterra University-Faculty of Law.

Criminalistic.ro. 2011. Criminal specialist Silviu Predescu, www.criminalistic.ro.

Golunski, S.A. 1961. *Forensics.* Bucharest: Științifică Publishing House.

Manea, V. 1991. *Course of forensic technique,* vol. I. Bucharest: School of Active Officers of the Ministry of Interior.

Mircea, I. 1971. *Forensics.* Bucharest: Lumina Lex Publishing House.

Neagu, I. 1993. *Romanian criminal procedural law,* vol. I. Bucharest: University of Bucharest.

O'Hara, C.E. 1976. *Basic principles of criminal investigations.* Illionis, U.S.: Thomas.

Stancu, E. 2015. *Treaty of forensics.* Bucharest: Universul Juridic Publishing House.

Vîlceanu, Clara Beatrice. 2013. *Prices applications in digital photogrametria,* Timisoara.

RAIS Journal for Social Sciences | VOL. 6, No. 1, 2022
ISSN 2574-0245 (Print) | ISSN 2574-1179 (Online) | DOI:10.5281/zenodo.6574794

"Our Air is Biscuit": Victims' Perspective of Factory Pollution in Oluyole, Ibadan

Olajumoke Elizabeth ADEMUYIWA[1], Ikem Godspower UJENE[2], Babatunde Michel IDOWU[3] and Felix M. NWANKWO[4]

[1]*Babalola Academy College of Health Technology Ilorin, Kwara State, Nigeria, jumykay59@gmail.com*
[2]*Achievers University, Owo, Nigeria, profikechukwu@gmail.com*
[3]*Alex-Ekwueme Federal University, Ndufu-Alike Ikwo, Ebonyi State, Nigeria, mitbabss@gmail.com*
[4]*Alex-Ekwueme Federal University, Ndufu-Alike Ikwo, Ebonyi State, Nigeria, felixnwankwo2@gmail.com*

ABSTRACT: This study set out to investigate the knowledge of Oluyole residents about factory pollution, the health risks experienced by Oluyole residents, the measures taken to protect from the factory pollution, and government responses to factory pollution in the Oluyole industrial estate. The study was conducted in Oluyole Ibadan and it adopted a combined design of field and victim surveys. The study used qualitative data to identify the effects of factory pollution on dwellers' health and ascertain the victimological perspectives of the health problems vis-a-vis factory pollution in Oluyole Ibadan. Using ten indepth interviews and five key informant interviews, the data were qualitatively analyzed using the content analysis method and the adoption of verbatim quotation where necessary. The study identified that the respondents are knowledgeable about the factory population and that factories in Oluyole are a major source of pollution and decease-causing agents in the area. Asthma, cough, catarrh, and headache are some of the side effects of the Oluyole factory pollution. It also discovered that the government had taken steps overtime to curb the menace, but those steps have been politicized and are inadequate hence, the upsurge in cases of factory pollution in Oluyole Ibadan.

KEYWORDS: factory, pollution, health hazard, asthmatic patients, Ibadan, Oluyole

Introduction

It has been estimated that the proportion of the global body of diseases and health risks associated with factory environmental pollution ranges from 23 to 30 percent (Lohchab & Saini 2018). These estimates include infectious diseases related to drinking water, sanitation and food hygiene, even respiratory diseases as a result of biomass burning on the health of dwellers around the factories.

In the submission of Ityavyar and Thomas (2019), the prevalence of factory pollution is a global issue and a challenge faced by so many individuals and societies especially given the industrial nature of the contemporary world. The issue of factory pollution has been a topical one since the dawn of the industrial age and has also remained relevant till date. It has been in existence since before the colonial era. Although there had been regulatory bodies to combat pollution in Nigeria, due to inadequacies of these agencies, efforts had yielded only but a few results. Olukanmi and Adeoye (2012) demonstrated that most factories are registered under the federal government and most companies or factories which cause pollution are under the Federal Environmental Protection Agency Act.

Industrialization and increased productivity are making unprecedented demands on natural resources. Moreover, chemical research and technologies have brought about 70000 compounds into use (Oyinloye 2015). The advancement in technology as a result of urbanization and industrialization has contributed to the increase in the discharge of pollutants into the environment through industrial effluents, domestic waste and auto-vehicle emissions (Olukanmi and Adeoye 2012). Studies have also shown that metals polluting soils can be hazardous to the health of dwellers around the factory areas i.e., the depository for pollutant metals as a result of adsorption processes which bind the metals to it. Proceeding, Jamshaid, Khan, Ahmed and Saleem (2018) added that high concentration of metals can cause harm to lives and environment of the individuals.

The effluents from factories are seen to have considerable effects on the water quality and making the water unsafe for human use. The negative consequences of factory pollution are of great health concern and this propelled Saini, Lohchab, Nain and Kumari (2019) to submit that microbes which are emitted into the water bodies are followed by fungi which are in themselves detrimental to human health system. To this effect, the public, especially individuals are speedily and increasingly becoming aware which has resulted in the interactions and in some case, conflicts between residents and factories. David (2015) believed that the problems are undoubtedly greatest in developing worlds where traditional sources of pollution such as factory emission, poor sanitation, inadequate waste management, exposure to health pollution from biomass fuels affect large numbers of people.

Being one of the industrial hubs of south-west Nigeria, Oluyole Industrial Estate houses such great industries like Yale Foods Industry, Seven-Up Bottling Company, Obasanjo Farms and many more high machine-powered industries. Despite the presence of these industries, a multifaceted and multi-layered study has not been conducted to ascertain the level of factory pollution from a victimological perspective especially given the siting of a new hospital in the estate- the Adeoyo State Hospital.

As a result, this study set the following objectives; to explore the knowledge of Oluyole residents about factory pollution; to identify the health risks experienced by Oluyole residents; to investigate measures taken in protection from the factory pollution and; to analyse government responses to factory pollution in Oluyole industrial estate.

Literature review

The central role played by industry in the economy of any nation is clearly evident in being one of the main determinants of economic growth and development. This is made possible through its role in increasing both national and per capita income, augmenting international trade, job creation, facilitating the growth of domestic markets, urbanization, among others (Obafemi, Eludoyin & Akinbosola, 2019) in the submission of Obafemie et al. (2019); they believe that although industrialization is inevitable, various devastating ecological and human disasters which have continuously occurred over the years implicate industries as a major contributor to environmental degradation and pollution processes of various magnitudes. To this end, there is the inordinate release of particles that engender pollution into the environment thereby causing industrial pollution.

Peterson (2018) opined that industrial pollution is caused by particles especially waste gases like carbon monoxide, sulfur oxides, and nitrogen oxides which are the waste products of industry which ultimately end up in the air, water and/or land. Most of the pollution on the planet can be traced back to industries of some kind and industrial emissions are the second largest pollutants of the atmosphere after automotive exhausts (Thirugnanasambandham & Ganesamoorthy 2019). To Bishnoi, et al. (2017),

factory pollution is often thought of, as those mostly visible and smelly smokestack emissions which are bound to occur in every society, because it is virtually impossible to have a productive process without waste and the pollution that follows after.

The issue of industrial pollution is presently receiving a universal attention because it affects the climate of the environment and its impact is therefore global. Its health implication, which is a form of negative externality imposed on other agents in the economy who are non polluters, makes the issue of grave importance (Ojekunle et al. 2018). It has been asserted that air pollution (which is one of the different forms of pollution resulting from factory operation) is now the world's largest single environmental health risks, and is fast becoming one of the leading causes of illness and death in developing countries (Word Health Organization 2019). These industrial emissions have the potential of aggravating the problem of climate change which poses serious health challenges in terms of cardiovascular and cerebrovascular diseases among the elderly as it is usually associated with excessive temperatures and heat waves that can alter arterial pressure and blood viscosity among other health risk factors (Peterson 2018). Other human health effects due to air pollutants include asthma, carcinogenicity, pulmonary tuberculosis, cerebrospinal meningitis, pneumonia, whooping cough and measles (Thirugnanasambandham & Ganesamoorthy, 2019). The World Health Organization (WHO 2019) estimates that in the case of outdoor air pollution alone, it accounts for about 2% of all heart and lung diseases, about 5% of all lung cancers, and about 1% of all chest infections. The number of deaths attributable to outdoor pollution has significantly increased, with 176,000 deaths annually from outdoor air pollution in Africa, and 3.7 million deaths globally (WHO 2019).

In the case of Nigeria, the worrisome effect of pollution cannot be overemphasized as the country has a high record of some of the worst health and healthcare statistics in the world. For instance, life expectancy at birth had remained low which is put at 52 years in 2014 and this is owed not just to socio-economic conditions but ecological factors as well as others (CIA World Factbook 2015). Mortality is high, with infant mortality rate in 2013 pegged at 74 percent per 1000 live births and maternal mortality rate was 560 per 100,000 live births (Asubiojo, 2016). The findings of Asubiojo (2016) further asserted that respiratory diseases which are major pollution related diseases especially influenza and pneumonia, asthma and lung disease have been found to account for 249,211 deaths in Nigeria.

These diseases account for about 15% of the total deaths in Nigeria with influenza and pneumonia being among the top 3 causes of death. Following the health situation described above and in addition to other World Health Organization health indicators, numerous studies have investigated the effect of factory pollution on health using health care spending as a measure of health status but there is the dearth of researches on the influence of industrial pollution on public health in and around the Oluyole industrial area in Ibadan. As the concerns and questions about industrial pollution and its accompanying effect on humans and the environment grow louder, understanding its effect on the public health of Nigerians becomes increasingly important.

Questions to address this burgeoning impact of factory pollution have been thrust forward such by different scholars. Is there a way we can link the deteriorating health situation in Nigeria to industrial pollution? If there is a link, what policies should be designed and implemented to reduce the level of emission generated from industrial activities? Or should industrial pollution be permitted as industries are major drivers of economic growth and development? If they are to be permitted, what quota of emissions is to be allowed that will not be detrimental to human health? Are there other factors besides industrial emissions responsible for the health status of Nigerians?

The ideas of Obafemi, Eludoyin and Akinbosola (2019) further state that the industrial revolution brought with it technological progress such as exploration of oil mass food production, packaging and distribution among others. The virtually universal use of such revolutionized technologies throughout different industries have aggravated the concentrations of pollution in recent time (Obafemi et al. 2019). The concerns of environmental pollution (especially in third world countries) have been raging on for decades, which made Nobuko as far back as 1993 to submit that it is the contamination of the physical and biological components of the earth/atmosphere system to such an extent that normal environmental processes are adversely affected.

Environmental pollution is the process whereby various harmful substances are added to the environment (i.e., land, water, air, and the acoustic environment etc.) by human and/or natural activities (Saini, Lohchab, Nain and Kumari 2019).

The harmful substances called contaminants released into the environment (i.e. water, land, air) cause harm or discomfort or damage to humans or other living organisms. This is not in anyway being oblivious of the fact that pollution can be naturally occurring substances, they are considered contaminants when it exceeds natural levels. Federal Environmental Protection Agency (FEPA) as contained in Asubiojo (2016) views pollution as man-aided alteration of chemical, physical or biological quality of the environment to the extent that it is detrimental to the environment or beyond acceptable limits. Nature maintains elements of the environment- the air we breathe, the water we drink and the soil on which our foods grow, so that the composition of these elements within certain ranges ensure our survival on this planet. But Saini et al. (2019) submits that in the contemporary days, man depends on better methods and techniques to achieve his aims for better standard of living e.g. to provide good food, transport, shelter, good roads and so on, environmental degradation and pollution notwithstanding.

Environmental pollution has become an unending problem in the modern society and it is now becoming a threat to the livelihood of the people. Man's efforts both technologically and industrially have resulted in the exploitation of the earth's resources which in effect has led to environmental degradation. Pollution of the environment is likened to different sources. For instance, air pollution results from the discharge of toxic materials from man's domestic and industrial activities into the air which remain suspended in the air for a period of time. More importantly, Ityavyar and Thomas (2019) believe that there are about five major pollutants that are constantly discharged into the air namely carbon monoxide, particulate matter, sulphur dioxide, hydrocarbon and nitrogen oxides. These pollutants are obtained from burning of agricultural combustion, space heating and other industrial activities.

Carbon monoxide results from incomplete combustion of fuel in engines, sulphur dioxide results from burning of coal and oil both in utility and industrial plants. Petroleum refining is also a major source of sulphur oxide. The particulate matter includes soot, lead, asbestos, dust which varies in size ranging from the visible to the microscopic components (Yakubu 2018). Yakubu (2018) further highlighted other sources of hydrocarbons as evaporation of industrial solvents, combustion of weed as well as emissions from internal combustion engines using gasoline while the harmful nitrogen oxides result from certain combustion processes such as industrial boil from plants and transportation vehicle.

Similarly, Lohchab and Saini (2018) explained that the discharge of waste materials like industrial effluents, dust, smoke, solid waste and so on, are the products of industrialization and urbanization. The introduction of such waste materials has led to adverse effect of environmental pollution on the health of man, animals, both aquatic

and terrestrial and of course on plants. On the whole, man is essentially responsible for many of the environmental problems encountered and this invariably suggests that the unwanted by-products of man's attempts to improve his standard of living have contributed largely to the deterioration of the environment.

Theoretical Representation

Modernization theory was adopted for this work. The theory is used to explain the progressive transition from a pre-modern or traditional to a modem society in terms of technology, industrialization and how it can cause pollution in the society.

Omoju (2014) submitted that environmental pollution is inevitable in developing countries and that pollution is one of the many environmental challenges facing the world today. In addition, the modernization theory, according to the American Journal of Sociology (1960) explains the process of transition in the economy from being traditional to modern. During this period of modern transitioning, the society faces a number of challenges and these are what include pollution in the environment with health and environmental effects.

The modernization theory explains that in halting environmental or factory pollution, it may undermine the economic growth and competitiveness of developing societies.

In the desires of factories to develop and improve standards of living of the people, the society opts for the goals of economic growth and cheap energy for all; leading to environmental pollution and degradation. The competitiveness of factories in developing societies, like Oluyole for instance, contributes to economic growth, job creation and development.

As much as modernization has brought about positive effects on dwellers health in Oluyole, Ibadan, by improving the income, productivity of the people, it has as well brought about degradation and adverse effect on the health of dwellers in Oluyole, Ibadan, it has caused people, their health, even their jobs leading to poverty. Developing societies desires industrialization and economic growth and this tend to consume more cheap energy. Factories are created to develop massive infrastructure to promote economic growth, but as it has been said earlier, the creation of pollution in the environment, affecting the socio-economic and health of dwellers in this area.

Materials and Methods

The study adopted a combined design of field and victim surveys. The study made use of qualitative data to identify the effects of factory pollution on dwellers' health and to also ascertain the victimological perspectives of the health problems vis-a-vis factory pollution in Oluyole Ibadan. The designs were pertinent because they are human-friendly, i.e., social science-friendly, as it is non-experimental in nature and therefore, lack active manipulation (Bhattacherjee 2012).

The study was conducted in Oluyole Ibadan. Oluyole is a popular estate that doubles as a local government in Oyo State, Nigeria. Oluyole Local Government was established in 1976, and the Council occupies a total area of 4,000km2. Based on the 2006 population census, its population is 202,725 (Oyo State Government, 2019). This study area was justified by the existence of several production factories such as Yale Foods, Seven-Up Bottling Company, Obasanjo Farms, etc. Due to the overwhelming effects of pollution from these factories, a government hospital known as the "New Adeoyo State Hospital" has been established in the area to tackle incidences of pollution-related diseases contracted by the inhabitants.

The study population was drawn from the inhabitants of the industrial estate. Ten in-depth interviews (IDI) were conducted among the residents of the estate, while five key informant interviews (KII) were conducted among health workers of the newly established hospital so as to ascertain pollution-related diseases in the area. The data were qualitatively analyzed using the content analysis method and the adoption of verbatim quotations where necessary.

Analysis and Discussion

As to respondents' awareness of pollution, a great number of them agreed to be aware of pollution and the detrimental effects of pollution. With the level of awareness of what pollution is among the study respondents, it will pose no threat for them to be able to identify when either the air they breathe or the water they drink is polluted; hence, their ability to present valid data for the issue under study.In trying to understand whether the factories in Oluyole are a source of pollution or not, the researcher asked the respondents to indicate whether the factories in Oluyole are a source of pollution and they had this to say;

> *Most times, the air we breathe is full of biscuit smell. Not a day goes by without us smelling biscuit, even inside your bedroom. There was even a time when our well water was contaminated by a factory that kills and processes chickens. It was not until we were upset that the government chased them away* **(IDI/Male/Igbo/20 years of residency).**

Air pollution, water pollution and noise pollution were identified as the types of polution within the area. One in-depth interviewee succinctly depicted this thus;

> *I just told you about the air we breathe and how our water at some point was contaminated. Ehe, one more thing, the trailers that those factories use to park on our roads, most times, it is their noise that wakes us up. You know because they are many, they used to make a great noise* **(IDI/Male/Yoruba/20 years of residency).**

Another respondent has this to say;

> *I don't think there is any ind of smell we have not smelled here since I have been living here. Believe me when I say that even chicken faeces had been poured on our roads many times thereby contaminating the air we breathe.*
> **(IDI/Female/Yoruba/10 years of residency)**

As to the frequency of the pollution, the respondents were torn between daily experience and weekly experience. Those who submitted that they experienced the different forms of pollution on a weekly basis believed that their responses are occasioned by their absence from the area in most circumstances. This is a show of the frequency and magnitude of the pollution, even though those that submitted that they experienced it daily believed that air pollution (such as the smell of hot biscuit) surmounted other types of pollution. For instance, a relatively young respondent for the qualitative data argued thus;

> *Bros you no dey smell am? The biscuit weh dem dey bake? Na so we dey smell am everyday na. Even though the smell na fine one, it still dey block our ability to smell real and better things* **(IDI/Female/Yoruba/4 years of residency).**

The respondents also believed that factory pollution is a bad factor with accompanying health challenges and therefore ought to be tackled decisively. This was depicted in the response of one of the in-depth interviewees who said;

> *You see the way my eyes are red, this is how it had been for so many years. I finished building my house and I parked into it 23 years ago, then suddenly*

I realized that my eyes were getting red and we'd gone for different medical tests but they asked me to park out of the place. Should I run away from the house I built with my money? **(IDI/Male/Yoruba/23 years of residency).**

In trying to determine whether factory pollution affects both the health of dwellers and/or the neighbourhood, the respondents were asked to respond on questions which border on this objective and to submit whether they had been victims of chronic or non-chronic diseases resulting from factory pollution. A great number of the participants submitted to have experienced non-chronic health challenges resulting from factory pollution while a small number of them lamented experiencing chronic health issues suspected to have engineered by the factory wastes in the area.

To drive home this certainty, the key informant interview conducted on a doctor with the New Adeoyo State Hospital (which is the nearest government health facility to Oluyole estate) stated thus;

Even though this is a state-owned medical facility, people from Oluyole patronize here a lot. Some of them are with asthma, while some come for treatments for as little as headache **(KII/Male/11 years with the Adeoyo State Hospital).**

They believed that such wastes that are indiscriminately disposed of around the neighborhood have the tendency to degrade the quality of the environment. They also believed that at some point when the factories want to burn waste such as unused cartons, the smoke gets into the atmosphere thereby affecting the quality of the atmosphere. For instance, an 80-year man who had resided in the area for 45 years (and was coincidentally celebrating his 80th birthday on the day of the interview) lamented thus;

Sometimes they bring out their cartons to burn and you see the cloud getting dark due to the smoke. The smoke goes so high that the whole environment becomes dark as if it's going to rain. **(IDI/Male/Yoruba/45 years of residence).**

The researcher inquired into the efforts taken by both the community and the government as to stopping factory pollution in the area and the effectiveness of those efforts where they exist.

About 20 years ago, all our water coming from the ground including our tap and well, was contaminated with chicken waste and smell. We couldn't use it for anything, we didn't know that a factory that rears and processes chicken was the fault. The pipe through which the waste water goes had broken somewhere and the whole water was now channeled into our source of water. It took the effort of me and some other elders in the community to go to the government and mount pressure on them before they came to chase them away. Whenever something like that happens, we gather all the landlords in the area and we go first to the ministry of health and later to town planning and through our efforts, they do something about it **(IDI/Male/Yoruba/45 years of residence).**

Another respondent for the in-depth interview had this to say;

There was a time when this carton industry close to us here started burning their cartons, most times you'll see the particles of the cartons everywhere inside your sitting room and bedroom not to talk of the smoke so some community leaders went and spoke to company about it but they did not listen so they went to the government. It was through the effort of the government that the company had to raise their funnel so that the smoke and particles started going up **(IDI/Female/Yoruba/4 years of residence).**

Anthropogenic (man-made) pollution has long been implicated as a major contributor to poor health, and has been recognised as an exacerbating factor when it is present with other

contributory factors such as exposure to cigarette smoke and natural allergens such as pollen. He, Liu and Salvo (2019) believe that direct causality is notoriously difficult to prove when considering the range of potential pollution sources and the almost infinite variety of chemicals to which the public is often exposed such as documented in and around Oluyole industrial area. Despite the concerns of difficulties as expressed above, an antique study done by Ginns and Gatrell (1996) had shown evidence of an association between pollution of different types as experienced in Oluyole and diseases of different kinds, mortality and morbidity, even when adjustment for other risk factors is made. Many of the residents living around the major industries that exist in Oluyole have complained about the plume of emissions, water contamination and noise pollution and have reported an increased incidence of headaches, sore eyes, sore throats, runny or blocked noses, and wheezing or asthma attacks.

One of the major concerns among parents and teachers of school age children whose schools are close to the factories in the area was an apparent increase and severity in the incidence of asthma. For instance, a nonacademic staff of one of the public schools in the area submitted that when the factory begins to burn their empty cartons, the students start experiencing asthmatic condition with high intensity. This is in line with the study conducted by Persico and Venator (2019) which relatively focused on the possible effects of particulate air pollution on the incidence of asthma and other respiratory problems, and which eventually submitted that there is a strong association between exposure to particulate pollution and asthmatic symptoms.

From the foregoing, it could be deduced that the concerted effort of both the community and the government had yielded more gains in the fight against factory pollution but the study population believed and submitted that more needs to be done by the government with respect to curbing the still existing factory pollution.

The chemical conversion of raw materials into usable (or consumable) products requires different industrial activities ranging from heating to melting which may be traditionally done by burning fossil fuels. These activities bring about the inevitability of factory waste emission and the need to curb them.

Conclusion

This study has been able to thrust forward the negative effects of factory pollution, especially how they affect the health of the individuals residing around factories located in the Oluyole industrial estate of Ibadan. The study has also established that through the combined efforts of the community members and leaders in Oluyole and the government at different levels, factory pollution had been reduced in the area with few cases of pollution still traceable to the factories in and around the estate.

Financial Support

The present research did not receive any financial support.

Conflict of Interests

The authors declare that there is not any conflict of interest regarding the publication of this manuscript. In addition, the ethical issues, including plagiarism, informed consent, misconduct, data fabrication and/ or falsification, double publication and/or submission, and redundancy have been completely observed by the authors.

References

Asubiojo, O. I. 2016. “Pollution sources in the Nigerian environment and their health implications.” *Ife Journal of Science,* Vol. 18, no. 4.

Bhattacherjee, A. 2012. *Social science research: Principles, methods, and practices*. University of South Florida.

Bishnoi, S., Lohchab, R. K. and Bishnoi, N. R. 2017. Assessment of sociol-economic impacts of Rajiv Gandhi Thermal Power Plant (RGTPP). *International Journal of Science, Engineering and Computer Technology* 7(2): 86-89.

Ginns, S. E. and Gatrell, A. C. 1996. “Respiratory health effects of industrial air pollution: A study in East Lancashire.” *UK. Journal of Epidemiology & CommunityHealth* 50(6): 631–635. doi:10.1136/jech.5.0.6.631.

He, J., Liu, H. and Salvo, A. 2019. “Severe air pollution and labor productivity: Evidence from industrial towns in China.” *American Economic Journal* 11(1): 173–201. doi:10.1257/app.20170286.

Ityavyar, E. M. and Thomas, T. T. 2019. “Environmental pollution in Nigeria: The need for awareness creation for sustainable development.” *Journal of Research in Forestry, Wildlife and Environment,* Volume 4, No.2.

Jamshaid, M., Khan, A. A., Ahmed, K. and Saleem, M. 2018. “Heavy metal in drinking water its effect on human health and its treatment techniques - a review”. *International Journal of Biosciences* 12(4): 223-240.

Lohchab, R. K. and Saini, J. K. 2018. *Industrial pollution management*. IAHRW Publications Private Limited. Haryana.

Nobuko, I. 1993. *Environmental pollution control measures*. Retrieved from https://www.jica.go.jp/jica-ri/IFIC_and_JBICI-Studies/english/publications/report s/study/topical/health/pdf/health_08.pdf.

Obafemi, A. A., Eludoyin, O. S. and Akinbosola, B. M. 2019. “Public perception of environmental pollution in Warri, Nigeria.” *Journal of Applied Sciences and Environmental Management* 16 (2): 233-240.

Oh, I., Yoo, W. J. and Yoo, Y. 2019. “Impact and interactions of policies for mitigation of air pollutants and greenhouse gas emissions in Korea.” *International Journal of Environmental Research and Public Health* 16(7), 1161. doi:10.3390/ijerph16071161.

Ojekunle Z. O., Jinadu O. O. E., Afolabi T. A. and Taiwo A. M. 2018. “Environmental pollution and related hazards at Agbara industrial area, Ogun State.” *Scientific Report* 8:6482; DOI:10.1038/s41598-018-24810-4.

Olukanmi, D. O. and Adeoye, D. O. 2012. “Heavy metal concentrations in road side soils from selected locations in the Lagos Metropolis, Nigeria.” *International Journal of Engineering and Technology,* 2(10).

Omoju, O. 2014. “Environmental pollution is inevitable in developing countries.” *Breaking Energy.* https://breakingenergy.com/2014/09/23/environmental-pollution-is-inevitable-in-developing-countries/.

Oyinloye, M. A. 2015. “Environmental pollution and health risks of residents living near Ewekoro cement factory, Ewekoro, Nigeria.” *International Journal of Architectural and Environmental Engineering* 9(2): 108-114.

Persico, C. L. and Venator, J. 2019. “The effects of local industrial pollution on students and schools.” *Journal of Human Resources* 05(18), doi:10.3368/jhr.56.2.0518-9511r2.

Saini, J. K., Lohchab, R. K., Nain, A. and Kumari, M. 2019. “Designing of anaerobic hybrid reactor to treat household sewage for decentralised system.” *Pollution Research* 38 (1): 204-210.

Thirugnanasambandham, K. and Ganesamoorthy, R. 2019. “Dual treatment of milk processing industry wastewater using electro fenton process followed by anaerobic treatment.” *International Journal of Chemical Reactor Engineering,* doi:10.1515/ijcre-2019-0074.

World Health Organization. 2019. “Health, environment and climate change.” *Seventy-Second World Health Assembly Provisional Agenda Item* 11.6. https://apps.who.int/gb/ebwha/pdf_files/WHA72/A72_15-en.pdf.

Yakubu, O. H. 2018. “Particle (soot) pollution in Port Harcourt Rivers State, Nigeria-double air pollution burden? Understanding and tackling potential environmental public health impacts.” *Environments,* Vol. 5(1), 2. doi.org/10.3390/environments5010002.

RAIS Journal for Social Sciences | VOL. 6, No. 1, 2022
ISSN 2574-0245 (Print) | ISSN 2574-1179 (Online) | DOI:10.5281/zenodo.6574806

The Social Problem of Suicide: A Theological Perspective

Nicolae CRETU

PhD (c), Aurel Vlaicu University of Arad, Romania
nicu_cretu@yahoo.com

ABSTRACT: This study addresses suicide as a real problem for social communities. With the development of social and cultural societies, this issue of suicide has become more and more common and discussed. This study will analyze, in the first part of it, an explicit approach on the meaning of the notion of suicide. We will focus on the explanation that Vasile Dongoroz offers from the point of view of criminal law; Thomas Beauchamp from a philosophical point of view and Emile Durkheim from a sociological point of view. Then we will offer a medical perspective on suicide, focusing on the explanation of medical terms and processes by which certain suicidal acts are committed. In the third part, we discuss the philosophical approach to suicide, presenting an evolution of the discussions as we find it categorized in certain historical periods. In the fourth part, we will approach the theological perspective on the suicidal act. We will turn to the theological understanding of suicide through the prism of five subchapters, drawing on biblical principles to better understand the Christian view of suicide. At the end we will find three important moral issues to which Christian thinking, grouped in religious communities must proclaim answers for social life.

KEYWORDS: suicide, sociology, theology, christian vision, morality

Introduction

An increasingly common social problem among developed or developing societies is that of suicide. The famous philosopher-sociologist Emile Durkheim states in his study "About Suicide" that this act of suicide is a normal problem, not a pathological one, because this problem, as an act in itself, is encountered in every culture and in every age.

This social fact has become so discussed and so common that it has penetrated into certain religious communities. Thus, the Church has come to be in a position to seek answers, from a biblical point of view, to this social problem of its ecclesial existence. Some questions arise among Christian communities about the fate of those who choose this end of earthly life. What happens to those who commit suicide? Where are they going? What is the reason behind their suicidal act? Is there social and religious penance for those who choose the path of suicide? and so on these are just some of the questions that Christian dogmatics must answer, and it does.

This study will not dwell directly on the dogmatic problem of suicide, but we will deal with its moral problem, from the point of view of sociology and theology, with brief presentations on the medical and philosophical perspective on this fact. Before making these presentations, I will dwell on the meaning of the term suicide or suicide and how it has been defined and understood in various circles of scientific research.

1. Defining the term

Suicide as a term has been introduced into the vocabulary of modern languages from a French direction. It comes from the combination of the words "sui", which translates to self or self, and the word "cidium", which translates to the term killer.

Sociology, as a science, offers a fairly broad perspective on understanding the term suicide, and because of this it is difficult enough to present a universally valid definition in all circles of scientific research. In order to provide a clearer understanding of this term, I will present three definitions, or three ways, in which this word can be understood, namely legal, philosophical, and sociological.

1.1. Vasile Dongoroz - criminal law

Vasile Dongoroz (1939, 1), a specialist in criminal law, defines suicide as an act "by which a lucid man, being able to live, causes his own death, apart from any ethical obligation." In other words, the definition of the romanian professor of Criminal Law leads to suicide in the way it is perceived by those who remain alive. He explains that if the man caused a good by his suicide, this act is not suicide, and if he did it without doing good to another, it is something to be condemned (Dongoroz 1939, 3).

1.2. Thomas Beauchamp - philosophy

Thomas Beauchamp, a professor of philosophy at Georgetown University (USA), believes that "an act is considered suicidal if a person intentionally causes his death in cases where external circumstances do not force him to choose this action, except in cases where death it is caused by external conditions that are chosen by the agent but not in order to censor his death" (Beauchamp 1982, 88). We can see that both Dongoroz and Beauchamp define suicide according to a factor external to the person and claim that this act is either a good one or one that is not good, all depending on the intention with which this act is done.

1.3. Emile Durkheim - sociology

Emile Durkheim (2007, 13) believes that suicide means "any case of death that results directly or indirectly from a positive or negative act, committed by the victim himself, and about which she knows what the result will be." Personally, I find the French sociologist's definition as the most complete of the three. It discusses both the direct or indirect act and the motive, positive or negative, which the person resorting to this act has in mind, aware of the consequences or effects of his deed or cause.

Nowadays, in postmodern society, the notion of suicide tends to be replaced by that of suicidal behavior, which encompasses successful suicide, suicide attempts, suicidal ideation, presuicidal syndrome. Replacing the probable with the possible with nothingness, with the insignificant, proves that suicide is not an option, but rather the total denial of the possibility to choose. Suicide also has an operational-psychological definition by which "suicide is a human act of cessation of life, self-produced and with its own intention" (Shneidman 1980, 130).

2. Suicide - the medical perspective

In his oath, Hippocrates, the father of medicine, states that "I will not prescribe a deadly drug and I will not give any advice that could cause his death. Nor will I give a woman a pessary (a medical tool used in ancient times to provoke abortion) to cause an abortion. I will preserve the purity of my life and my art" (Hippocrates 2014, 1). Through this oath, it can be seen how Hippocrates indirectly declares himself against the practice of suicide, but this medical oath has not remained applicable in our times. The public space has developed

continuously, and today we can observe all kinds of social anomalies practiced in hospital spaces.

2.1. Euthanasia

One point of this discussion is that of euthanasia. A group of doctors around the world talking about euthanasia divides it into several categories, namely: voluntary euthanasia (by patient consent), involuntary euthanasia (against the wishes of a competent person), non-voluntary euthanasia (non-competent patient), euthanasia active (intentional termination of a patient's life by a physician), passive euthanasia (withdrawal of treatment), medically assisted suicide (Brock 1993, 13). This suicidal act is done in most cases with the patient's consent, but there are also cases in which the patient, without reason, can no longer make personal decisions, and the family is the one who becomes decisive for him, so that the former is removed from certain devices that keep him alive.

2.2. Biological factors

New studies in the field of suicide, from a medical point of view, state that biological factors may play a major role in some suicidal behaviors. It is claimed that there is a much clearer concordance in terms of suicide and suicide attempts between monozygotic twins (those with completely identical genes) than between dizygotic twins (they only have half of the genes in common). In a 1978 study of a group of adopted children, Schulsinger found that there had already been suicides in the biological families of those who committed suicide. The suicide of these adopted children was largely independent of the existence of psychiatric disorders, which may lead us to believe that there is a genetic predisposition to suicide. It is very likely that other factors, such as social, added to family history may increase the risk of suicide (Schulsinger 1979, 227-287).

2.3. Neurobiological processes

Other studies in the medical field of suicide show that in neurobiological processes, which are responsible for many psychiatric disorders, including those that predispose to suicide, it turns out that there is a biological basis for suicide. It is found, for example, that the level of serotonin in the cerebrospinal fluid is different in psychiatric patients who have committed suicide. Serotonin is a very important neurohormone that responds to mood and aggression. It is possible that the malfunction of neurons containing serotonin in the prefrontal cortex of the brain may be one of the underlying causes of a person's low ability to resist the impulses that push him to the actual act (Coccaro 1989, 587-599).

2.4. Sigmund Freud - the psychoanalytic perspective

Sigmund Freud's psychoanalytic perspective links suicide to melancholy as a deep and painful depression, in which all interest in the outside world ceases, with the loss of the capacity to love, due to diminished self-esteem. In his conception, this depression generates self-accusations, self-insults, all with self-destructive meanings, going as far as the dissolution of the person by himself. Freud's conception of suicide is also based on his theory, developed in 1920, which states that in every human being there is a "death instinct, *destrudo*, which would oppose the instinct of life and reproduction, *libido*, and which, in some cases, it may prevail if it is not sublimated into substitutes such as self-denial in devotion to others" (Minois 2002, 337).

2.5. Alfred Adler - psychology

Austrian psychologist Alfred Adler believes that suicide is an active protest against useful collaboration, a total withdrawal from life's problems, generated by defeat, or the fear of defeat in one of life's three great problems: society, profession, or love. "Suicide can be considered the most impressive challenge for psychology, it is favored by the deficiencies of the feeling of communication, appearing against the background of a melancholy" (Adler 1986, 100-124).

Condemned by religious prescriptions, public attitudes, and last but not least by the regulations of contemporary law, suicide seems, at least in appearance, a kind of conduct that involves only the individuality of the person and whose inner motivations are difficult to perceive or decipher. In a sense, Professor Radulescu remarks that "the suicidal act concentrates in him a whole universe of human feelings: frustration, hatred, jealousy, morbid passion, damage to dignity, violence projected on one's self, all intertwined with the loss of the primordial instinct of of life" (Radulescu 1999, 214).

3. Suicide - the philosophical perspective

The famous French philosopher Albert Camus, in the work Myth of Sisyphus, speaking of suicide, strongly states that "the man who is able to face the absurdity of human existence, who sees the meaning of life disappearing, still faces the problem of suicide. There is only one really important philosophical issue: suicide. To consider whether or not life is worth living is to answer the fundamental question of philosophy" (Camus 2020, 47). In light of the importance that Albert Camus attaches to this act, research into suicide from a philosophical perspective will continue with the way it has been viewed by various philosophers throughout important historical periods.

3.1. Antic Greece

In ancient Greece, the view of suicide was characterized by pluralism. "Each important philosophical school had its own particular position, being represented by all this plurality, from the categorical opposition of the Pythagoreans to the permissive approval of the Epicureans and Stoics" (Minois 2002, 50).

Plato was generally against suicide, but mentioned three major exceptions: condemnation (the case of Socrates), very painful and incurable disease, and a miserable fate, which could include various situations, from misery to shame (Plato 1999, 34) .

The epicureans, on the other hand, argued that wisdom advises us to calmly commit suicide if life becomes unbearable. The individual can "leave without noise", after reflecting deeply, without haste, "as if you were leaving a smoky room." The Stoics also recommended thoughtful suicide, when reason shows us that this would be the most worthy solution to our order of things, or when we can no longer follow the line of conduct we have drawn. In epicurean thought, suicide was recommended if life became unbearable. If the epicurean faced in his life the so-called adverse conditions of human existence, the best thing for him was the act of suicide. But if the whole human race were to suffer at once, what must it do if it were led by this philosophical current? "In response, it should be noted that the whole human race may be wrong. Entire communities, such as Jonestown, have committed mass suicide. What if the vast majority of the human race decides that suicide is the best "solution" to the world's problems? Is the nonconformist obliged to comply?" (Brie 2009, 4)

In ancient Greece, there were some philosophical schools that were against suicide. The most important school with such a creed was the Pythagorean one. Their opposition was based on two main reasons, namely: "the spirit, fallen in the body as a

result of an original defilement, must endure atonement to the end; the association between soul and body is governed by numerical relationships, to which suicide could break the harmony" (Brie 2009, 4-5).

Seneca, in the *Letter to Lucilius*, presents the obvious connection between suicide and the age of the individual. "If the body is no longer good for anything, why not release a struggling soul? ... I will not give up my old age, if it will leave me whole, whole by what is best in me. But if it starts to scare me or take my mind away, if it leaves me with no life, only breath, I will run away from this rotten and downhill hardughie ... it is a reluctant and a villain who dies of the cause of pain, but it is a fool who lives only to suffer pain" (Seneca 1967, 148-149).

Another important philosophical current that condemns suicide is the neoplatonic one. According to Plotinus, suicide "disturbs the soul of the dead and prevents it from detaching itself from the body in order to return to the celestial spheres; he admits, however, the practice of suppressing his own life in cases of physical pain, shortcomings caused by old age, trials to which man is subjected in captivity" (Minois 2002, 61).

3.2. Middle Ages

The Middle Ages were marked by a period in which suicides among the important people of society were absent, compared to the high number of suicides in ancient Greece. Beginning in the second half of the thirteenth century, in England, the courts decided to distinguish between cases of suicide non compos mentis (those who committed suicide suffered from a mental illness) and those of suicide (traitor of one's own person), only the assets of the latter being confiscated. Explaining suicide only by the action of the devil and by madness, the Middle Ages made it a completely irrational act. Suicide, long thought and explained by the simple reason of disgust with life, was only a category of madness, melancholy (Saucan 2005, 7).

3.3. Renaissance

The renaissance is a special picture in terms of suicide. Although the essence of the Renaissance vein was man (Rotaru 2005, 350), the personalities of the time speak clearly of an increase in the number of suicides. Boccaccio was surprised by the frequency of suicides by hanging in Florence. Erasmus of Rotterdam rhetorically wondered what would happen to mankind if people did not fear death anyway, given the ease with which they meet it. Luther talks about the suicide epidemic in Germany in 1542.

This period is also the time when the first statistics on suicide began to appear, and England remains the best example of this (Minois 2002, 70). In London, the registration of deaths allows us to understand the amplifying role of rumors about suicides. From the beginning of the seventeenth century, the municipal authorities published a weekly list of deaths, first in connection with the plague epidemics, then regularly, indicating the causes of death; is what was called the "bills of mortality." Thus, a weekly list of suicides was available in each parish, which also mentioned cases of insanity and sometimes the profession of victims, making an annual total" (Saucan 2005, 9).

3.4. The Enlightenment

Enlightenment philosophers are all interested in the phenomenon of suicide, some condemn it without hesitation, others proclaim the total freedom of man to dispose of his own life, others are more nuanced, accepting or rejecting it depending on the context (Montesquieu 1993, 109).

3.5. 19th century

The nineteenth century brought a change in the debate on suicide, and the causes of the phenomenon, whether social or psychological, began to be discussed more and more. The problem of individual responsibility becomes secondary, man being increasingly perceived as manipulated by social or psychological factors, factors that he can not control (Saucan 2005, 12).

4. Suicide - the theological perspective

Holy Scripture has a very clear message on this issue. Thus we find that the sixth commandment, "Thou shalt not kill" (Exodus 20:13) shows a categorical prohibition to suppress life, whether personal or personal.

Life is the most beautiful but received from God, the source and foundation of all other existential goods (Rotaru 2019, 201-215). That is why this commandment forbids killing, that is, the raising of one's neighbor's life, but also the cessation of one's own life, that is, suicide. If human life is confined to an economy of God's gifts, then he who respects the gift, that is, life, respects and honors God, the Giver of life. That is why Scripture considers killing a blatant sin in heaven (Genesis 4:10). In the current context, this order also extends to very subtle forms of killing or suicide, which are related, for example, to drug and alcohol use, genetic interventions on the plant and animal kingdom, which endanger human health, techniques and techniques. cloning and genetic modification of the human embryo, to manipulative subliminal messages, etc. "Unmasking these subtle forms that kill the physical or spiritual lives of many people is the right way to keep this commandment and contribute to the transfiguration of our present life into the light of eternal life in the Kingdom of God, which is peace and joy in the Spirit. Holy, the Giver of Life" (Brie 2009, 105).

As we see from the fourth commandment, suicide is a crime, it is a murder, and it falls under this commandment. Taking your own life is as guilty as taking someone else's life. Suicide is specifically condemned in the Bible. The Bible gives us some condemnable cases of suicide. Abimelech decides to kill himself near the tower of Thebes. Then Saul, Ahithophel, Judas, etc., and of the latter the Lord Jesus Christ said, "For it were better that he should not have been born" (Matthew 26:24).

Suicide is a terrible sin. Why is suicide so guilty? The answer to this question is multiple and I want to give it briefly (Brie 2009, 106).

4.1. God's sovereignty

According to the Christian view, suicide rejects God's sovereignty over life. God gives life, and God takes life. Whoever interferes in this, taking the life of another or his own life, violates the sovereignty of God. The only one who is Lord of life is God. In 1 Corinthians 3:16, we read that "if anyone destroys the temple of God, God will destroy it, "and Moses clearly states God's words, "I give life, and I kill." I will heal, and I will heal; and no man shall deliver me out of my hand" (Deuteronomy 32:39).

4.2. The sanctity of life

According to the Christian conception, suicide is considered to be an attack on the sanctity of life. It is the church fathers who introduce the expression sanctitas vitae (Feige 1997, 435). Man's life is holy. That's how God gave it. It is made in the image and likeness of God. We find in Genesis 1:27 the words "God made man in his own image, in the image of God he created them," and by this we mean that in the Christian vision when one man attacks the life of another, he actually attacks his image and likeness. God in man, in the holiness of the life that God has placed in him (Ephesians 4: 22-24).

4.3. The body as the Temple of the Holy Spirit

Suicide is to blame for destroying the body, which is the Temple of the Holy Spirit. Through this body man must worship God and give Him to Him by his deeds. The apostle Paul wrote to the Corinthians: "Know ye not that ye are the temple of God, and that the Spirit of God dwelleth in you? If any man defile the temple of God, him shall God destroy; for the temple of God is holy, and so are you" (1 Corinthians 3: 16-17).

4.4. Life - God's gift

Suicide is the culprit because the suicide bomber fails to take responsibility for the life God has given him. The Lord said, "There is no temptation to you, which is beyond the power of men" (1 Corinthians 10:13). God weighs the circumstances in our lives, and His purpose for us is to force us through these circumstances to return to Him and assimilate our Christian moral values. When a person commits suicide, he refuses to take responsibility for fulfilling God's plan for him, for the Apostle Paul exhorts "glorify God in your body and in your spirit, which are God's." (1 Corinthians 6:20).

4.5. The possibility of repentance in the Christian vision

Suicide is to blame for giving man the opportunity to reconcile man with God. In the Christian view, all sin receives God's forgiveness on condition that he repents (Acts 26:20), repents of his sin (Proverbs 28:13), and receives divine forgiveness and correction (John 3:16; Romans 12:2). Suicide, thus, in Christian theological thinking, is the only sin that remains without the possibility of repentance, because it can no longer offer time and life to repentance.

5. Moral issues

Responding to this problem of suicide from a moral perspective is very difficult when it comes to certain special situations, with exceptions. In the following, I would like to focus on a few issues in this category, such as:

5.1. How guilty is the suicide attempt?

The attempted murder is condemned by law. If a man tries to kill someone and fails, but it is legally proven that he wanted to kill him, he is sentenced to prison. However, the suicide attempt is not condemned by law. But, as we have seen above, from the point of view of Christian morality, the suicide attempt is guilty before God.

5.2. The problem of self-sacrifice.

Is self-sacrifice suicide? She is the mother who refuses to eat bread because the bread is too little, she gives it to the children, and as a result she dies of starvation. Is she guilty? Is the one who is in a boat with friends guilty, and who throws himself into the sea to lighten the boat so as to save the others? Is self-sacrifice suicide? If so, it means that the most guilty "suicide" would be the Lord Jesus Christ, who gave his life for all. John, the apostle of love, presents his Christian vision of self-sacrifice and remarks: "We have known His love by the fact that He gave His life for us; and we ought to lay down our lives for the brethren" (1 John 3: 6).

5.3. Can refusal of medical care be considered suicide?

He is a sick man, he is old, death is near, and he says: "Don't take me to the hospital anymore, I don't go to the hospital anymore! I believe in the Lord Jesus, I know that the

Lord heals me, and if His glory heals me, and if not, I still owe death. " And he dies! Is it suicide before God?

Based on Horatiu's aphorism, carpe diam or live the moment, we can understand that the principle of people without faith in God is the capitalization of earthly life, "escape your life". The highest value in their eyes is their lives, if they lost their lives they lost everything. But for Christians, not bodily life is the greatest value, but greater than bodily life is eternal. Paul stated, "For to me to live is Christ, and to die is gain. But if I have to live in the flesh, make me live; and I don't know what to choose. I am close in two ways: I would like to move and be with Christ, because it would be much better; but it is more necessary for you to abide in the flesh" (Philippians 1: 21-24).

6. Conclusion

Voluntary or intentional homicide or murder (Genesis 4:8-10) that can be mediated or committed, committed in one's own life (suicide) or alien, born or not yet born (abortion), from the Christian point of view is the greatest evil which man can do, because - according to the teaching of the Church - life is the greatest gift of God, of which we have no right to lack the one who has this gift.

John Breck in his study *Euthanasia: A Good Death?* believes that Orthodox Christianity cannot accept the solution of active euthanasia, no matter how popular this solution is in any given society (Breck 2001, 54). Christian religious societies continue to be challenged to find morally acceptable alternatives.

In a Christian vision we know, and what we know we can say: suicide, from the point of view of Christian religious communities, is guilty before God. It is guilty as a crime, as an attack on God's sovereignty, on the sanctity of life, on the image and likeness of God in our lives, and on the peace of others.

References

Adler, Alfred. 1986. *Theories of Personality.* California: Cole Publishing Company.

Beauchamp, Thomas şi Barbara Levenbook, James Rachles, J. Baird Callicott, Tom Regan, Hugo Adam Bedau. 1982. „*Suicide*", *Materrs of Life and Death*. New York: McGraw-Hill Humanities.

Breck, John. 2001. *Darul sacru al vieţii (The sacred gift of life).* Cluj-Napoca: Patmos.

Brie, Ioan. 2009. *Curs de Teologie Morală (Moral Theology Course)*. Bucharest: Pentecostal Theological Institute.

Brock, D. 1993. „Eutanasia activă voluntară" (Voluntary active euthanasia). In *Raportul Centrului Hastings* 22 (2): 10–22.

Camus, Albert. 2020. *Mitul lui Sisif (The myth of Sisyphus).* Iasi: Polirom.

Coccaro, E. F. 1989. "Serotonergic studies in patients with affective and personality Disorders." In *Archives of General Psychiatry*, no. 46.

Dongoroz, Vasile. 1939. *Curs de Drept Penal (Criminal Law Course).* Bucharest: University of Bucharest.

Durkheim, Emile. 2007. *Despre Sinucidere (About Suicide)*. Bucharest: European Institute Publishing House.

Feig, G. 1997. „Die Väter der Kirche—eine ökumenische Herausforderung?" (The Fathers of the Church – an ecumenical challenge?). In *Unterwegs zum einen Glauben,* Leipzig, p. 430–447.

Hipocrate. 2014. *Jurământul lui Hipocrate,* format pdf. https://dokumen.tips/documents/hippocrate-barbu-elena-si-catalina-alina.html (accessed on 20.02.2022).

Minois, Georges. 2002. *Istoria sinuciderii. Societatea occidentală în faţa morţii voluntare (Suicide history. Western society in the face of voluntary death).* Bucharest: Humanitas Publishing House.

Montesquieu, Charles. 1993. *Scrisori Persane (Persian Letters)*. Chisinau: Hyperion Publishing House.

Platon. 1999. *Legile (The Laws)*. Bucharest: IRI Publishing House.

Radulescu, S. M. 1999. *Devianţă, criminalitate şi patologie socială (Deviance, crime and social pathology)*. Bucharest: Lumina Lex.

Rotaru, Ioan-Gheorghe. 2005. *Istoria filosofiei, de la începuturi până la Renaştere (The History of Philosophy, from the beginning to the Renaissance)*. Cluj-Napoca: Cluj University Press.

Rotaru, Ioan-Gheorghe. 2019. *Om-Demnitate-Libertate (Man-Dignity-Freedom).* Cluj-Napoca: Risoprint Publishing House.
Saucan, Doina- Stefana. 2005. *Abordare psihosocială a sinuciderii ca formă particulară a violenţei (Psychosocial approach to suicide as a particular form of violence)*. Bucharest: National Institute of Criminology.
Seneca. 1967. *Scrisoari către Lucilius (Letters to Lucilius).* Bucharest: Scientific and Encyclopedic Publishing House.
Schou, M. Schou and Strongren, M. E. 1979. *Origin, prevention and treatment of affective Disorders*. Londra: Academic Press.
Shneidman, Edwin. 1980. *Voice of death*. New York: Harper & Row.

RAIS Journal for Social Sciences | VOL. 6, No. 1, 2022
ISSN 2574-0245 (Print) | ISSN 2574-1179 (Online) | DOI:10.5281/zenodo.6574811

The Educator as a Role Model within the Community: An Analysis of the Leader's Speech in the Book of Samuel

Samuel Florin BÎRLE

PhD (c), "Aurel Vlaicu" University of Arad, Romania, sami_birle@yahoo.com

ABSTRACT: The final speech given by Samuel to mark the passing from a theocratic to a monarchical regime is distinguished by a strategy of motivation to obedience, following his personal example. The community thus has the opportunity to meditate on the fact that they are changing a leadership system represented by a person of integrity that has honorably undertaken their leadership tasks. By means of this strategy, Samuel's generation benefited from the example of their leader to whom they could relate to, and whose faith could be followed in circumstances of social transition. The description of the immaculate journey of the leader using rhetorical techniques is displayed by presenting a living example that refers to the fact that faithfulness is achievable with respect to Yahweh's perfect commandments in Deuteronomy and has the role of convincing the nation that their request for a king was sinful.

KEYWORDS: Samuel, speech, education, strategy, leadership

1. Introduction

According to the paradigm consecrated in the books of Deuteronomy - Kings, Samuel gives a public speech at the end of his activity to mark an important moment of social transition (1 Sam. 12). The perspective given even from the times of the classical work of Martin Noth (Geschite Israels, 1943), is that the protagonist interprets the past and the future, following the model offered by Moses (see also Joshua at Shechem (Josh. 23-24), Samuel at Gilgal (1 Sam. 12), Solomon in Jerusalem (1 Kings 8) and Elijah on Mount Carmel (1 Kings 18).

In terms of general circumstances, we note that Samuel operates the transition from the theocratic regime instrumented by the judges to the monarchical one - in which the king will determine the further evolution of the nation. The prophet's speech begins with a sort of public report of activity in which he emphasizes the purity of heart with which he carried out his entire work. According to our interpretation, this aspect is part of a motivational educational strategy, by which the leader positions himself as a role model to be followed within the community.

The fact that Samuel includes himself in the list of judges authorized by Yahweh is not proof of his self-sufficiency, but rather an expression of the authority he was given. Paul does the same in a New Testament context, when he declares *Imitate me, just as I also imitate Christ* (1 Cor. 11: 1 NKJV). A true educator must be able to set an example to follow, essentially presenting an uncompromising trajectory. In addition, we believe that he fought for obedience to God even though times were changing. As in the case of Moses, by using his own example of obedience, one considers not only the shaping of the image of the leader / educator, but also the idea that this (privileged) status does not relieve one of responsibilities in relation to Yahweh. On the contrary, the

activity of mediating teaching connects and conditions the obedience of the people to the leading effort. Ultimately, as we will demonstrate, the purpose of this strategy is to determine a living proof of faithfulness to God. The requirements are not in the realm of the impossible, there are examples of people who have lived righteously. The community should follow the example and accept the Deuteronomic message it carries.

2. A king to judge us

It is clear that before the Gilgal sermon, a number of preliminary steps were taken, preparing the change of leadership in Israel, as recorded in the beginning of chapter 8. As R. P. Gordon pertinently remarks, the narrative of Saul's establishment as the first king can be summarized in five successive steps: "(i) a request for a king by the tribal elders of Israel (8:1-22); (ii) the private anointing of Saul (9:1-10:16); (iii) divine nomination and public presentation (10:17-27); (iv) military success and public acclamation (11:1-15); (v) final speech by Samuel" (Gordon 1984, 40).

Therefore, the final discourse and the whole evolution of events in Chapter 12 are a follow up of what happened in Chapter 8, where the motivation behind the request for a king (מֶ֫לֶךְ- meleḵ) was revealed. In light of this representation, Samuel's speech is the climax to make the monarchical regime official. In view of the connection of the aforementioned writings, it is appropriate to examine the reasons which led the representatives of the tribes of Israel to ask for a king. Three of the elders' reasonings are revealed: "*Look, (1) you are old, and (2) your sons do not walk in your ways. Now make us a king to judge us (3) like all the nations"* (1 Sam. 8:5 NKJV).

First of all, they begin from the objective reality in which Israel was at that moment, in terms of leadership. Samuel had grown old, so the appointment of a new leader was required. It is noteworthy to observe that this chapter specifically begins with the mentioning of the historical framework, by the use of the phrase *when Samuel grew old*. Samuel himself starts his final speech using the same statement: I am old and gray (זָקַ֫נְתִּי - zāqantî - I am old / וָשַׂ֫בְתִּי - wāśaḇtî - gray).

Second of all, the elders claim that the sons of the prophet did not continue to judge Israel according to the model set by their father. Verse three reveals four heads of accusation: (1) *But his sons did not walk in his ways;* (2) *they turned aside after dishonest gain,* (3) *took bribes, and* (4) *perverted justice (NKJV).* It is important to note that the request comes in the context in which Joel and Abiah, Samuel's sons, had already been appointed judges over Israel, and were residing in Beersheba. It seems that their ministry was limited, probably with the aim of preparing them for a future, full-time position, because this location was positioned at the southern end of the country, and at that time Beer-Sheba was not yet well defined as a settlement (Walton, Matthews and Chavalas 2014, 313-314). However, it was enough for the young judges, who were no longer mentioned in Scripture after this time, to have the reputation of being compromised individuals. According to Willard Winter, "this is just another instance of a good father without the blessing of faithful sons" (Winter 1967, 103). Nevertheless, the problems within the leader's family added to the debate over the change of the Israel ruling regime. Christopher Wright implicitly notes in the context of describing examples of Old Testament moral self-defense that "it was the failure of Samuel's sons to uphold their father's standards that triggered and guaranteed the success of the monarchy as an alternative" (Wright 2004, 374). Samuel did not like the initiative of the elders (Rotaru 2014, 27-31), which suggests that it was not yet the right time for this change. The monarchy had been anticipated and even legally structured since the time of Moses, but the initiative should have belonged to Yahweh, and it should have been applied at the correct time. Moreover, their gesture could be defined as a lack of trust in God-given leadership.

The third reasoning behind the decision to ask for a king is likely to incriminate them even more. They wanted to be like the rest of the nations (כְּכָל־ הַגּוֹיִם: - kəḵāl haggōwyim). Neither the presentation of the king's rights discouraged the delegates, nor did the prophetic elements that revealed future conflicts between the people and the king. Consequently, during the meeting in Rama, the future moment when the judge-prophet would leave the ministry was anticipated, in a national assembly organized in Gilgal. In the context of the analysis, we bring into question the perspective of Christopher Wright, who examines the period of transition to a kingdom, emphasizing two fundamental issues. First, he points out that this system has human origins: "one thing that stands out clearly in the emergence of monarchy in Israel is how characteristically human, ambivalent, even squalid at times, were the factors that gave rise to it" (Wright 2004, 230). These remarks are made despite the text in Deut. 17, that is perceived as an additional and limiting stipulation that had to be initiated by Yahweh, and not by the people. On the other hand, the author talks about the divine participation within this system of leadership, as well as about "the interesting tension here between the theocratic ideal and the attributes and functions accorded to human kingship" (Wright 2004, 231). Thus, he aptly remarks that "the great paradox of the monarchy is that, though human in origin and infected from its very conception by tendencies to apostasy and corruption, God nevertheless took up monarchy and wove it into the heart of his redemptive purposes" (Wright 2004, 231). He therefore concludes with the long-term result of the ministry, asserting that "the king represented God's rule over Israel in the present, and became the symbol of the hope of God's ultimate perfect, messianic rule over all nations. Such is the wonder of the interplay between human freedom and divine sovereignty" (Wright 2004, 234).

As we could note, Samuel's speech in 1 Sam. 12 is the climax of the establishment of the monarchy in Israel. From a critical-editorial perspective, it is part of the work of a Deuteronomist writer (or several), that linked the older narrative texts. We will not insist on these aspects, but we will briefly reiterate only a few elements that underlie the interpretation of these texts. Not only the book 1 - 2 Samuel, but also the rest of the texts that are the subject of our study (Deuteronomy, Joshua, Judges, and 1-2 Kings), form a group of books whose final form has been assigned to a Deuteronomist author (or several), receiving the generic name of Deuteronomistic history. This perspective is based on the fact that Joshua - 2 Kings can be observed through a single line of interpretation, based on the connections in language and concepts between Deuteronomy and the following books, especially distinguishable in the speeches of leaders given at the turning points in history. Although the hypothesis that Martin Noth made at the beginning of his study came to be considered too simplistic, the evolution of his ideas developed, in the sense that, researchers came to accept the idea that the writing was made by a Deuteronomic school or Deuteronomic circles, and, moreover, the inter-connections (McCarter 1980, 1984) between these books have been generally acknowledged.

3. Editorial aspects

The analyzed text reveals that we are dealing with a complex text from an editorial perspective. For example, Antony Campbell points out that in chapters 7-12 "rather than a flowing text, these chapters present a variety of views, both for and against the monarchy, expressing different traditions of its origins in Israel" (Campbell 2003, 88). Campbell believes that writing a sketch with a general perspective will highlight different versions and contradictory opinions of those who contributed to the writing of the texts. In spite this, we should keep in mind that Samuel, as a leader, is, in our view, a mediator of the two outlined perspectives. He is the main character in any of the versions we could identify.

Hence, according to the understanding we have, because of the way the main character wrote the texts that preface and postface the speech, these can be perceived without reservation as homogeneous.

In addition, we emphasize the perspective of some researchers who underlined the unity of the paragraphs between chap. 8-15, such as Dorsey or Marcel Măcelaru. The latter explains the differences between his own perspective and that of Dorsey, and points out that "the meaning and purpose of the pericope are necessarily in connection to its structural arrangement. In this regard, I suggest that the narrative was arranged in such a way that the events presented are changed, reversed, and contrasted with other parallel events as the narrative unfolds. The result is a chiasmatic and concentric arrangement of narrative scenes, with Samuel's speech as the culmination of the chiasm, and with the parallel events written in opposition to each other" (Măcelaru 2012, 64-65).

Referring to Samuel's speech in Chapter 12, we point out that while in Barton and Muddiman's work it is categorized as "a farewell speech" (Barton and Muddiman 2000, 205), Keith Bodner points out from the start that, "it is the longest speech in Samuel's career" (Bodner 2009, 110) and that he was trying for the last time to determine the progress of the people by offering an alternative to monarchy, in the form of his sons who were brought into discussion at the beginning of the speech. We do not concur with this perspective because of the fact that Samuel was the one who anointed Saul king, and afterwards, even though the same prophet announced the king that his reign would not last, we should not dismiss the detail that he was weeping over the fact that God had rejected him (1 Sam. 16:1). In the same commentary edited by Barton and Muddiman, is underlined the idea that "1 Sam 12 is certainly Deuteronomistic, for Samuel's speech is reckoned to be one of the orations included by the Deuteronomist to mark one of the important milestones in Israelite history" (Barton and Muddiman 2000, 200).

Another observation is that in Samuel's speech, we can remark the specific elements of entering a covenant. McCarter noted some similarities between this covenant and the one in Joshua 24. These are the following: the introductory part, historical elements, the transition to the present, requirements, blessings, and curses (McCarter 1980).

To conclude this section, we can assert that the discourse in question marks the end of one age and the beginning of another. The narration shows that after a victory accompanied by enthusiasm, the prophet Samuel advances the proposal to go to Gilgal to strengthen the kingdom. Thus, the discourse of Samuel is prefaced, and that will, in essence, emphasize Samuel's faithfulness, reveal the sin of the people in their request for a king, and call the whole community to listen and obey God's commandments. Before the speech, we witness a moment when the cooperation between Samuel and Saul is evident. The enthusiasm of the people for the victory over the Ammonites is manifested inadequately due to the fact that it asks Samuel to hand over Saul's early opponents. Therefore, the victory over Nahash's army was to publicly confirm the legitimacy of the newly elected king. Saul himself will respond to the request, showing a conciliatory spirit. Immediately after, Samuel forwards the proposal to go to Gilgal, and verse 15 summarizes the most important things that happened there:

> *So all the people went to Gilgal, and there they made Saul king before the LORD in Gilgal. There they made sacrifices of peace offerings before the LORD, and there Saul and all the men of Israel rejoiced greatly* (1 Sam. 11:16 NKJV).

4. The educator as a role model (1 Sam. 12: 2-5)

The leader's speech begins with the motivational strategy provided by his personal example. By comparing Samuel's approach with that of Moses or Joshua, we notice that at this time there is more emphasis on his personal ministry, which is why the discourse can be perceived as a sort of public account. He cannot say what Joshua had said, *as for me and my household, we will serve the LORD*, because of the compromise of his sons, so he focuses his speech on his own activity. Consequently, in verses 2-5, a strategy based on the leader's behavior in public ministry is shown. After pointing out that he had aged, he disclosed that he had served the people tirelessly since his youth. This exemplifies an entire life put in the service of one's fellows. The speech continues to reveal that it was not an ordinary ministry, but one that stood out in terms of faithfulness and justice. Samuel was at the forefront of history as a worthy servant. He shows in this way that the people chose to change the leading typology, even though they had in front of them a complex and upright leadership model. He was careful to remove completely any possible accusations: greed, injustice, bribery, abuse and the oppression of the people. The speech presents elements that lead to the shaping of a process in which, through rhetorical techniques, the accused also becomes an accuser. Besides the charges, witnesses are also called, and these obviously have to be exterior. Thus, the discourse incorporates public testimonies, given by the people and the new king, whom he names in this context the anointed of the Lord. In the *The IVP Background Bible Commentary: Old Testament*, the structure of the process is pointed out: "the legal process described here consisted of three parts: (1) the witnesses are listed (Yahweh, his anointed [i.e., the king] and the people, v. 3), (2) Samuel appealed to these witnesses, and (3) the witnesses responded. This pattern is also attested in Ruth (4:4, 11) and Joshua (24:22)" (Walton, Matthews and Chavalas 2000, 320).

Some scholars have argued that the part of the discourse between verses 1-5 "do not represent the most interesting dialogue in the Deuteronomistic History" (Bodner 2009, 111), and that the people would be "rather passive and compliant, and not very creative as interlocutors with the last judge and his very intense speech. Samuel's inquiries sound like rhetorical questions" (Bodner 2009, 111). However, given the background of the discussion, we can ask ourselves what creativity could have been shown in the face of questions that required evidence of compromise. These are not rhetorical questions, although in a speech like this, they could have been addressed, but rather they were real questions, that require the same kind of answers. There is every reason to believe that these elders, who did not shy away from telling the prophet about the sins of his own sons, would have reasoned if Samuel had wronged them in any way. However, their answer leaves no room for other interpretation. They had a leader whom they could not blame, who did not take anything from them, unlike the king who would lead the people from then on, and who would claim all kinds of benefits from the people (1 Sam. 8: 11-18).

Another aspect that needed to be considered at that time was Samuel's decision to include himself in the list of judges who were sent by the Lord. We do not consider that gesture to be a proof of self-sufficiency, but rather the expression of the authority of a man truly used by God, and who could be recommended as an example to follow. Similarly, in a New Testament context, Paul has the same approach, when he says *Imitate me, just as I also imitate Christ* (1 Cor. 11: 1 NKJV). Neither Paul, nor Samuel should be suspected of infatuation when making such statements. On the contrary, a true educator must be able to set an example to follow, demonstrating in himself the experience of an uncompromising life path.

We agree with Hamilton that Samuel does not present in his discourse any of the "problems or the actual experiences of the judge leadership" (Hamilton 2001, 242), however his purpose was to inspire the community to serve God. So, we should not be

held captive to the reasoning that Samuel supports the monarchy, or Samuel supports the judge. He rather sought to connect the people to Yahweh's preferred system of government, and most of all, we believe that he advocated obedience to God even though times were about to change. The leader was perceived as a role model therefore the developed rhetoric had an important motivational component.

Conclusions

In light of the above observations, we can see that Samuel is positioning himself as an exemplary leader. Although Israel benefits from a special identity, the people yearn to be like the rest of the nations. Their request for a king derived from their immediate needs - we need a military leader, and not from other deeper realities - we need a leader to lead the nation in obedience to Yahweh. Suitable leaders (and teachers) for the living times have always been sought, to help meet the relevant needs of a specific generation. However, the considered options in this field should be based on moral considerations, taking into account the fact that those who lead inevitably become models to which the social group adheres.

The fact that Samuel includes himself in the list of judges authorized by Yahweh is not proof of his self-sufficiency, but rather an expression of the authority he was given. Paul does the same in a New Testament context, when he declares *Imitate me, just as I also imitate Christ* (1 Cor. 11: 1 NKJV). A true educator must be able to set an example to follow, essentially presenting an uncompromising trajectory. In addition, we believe that he fought for obedience to God even though times were changing. As in the case of Moses, by using his own example of obedience, one considers not only the shaping of the image of the leader / educator, but also the idea that this (privileged) status does not relieve one of responsibilities in relation to Yahweh. On the contrary, the activity of mediating teaching connects and conditions the obedience of the people to the leading effort. Ultimately, as we will demonstrate, the purpose of this strategy is to determine a living proof of faithfulness to God. The requirements are not in the realm of the impossible, there are examples of people who have lived righteously. The community should follow the example and accept the Deuteronomic message it carries.

References

Barton, John and John Muddiman. 2000. *The Oxford Bible Commentary.* Oxford and New York: Oxford University Press.

Bodner, Keith. 2009. *1 Samuel. A Narrative Commentary.* Sheffield: Sheffield Phoenix Press.

Campbell, Antony. 2003. *1 Samuel.* Grand Rapids: Eerdmans Publishing.

Gordon, R. P. 1984. *1 & 2 Samuel*. Sheffield: Sheffield Academic Press.

Hamilton, V.P. 2001. *Handbook on the Historical Books*. Grand Rapids: Baker.

Măcelaru, Marcel V. 2012. Identitatea între povară și privilegiu (The identity between burden and privilege). Cluj-Napoca: Risoprint.

McCarter, Peter Kylee McCarter. 1980. *1 Samuel.* New York: Doubleday.

Peter Kyle McCarter, Peter Kyle. 1984. *2 Samuel.* New York: Doubleday.

New King James Version Bible (NKJV). 1982. Thomas Nelson, Inc.

Rotaru, Ioan-Gheorghe. 2014. *Drept bisericesc (Church Law).* Cluj-Napoca: Risoprint.

Walton, John, Victor H. Matthews and Mark Chavalas. 2000. *The IVP Background Bible Commentary: Old Testament*. Downers Grove: InterVarsity Press.

Winter, Willard. 1967. *Studies in Samuel.* Joplin: College Press.

Wright, Christopher J. H. 2004. *Old Testament Ethics for the People of God.* Downers Grove: InterVarsity Press.

RAIS Journal for Social Sciences | VOL. 6, No. 1, 2022
ISSN 2574-0245 (Print) | ISSN 2574-1179 (Online) | DOI:10.5281/zenodo.6574815

Integrated Management System in Education

Salome CHKHEIDZE

IMS Manager, Independent Auditor of Management Systems and Occupational Health and Safety
Business Administration PhD Student, Georgian American University, Georgia

ABSTRACT: The importance of Integrated Management Systems (IMS) is growing more and more for organizations. Interest in this subject indicates that IMS is seen as "management systems of the future." IMS is one of the most effective tools to lead effectively and make processes in the organization fluent. According to that, the aim of this article characterizes the possibility of building IMS through the identification of common elements and specific requirements by the ISO 9001 and ISO 45001 professional references. Part of the article is the methodology of building IMS in the educational organization. To achieve this aim, the author will try to demonstrate the importance of an integrated management system in the frame of quality management and occupational health and safety in the educational organization. An Integrated Management System (IMS) includes all aspects of an organization's systems, processes, and standards into one smart system. This system allows a business to have effective management tools, save time and increase efficiency. IMS is a combination of all elements as one whole system.

KEYWORDS: Integrated Management System, PDCA cycle, ISO 9001, ISO 45001

Introduction

An Integrated Management System in education combines the integration of an effective Quality Management System (QMS), Occupational Health and Safety System (OHSAS), and Information Technologies Systems (ITS). Especially during the pandemic situation, when the whole educational system in the world had to turn online, we have seen the importance of using technologies not only in teaching but also in leading and management.

For Quality Management Systems, ISO 9001 is the most common and effective way to establish an appropriate management system in the organization. ISO 9001 is defined as the international standard that specifies requirements for quality management systems (QMS). Organizations use the standard to demonstrate the ability to consistently provide products and services that meet customer and regulatory requirements. ISO 9001 is based on the PDCA cycle, which will be discussed later in this article, and provides the organization with all the necessary aspects for effective quality management systems.

As for the Occupational Health and Safety System, ISO 45001 is a way to establish the standard and make health and safety system procedures and processes effectively in the organization. Unfortunately, not all leaders understand the importance of this standard in education, on and mostly it is considered a standard for construction or oil production companies. Later in the article, we will see the importance of integration of both these standards for effective education management.

Finally, Information Technology Management has become vitally important, especially while teaching and working online. It is important to combine Information Technology standards into the IMS to have effective human resources management. The most common and spread standard for implementation is ISO/IEC 20000-1(2018).

PDCA Cycle in Integrated Management

Harrington and McNellis (n.d.) said: "Measurement is the first step that leads to control and eventually to improvement. If you cannot measure something, you cannot understand it. If you cannot understand it, you cannot control it. If you can't control it, you can't improve it." William Edward Deming, a prominent American researcher, similarly to Japanese, believed that management staff and all employees should be involved in the process of continuous improvement. He created 14 principles that later became the basis of the philosophy of quality in the organization and continuous improvement cycle PDCA (Plan - Do - Check - Act), called the Deming wheel. The Deming cycle is a sequence of actions that aim at improvement. This cycle is also designed to solve quality problems and implement new solutions. PDCA model is extremely versatile and it can be successfully used in any type of business (Deming, n.d.). The first "Plan" cycle in integrated management is one of the most important as far as it takes a longer period than the other cycles and requires more work. "A man who does not think and plan long ahead will find trouble right at his door" – Confucius. In PDCA Cycle Plan includes such important business components as analyzing previous work with strong and weak sides; setting effective preventive actions; risk assessment; Design and revising business process components to improve results. So planning in IMS for both, Quality Management and Occupational Health and Safety directions should include all the components for effective planning. Planning in the IMS of Education organization includes:

- Analyzing of the previous year's academic achievements
- Employees' evaluation results
- Customer satisfaction
- KPIs achievement
- Incidents and their root causes
- Non conformances and their root causes
- Risk assessment
- Customers and other interested parties' expectations

According to all mentioned above, the next step is making an effective plan, where all the employees will be involved and feel like part of the team. Therefore, to sum up, the "Plan" cycle, starts with analyzing the previous work to make an effective action plan. However, just because we made a good plan, does not mean that it will occur. Hence, the next step of the Deming Cycle is "Do". Here the top management of the education organization needs to implement all the planned processes. Here is very important the term teamwork as far as the teachers, lecturers, technical personnel and other employees should be involved in doing the process. Otherwise, the aim of the organization will not be achieved as effectively as with their involvement.

Every process in business should be studied or checked. Within PDCA (Plan – do-check-act) Cycle Deming also uses PDSA (Plan-Do-Study-Act) cycle. To study or check, we should first have effective measurement tools. By this, I mean objective and reflective employees' observation forms; appropriate customer satisfaction questionnaires, where both, quality and occupational health and safety standards requirements will be included. At the stage of Check/Study, we should make clear feedback as far as this stage is tightly connected with continuous improvement. Our Academic Personnel's professional development is based on an effective evaluation system. At the same time, incidents, non-conformances, risks, and near misses should be studied and investigated deeply to set effective preventive actions and avoid them in the future (Weinstein & Vasovski 2004).

The final stage of the Cycle is "Act", which includes taking actions based on the results of measurement. Setting effective actions to reduce the risks and avoid incidents

and/or nonconformance is a path to continuous improvement. The act is a part of the cycle, which analyses all other stages and leads to improvement. PDCA cycle and its implementation in an integrated management system are given below in Figure 1.

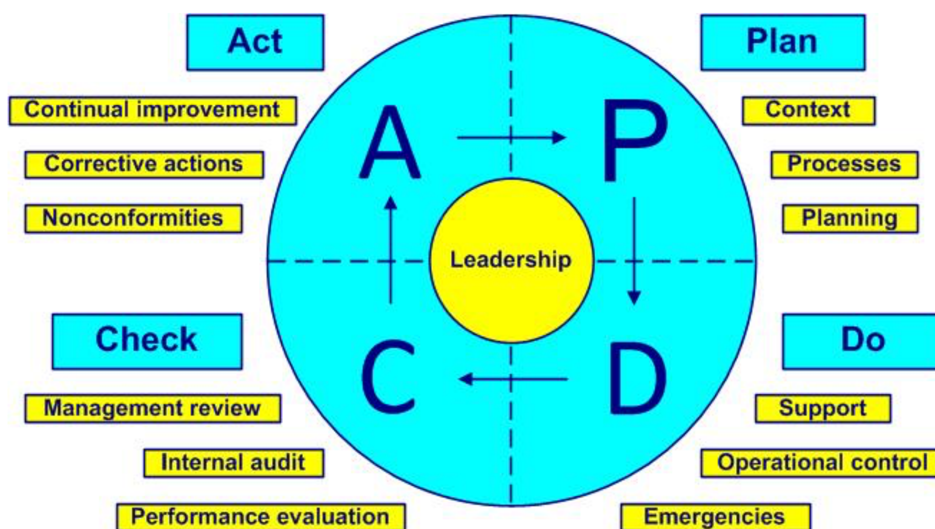
It is important to mention that in November 2021, there was made small research in educational organizations (private and public schools and Universities of Tbilisi, Georgia). Participants of the survey were teachers/lecturers, top managers, and customers (parents and students). According to the research, 100% of interviewed educational organizations have an action plan and they are aware of it. However, 75 % of the public sector and 40% of the private sector mentions that the plan is not based on the analyses of the previous academic year and/or employees do not have any information about last academic year's achievements, strengths, and weaknesses. It may lead us to doubt whether the plan can be effective and oriented toward continuous improvement. Moreover, there is another question about the consideration of interested parties' expectations. Most of the interviewed customers say that they have access to the calendar of the educational organization, however, they do not have any information about the achievements, strengths, and weaknesses of their institution.

94.4% of interviewed employees notice that they have systematic observations and receive the observation feedback on time. However, the result of Teachers' Subject Area Examinations, according to the statistics of the Ministry of Education and Science of Georgia, does not even exceed 25% (Edu Aris 2017).

As for the Occupational Health and Safety, unfortunately, there are no schools or Universities in South Caucasus with this Standard, while top Universities in the United Kingdom, the US, and Western European countries are proud to have the standard and effective integrated management system of ISO 9001 and ISO 45001. In the list of these educational organizations are such top institutions as Boston College in the UK, University of South Carolina, Imperial College of London, University of Warwick, and others.

To sum up, PDCA or Deming Cycle is a method of leading the educational organization effectively; however, case of implementation of PDCA in an integrated management system (IMS) is much more beneficial for business operation and managing educational organization, which finally should lead to the good educational system in the country.

Figure 1. Deming Cycle



Source: https://www.pqbweb.eu/platform.php?i=&if=69&ch=1853

Quality Management in Integrated Management System of Education

Quality Management means that the organization is focused on customer satisfaction through an integrated system of tools, techniques, training, and other different methods. This involves the continuous improvement of organizational processes, resulting in high-quality products and services. According to Deming, a system of quality improvement is suitable for any organization, which aims to launch a product or is involved in any type of service. The industrial analogy that compares workers and managers to students and teachers/lecturers is accurate and appropriate. In schools, students are the workers and products. Teachers and administrators are managers. The difference between success and failure of the educational organization depends on the quality of their work. Teachers are the first-level managers. Therefore, the teacher is a class leader, who emphasizes giving students the correct direction and teaching them how to learn and thus teach themselves. In modern teaching, teachers are managers, who show students the correct directions. Heads of Departments/Deans are the middle and upper-level management. The productivity of any educational institution depends mostly on the skills of those who directly manage the workers, i.e. the teachers/lecturers. According to Deming (n.d), their success in turn depends on how well they are managed by the administration above them. Therefore, any attempt at educational quality is best centered around organizational improvement efforts. The Board of Education is the board of directors thus responsible directly to the clients, and board members are overseers of the administration.

To promote quality management in educational organizations, there is a need to change management philosophy. The new management philosophy focuses on achieving quality, which is defined as meeting and exceeding the needs and expectations of clients. According to PDC(S)A cycle, customers' and other interested parties' expectations must be considered at the planning stage when the organization is focused on creating a strategic plan. Hence, the goal and aim of the organization should consider customers' and interested parties' expectations and interests. A second focus is on the acceptance of continuous improvement. The philosophy of continuous improvement is based on the readiness of the top management and the whole staff to be involved in analyzing work and setting effective corrective action plans.

To provide leadership for quality management and mostly for integrated management, people in leadership must be able to understand and apply these concepts:

- Systematic Thinking – this is the interdependence of functions with their sub-processes and the organization with its people.
- Theory of Variation – this is the understanding of the difference between common and special causes. An understanding of variation will enable educational leaders to work toward quality within the framework of individual differences. The existence of variation is why a state of zero defects does not occur and why numerical goals are not feasible (Darling-Hammond et al. 2020).
- Theory of Knowledge – only through a theory of knowledge can one understand the past and predict the future. A major component of total quality management is prediction. Only through prediction and long-term perspective can educational organizations expect to succeed over a long period.
- Knowledge of Psychology – the new philosophy is based on the understanding of people and their differences, and a commitment to applying systems thinking to the people system. School leadership aims to free up the potential of the different attributes of the people of the organization (Darling-Hammond et al. 2020).

Quality comes not from inspection but from improvements in the process. In education, teachers/lecturers need to involve the student as a worker to evaluate the quality of his/her work, product, or outcome. When students buy into the self-evaluation

process the quality of their work is greatly enhanced. Using reality therapy techniques to find out what students want and what they are doing to get what they want sets the stage for this process of self-evaluation.

Occupational Health and Safety System in Education

The integration of Occupational Safety And Health (OSH) into the educational system is an essential aspect of the development of a risk prevention culture. This allows everybody, teachers/lecturers, students, and parents alike to learn how to live and work safely and in a healthy environment. The educational staff must be aware of the risk factors in their working environment and must realize the importance of accurate investigation of any incidents and near misses. They must also become acquainted with the legal regulations on safety and health at work to prevent accidents at the workplace. An educational institution must be a safe and healthy working environment for all the staff, students, and other persons involved with it to make it suitable for the teaching and learning process. Implementation of Occupational Health and Safety into the integrated management system of education is not as simple as it may seem. First of all, it is mostly connected with the educational organization staff's philosophy and mentality. Employees and top managers should feel and understand the importance of an integrated management system within OHS as a path to an effective management system. A very good and effective way to implement OHS Standard is ISO 45001.

To ensure occupational health and safety in educational institutions managers must implement an occupational health and safety system. This should be part of the overall management system and include the following elements:

- development of an occupational health and safety policy
- a management system that allocates responsibilities in the field of occupational health and safety
- a risk assessment of health and safety at the workplace to be reviewed whenever conditions change
- occupational health and safety auditing
- training, information, and instruction on health and safety at work
- emergency procedures -periodical analysis of the system to ensure that it is efficient
- storage of documentation and records to ensure continuity

OHS system in educational organizations should include the following directions:

Medical service - it is one of the most important parts of the system, which consists of doctor and phycologist's work. When we talk about educational institutions, medical service is vitally important for schools, as the school age is regarded as the most important phase of childhood life during which the child enters the society training system and emerges as a contributing member of the community. If the child does not maintain adequate health, the benefits of education will be lost because of absenteeism or lack of attention due to ill health and consequently poor academic performance.

School health services deal with health appraisals, control of communicable diseases, record keeping, and supervision of the health of school children and personnel. This aspect concerns itself with evaluating the health of an individual objectively. Healthcare service allows the school authorities to detect signs and symptoms of common diseases as well as signs of emotional disturbances that could impede the learning activities of children. Psychologists should have a big role in the process of observing employees' psych-climate, evaluating students' and employees' mental health, and giving effective consultations to both students and employees. There are a lot of fields, which must be studied by the educational organization's psychologist, from students' and teachers/lecturers' relationships to the psych-climate between the

employees inside the institution. Another very important object for psychological service is the parents of students in schools. Unfortunately, a lot of parents have wrong attitudes towards children's raising methods and psychologists should be an intermediary link to build a correct relationship between parents and children.

Health services are both preventive and curative services and it helps in providing information to parents and school personnel on the health status of school children. It also provides advisory and counseling services for the school community and parents. It includes pre-entry medical screening, routine health screening/examination, school health records, sickbay, first aid, and referral services. Other services rendered include health observation (which involves the physical inspection of the physiology and behaviors of students/children), health examinations (screening tests and medical diagnosis), and health records (keeping of records of the health histories of students/children) (Olympia 2005).

Security Service - is the second biggest department in OHS for educational institutions. This service should work due to regulations for keeping safety in educational institutions. This service aims to strengthen security and emergency preparedness best practices; reduce safety risks and liabilities; improve students' and employees' perception of safety. Security service should not only guarantee security in all aspects of educational organization but also lead the process of incidents and near misses investigation, set together with other responsible employees effective preventive and corrective actions and conduct training for the employees and students to keep safe and make people understand the importance of it.

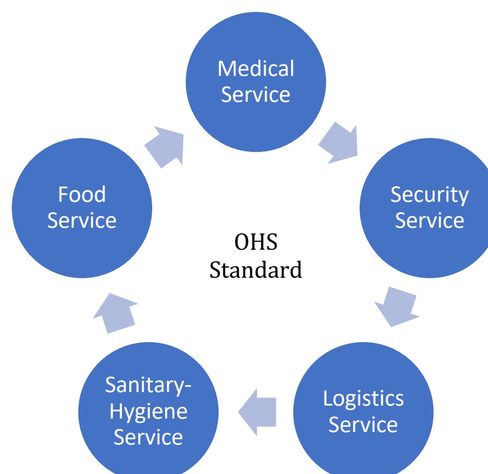
Logistics Service, which should be responsible for infrastructure, purchasing, transportation, and other services.

Sanitary – Hygiene Service, which is responsible for keeping the whole infrastructure clean following the regulations and norms of the standard, and being involved in teaching students (in schools) how to keep and role of cleanliness of their own space.

Food Service, which is responsible for providing employees and students with healthy food. Usually, the menu must be confirmed by the doctor and food manager.

These are the services which make the occupational health and safety system work in the educational organization. However, it is important to remember how these services work, the organization should decide and plan appropriately, make a clear policy, strategy and aim and follow the local regulations and norms of the Occupational Health and Safety Standard. Figure 2 shows a clear connection between these services in the Occupational Health and Safety system of educational organizations.

Figure 2. Interrelated services in Occupational Health and Safety system of the educational organization



Role of Technologies in Integrated Management System

Technology has revolutionized the field of education. The COVID-19 pandemic is quickly demonstrating why online education should be a vital part of teaching and learning. By integrating technology into existing curricula, as opposed to using it solely as a crisis-management tool, teachers can harness online learning as a powerful educational tool.

Technologies have been used to a major extent in the governance and administration of educational institutions. The role of ICT has become one of the biggest in the effective management of educational institutions.

Educational governance today increasingly needs to be understood as *digital educational governance*. The monitoring and management of educational systems, institutions, and individuals are taking place through digital systems that are normally considered part of the backdrop to conventional policy instruments and techniques of government; technical systems that are brought into being and made operational by certain kinds of actors and organizations, and that are imbued with aims to shape the actions of human actors distributed across education systems and institutions.

In internal administration, the use of technologies has been recognized on a comprehensive scale. Educational administration is the process, by which methods, principles, and procedures are put into practice within the educational institutions. The individuals need to carry out these functions by the goals and objectives. When the individuals are carrying out the governance and administrative functions, they need to ensure that they can achieve academic goals effectively (Oyedemi 2015). Today technologies in managing educational institutions can be used not only as a way of effective communication, but also correct time management, effective planning, and decision making, and objective measurement and monitoring tool.

Nowadays, in the era of timeless, effective, and fast communication is one of the most important in management. People should have free and fast access to necessary information. The communication process between the individuals within the working environment is an easy and less time-consuming process. Individuals can access various forms of technology. In other words, connectivity is promoted among departments through technology and they are required to work in greater collaboration and integration. Through the use of technology and the internet, individuals can acquire information and augment their understanding in terms of concepts and fields. It facilitates organizational learning and adaptation to the changing global environment by the way of partnership, participation, information sharing, and delegation.

To sum up, there is a need for new approaches to enhancing education for sustainable development in universities and schools. Implementation of an integrated management system in educational institutions provides an active, safe, and healthy environment for sustainable development and it also causes an increase in their quality levels. Implementation of IMS not only causes continual improvement but also familiarizes the public with new management systems, which would be a good pattern for using efficient management and policies.

References

Darling-Hammond, Linda, Lisa Flook, Channa Cook-Harvey, Brigid Barron & David Osher. 2020. Implications for educational practice of the science of learning and development, Applied Developmental Science, 24:2, 97-140, DOI: 10.1080/10888691.2018.1537791 https://www.tandfonline.com/doi/full/10.1080/10888691.2018.1537791.

Deming, D. W. (n.d.). "PDSA cycle." *Deming Institute*. Available at https://deming.org/explore/pdsa/.

Edu Aris. 2017. Available at https://edu.aris.ge/news/ramdenma-pedagogma-gadalaxa-minimaluri-zgvari-ratom-uchirs-naeks-am-informaciis-damushaveba.html.

Harrington, H. J. and T. McNellis (n.d.). “Mobilizing the Right Lean Metrics for Success.” *QualityDigest.* Available at https://www.qualitydigest.com/may06/articles/02_article.shtml.

Institute of Medicine. 1997. *Schools and Health: Our Nation's Investment.* Washington, DC: The National Academies Press. *https://www.ncbi.nlm.nih.gov/books/NBK232689/*. (n.d.).

ISO/IEC 20000-1:2018. Information technology — Service management — Part 1: Service management system requirements. Available at https://www.iso.org/standard/70636.html.

Olympia, R. P., Wan, E., Avner, J. R. 2005. The preparedness of schools to respond to emergencies in children: A national survey of school nurses. Pediatrics, 116, 738–745.

Weinstein, J., & Vasovski, S. (2004). *The PDCA Continuous Improvement Cycle*. ESD.60 – Lean/Six Sigma Systems. MIT Leaders for Manufacturing Program (LFM) Summer 2004.

RAIS Journal for Social Sciences | VOL. 6, No. 1, 2022
ISSN 2574-0245 (Print) | ISSN 2574-1179 (Online) | DOI: 10.5281/zenodo.6581195

A Century-Old Yet Topical Controversy - Euthanasia

Angela VLAD (CHIRVĂSUȚĂ)

PhD Student in the field of Sociology within the University of Bucharest, Romania
chirvasutaangela99@gmail.com

ABSTRACT: The paper focuses on the main ideas conveyed in articles and specialized theses on euthanasia, the principles that either support or combat it, the morality of the new permissive legislation in the field and the reasons why certain behaviors related to the end-of-life option are vehemently criticized today and cataloged as deviants in some countries. The debate on euthanasia has been of increasing interest lately, especially as medical technological advances have led to notable changes in the age structure of populations. More and more people with debilitating conditions have vital functions maintained artificially or they are resuscitated, even when they do not appreciate the quality of their own life. By the end of the twentieth century, all these aspects came to the attention of sociologists, who began to analyze the implications of technological and normative changes in the evolution of social relations. Some people consider there is a right for everyone to decide how they depart from this world, and according to others, claiming this right is a fundamental sin over the divine gift, life.

KEYWORDS: euthanasia, incurable disease, fundamental sin, the sacredness of life

Introduction

The practice of euthanasia has been recorded since antiquity, with infanticide, suicide and euthanasia enjoying widespread acceptance in Greek philosophy, which believed that the suppression of those who became a burden for people around them was justified. The Romans took over these practices from the Greeks after conquering them and resorted to euthanasia until the emergence of monotheistic religions and the concept of the sacredness of life.

Euthanasia is, in fact, the end of the pain for an incurable patient, through medical maneuvers or the suppression of life support, all decisions being made for the benefit of the patient and based on legislation that allows these medical and ethical decisions. If the procedure by which death is induced is carried out by the patient himself, under the direct guidance of a medical staff, then we are talking about a medically assisted suicide (Mureșan et al. 2013).

The history of euthanasia is sinusoidal: first allowed for practical reasons, then combated for religious reasons, practiced by the Nazis in their policy of exterminating „defective" people and „impure" nations and now reconsidered from the perspective of incurable diseases (AIDS) but also motivated by the increase of the life expectancy of the population that brings a lower quality of life in the years prior to dying.

The medical advances (technological, microbiological, pharmacological etc.) have given us more time to live, saved us from diseases that decimated generations, provided the possibility of artificial life support and allowed the human body to reach a certain threshold of old age when certain functions are permanently altered and it can no longer be about the joy of living, autonomy, or even the perception of the surrounding reality. Senile dementia is the "disease of modern society" with 10 million new patients annually (according to data from the International Health Organization), the most numerous diseases being registered in the age category of 65 years and over.

Euthanasia is a controversial topic nowadays, approached from different perspectives by doctors, lawyers and religious representatives, one of the main questions being what the justified limit of the protection of the right to life is, because this benchmark is not well defined (Pivniceru & Dăscălescu 2003, 114).

Doctors' opinion

Until recently, the original version of Hippocrates' Oath clearly stated the following: "I will not entrust poison to anyone, if I am asked so, and I will not urge such a thing, nor will I entrust to any woman any medicine to help her miscarry." The modern version (adopted by the World Medical Association in the Geneva Declaration, 1975) of the oath taken by medical graduates does not mention euthanasia or abortion. Any medical maneuvers with implications related to the right to life, abortion or euthanasia techniques could not be performed by doctors until the law allowed them to do so. It was not a choice of the doctors to change medical protocols, but it was a state decision to accept the interruption of the course of life under certain circumstances. The legislator included in the legal provisions which persons may perform these interventions (only doctors) as well as what conditions must be met.

Doctors' opinions matter only to the extent that they may choose to accept or to reject a patient euthanasia, for personal moral reasons, otherwise they are obliged by the law of the state where they work. Doctors are aware that they have to choose between the duty to keep patients alive against the duty to respect patient's right to a high-quality life. Large sums of money are currently being invested and strategies are being developed to prolong life, eradicate diseases, and discover miracle drugs. The social power of medicine increased with the improvement of medical techniques and the advanced training of doctors who can give or take life, comparable to the Creator.

This power comes with a huge responsibility, thus doctors, to protect their conscience and to avoid possible criminal proceedings against them, have asked the legislator or judges to establish clear instructions and procedures, regarding the time of the decision and how they should "play God" (Howarth & Jefferys 1996, 382).

Over time, euthanasia has gained more and more followers who have shown that death is preferable to diseases that cause unbearable pain. Nobel laureates: G. Thomson, L. Pauling and J. Monod argued that: "When there is no hope of acting effectively to heal, the only duty is to alleviate suffering and fear and any therapeutic fierceness becomes a caricature of medical duties" (Soulier 1991, 7).

The opinion of religious cults

Article 1 of the Universal Declaration of Human Rights states that "All human beings are born free and equal in dignity and rights." but individual dignity and freedom have been reconfigured by religious precepts, because you cannot dispose of something that is not yours, such as the life of others. Euthanasia is a rebellion against the Creator and religious philosophy, and I am not referring only to Christianity, but many other religions do not allow the human being, as created by divinity, to give up the gift of life, even in suffering. This is motivated by religions as accepting suffering brings subsequent salvation in the afterlife.

The declaration of monotheistic religions Judaism, Christianity and Islam, signed on October 28, 2019 in Vatican City, reconfirmed that "Euthanasia and assisted suicide are moral and intrinsically wrong and should be prohibited without exception." The Conclusions of this Declaration contain the following clarifications: "We support public laws and policies that protect the right and dignity of the terminally ill patient, to prevent euthanasia and to promote palliative care" (Dancă 2019).

I will address the thesis on the sacredness of life later in this paper, but for now, as I intend to offer an overview on how euthanasia was debated and perceived, I will also present the opinion of lawyers and the pros and cons of citizens.

Sociologists are interested in the political, economic, and social context in which changes in the legitimacy and morality of euthanasia occur but also in the motivation for changing options. In some countries, it is legalized, embraced by the public opinion while in others it is harshly criticized and combated. What exactly determines this difference in beliefs and values related to life and death? Why is euthanasia currently gaining followers? "Simple words such as death, pain and mourning had a different connotation in the 1970s than in the 1960s" (Fulton 2007, 15). Time will continue to make changes in all aspects of life and social relationships and the current trend is in favor of autonomy and respect for personal choices in all aspects of life.

Why is the Netherlands a pioneer in the introduction of euthanasia? What makes the Dutch different? Weyers (2006) summarized their characteristics as follows: individualism, the influence of medical technology, a specific view of death. He noted that between 1960 and 1970, in the Netherlands, major changes took place, old-fashioned ideas were abandoned, "the country stepped with confidence towards an era of internationalization, prosperity and secularization". Meyers stated that the Dutch appreciate sincerity and have therefore been more open to talking about death, being aware that certain treatments may be considered desirable or undesirable when it comes to a patient in pain who presents a low possibility of recovery. The Dutch relatively quickly reached a consensus and considered that unnecessary treatment is in fact a form of ill-treatment and therefore it should be stopped.

One of the basic concepts of euthanasia is the „right to die"

We cannot claim that there is a right to die, because every living being, at some point, will die, and we cannot prevent this. We can only speed up the process or extend life, to a certain extent, through some devices. We cannot compare the fundamental human rights to conventional rights because where there is a right, a natural consequence would be that someone would have the duty to cause death if the applicant wishes to do so and is physically unable to perform the act himself (Boudreau & Somerville 2014, 4).

From a religious perspective, the right to die does not exist because life does not belong to the individual but to God. On the official website of the Romanian Parish, in a document assumed by the Romanian Orthodox Church, the issue of euthanasia is addressed as follows: the doctor and no one else has the right to deliberately hasten the death of the patient because only God can give and take life. Even then, the doctor has only the duty of easing the suffering of the sick. Regarding the position adopted by the Romanian Orthodox Church, Peter Berger (1979) criticizes the commitment with which it must preserve traditions, rather than engaging in current social issues.

It is interesting to observe countries where euthanasia has been legalized and how religious affiliations influence the attitude of medical staff toward this issue. A study conducted in Australia revealed that more doctors without a religious affiliation admitted to practicing euthanasia more often than doctors with any religious affiliation. Among those who identified themselves with a religion, Protestants were intermediaries in their attitudes and practices between agnostic/atheist and Catholic groups. Thus, Catholics recorded the most opposition to euthanasia, and yet 18% of them admitted to having applied euthanasia procedures (Baume et al. 1995, 49-54).

How did the attitude of U.S. citizens change over time based on the religion they practice? Several longitudinal studies (Attell & Brandon 2017, 19-20) have shown an acceptance of the ideas of euthanasia and suicide for terminally ill patients. Compared

to Protestants, atheists are supportive of both measures and Catholics are more open to these options before the age of 40 years, as they grow more reluctant with age.

The idea of euthanasia gained ground due to the *desacralization of life.* In secular Western societies, priests of the most traditional Christian religions are fighting a losing battle on the authority to influence the way citizens view death and the fear of the end of life (Howarth & Jefferys 1996, p. 382).

What are the priests facing today? People who do not believe that there is anything else in the world but natural sciences, humanism and rationality. *Traditional values*, according to the World Values Survey (2008), consist of "a strong religious belief, the manifestation of close parent-child ties, authority and the rejection of abortion, euthanasia and suicide. *Secular-rational values* represent relaxation in terms of religious precepts and traditional family values, a less rigid authority and a greater degree of acceptance of abortion, suicide and divorce."

The modern person struggles to gain his own autonomy and to fulfill the ideals of Western humanism, they want to rule the world with an increasingly advanced technology, for them the world is empty of mystery, secular and the institutions are differentiated (Pârvu 2013, 112). This process of removing the spell began with the emergence of industrial societies and the involvement of organizations and institutions in areas such as health, education and politics, areas which the church previously steered.

"Both Weber and Durkheim constructed their axioms of secularization, which ultimately determined the disappearance of religion from the public space, on supply and demand. This disappearance was also celebrated by Mills: the sacred will disappear everywhere except the private domain" (Wright 1959 quoted in Ciuraru 2003, 737). The sacred is gradually disappearing and this is especially noticeable now, when we live in a period of modernization, of modern societies. Reflective modernization refers to the modernization of societies through where everything is weighed, tested, values are reevaluated, fundamental truths are reanalyzed and moral norms are modified to suit the evolution of social relations (Schifirneț 2009).

Anthony Giddens was concerned about the impact of reflexivity on the formulation of social projects and public policies. He also noted that there are major differences in behavior and the structuring of the community when the public sacralizes rationality and secularizes science against the society that institutionalizes "self-criticism of reason" (Dobrescu 2009).

Another concept used in discussions about euthanasia is "Autonomy"

Advocates of euthanasia base their explanations especially on the need to respect the autonomy and self-determination of every human being. Autonomy refers to a person's right to make decisions based on individual beliefs about what they think is right for them.

The medical committees consider it is very important to respect the patient's autonomy in approving the euthanasia procedure because no doctor would want to violate the patient's right to make personal choices. The choices must cumulatively meet several conditions: to be knowledgeable of the alternative of palliative care, to be in full mental capacity, neither constrained nor influenced. Faced with individual choices, society tries to prevent suicide and to save its' citizens, protecting them, as every person is valuable. This approach sends a positive message and strengthens the group mentality. The prevailing social opinion is that suicide, at least outside the context of terminal diseases, should not be tolerated, but rejected with all efforts. "Suicide is generally considered a kind of failure: the manifestation of an improperly treated depression, a decrease in community support, personal lack, social shame or a combination of these." (Young 1994, 657-707)

The weaker the social groups are, the less the individual relies on them and more on himself. It can no longer find its balance unless an external force guides them. When this collective force weakens, the predisposition to suicide increases" (Rarița 2009).

Émile Durkheim, in his study on suicide, addressed the issue of social integration. He believes that suicide occurs predominantly in communities where the individual does not feel integrated into the group and protected by close relationships with other members (Émile Durkheim, About suicide). Durkheim's study does not address suicide motivated by illness, but rather the principle of dysfunctional relationships that can be applied in euthanasia. This is a product of the recent decades practice, the sick and the elderly getting away from family and friends and receiving care during their last years in special institutions. Hospitals or palliative centers are example institutions, where patients ensure that death does not surprise them amid the family, as it happened in the past. Fulton (2017, 17-18) showed that the departure of the dying from the middle of the family was also observed in the United States after the 1960s, with the increase in life expectancy: if in the 60s about 12% of the population was over 65, fifty years ago, the percentage of seniors was only 4%. He described the American society of the 1960s as a paradox in which new attitudes to age, family, ageing, secularization, occupational specialization, and mobility intersect.

"Those who chose the ritual of death to be medicalized, gave up their own individuality and handed over control to the medical staff. Members of the dying person no longer know how to take care of such a person and no longer experience the fear of death. Death is removed from everyday life" (Kearl 1989, 442-443).

Currently, daily personal care provided by someone else, especially when involved in acts that invade privacy, is disturbing for the patient even when the help is offered carefully and with affection (Seal & Addington-Hall, 1995, quoted in Howarth & Jefferys, 1996, 384). This behavior is manifested in modern societies because reciprocity in relationships as well as autonomy are now greatly valued and the dependence of another adult for caring strongly affects a sick person's dignity, leading to the loss of their self-esteem and the emergence of a feeling of emotional blackmail.

If we were to list the three most important problems that were identified as the reason for euthanasia in the Oregon Public Health Division Annual Report (published on 28 January 2014 and carried out over a 14-year period: 1998-2012), they would be: loss of autonomy (91.4%), decreased ability to participate in activities that made life pleasurable (88.9%) and loss of dignity through a loss of a body function (80.9%). Therefore, it is not the pain that is the main reason, because it can be relieved relatively easily with an analgesic medication, but other considerations, on psychosocial level, where it is much more difficult to intervene.

When a patient is informed about their health and consents to a certain medical approach, he "becomes a collaborator and decider in the therapeutic act, thus overcoming the paternalist period in which the doctor was the absolute decider of medical treatment. It is therefore natural that his right to demand and receive death, when medicine is powerless and the quality of life becomes critical, must be respected" (Morar 2005, 112). A patient's autonomy should be respected when applying for euthanasia the same as the intimate choices and opinions of the medical staff responsible for performing the operation. Doctors have their own moral values that can go against the idea of euthanasia. These aspects should not be ignored or minimized. An eloquent example is the Netherlands, where doctors do not have the right to refuse a specific euthanasia procedure after it has been approved by the commission. The emotional work of these professionals should be considered for their protection because they too have rights and are citizens of the same country.

Euthanasia raises the debate not only on what is happening now, but also on what could happen in countries where once legalized, it might lead professionals and politicians to a possibly negative slope of abuse. Certain ethical issues are already visible and are related to:

- the responsibility felt by patients in the advanced stages of terminal illnesses who feel morally obligated to opt for euthanasia because it costs less than keeping them alive;
- the possibility of disregarding, in the near future, the lives and rights of the most vulnerable groups in a society, elderly patients, those with mental or disability issues, children or newborns with serious disabilities, with the risk of excessive interpretations for the need of euthanasia (see the debates in the Netherlands).

Euthanasia affects important moral values in society: the doctor becomes the character who takes life, not the one who only heals the soul and body, and the hospital is no longer the institution in which people are saved but the place where they are killed.

Euthanasia is about „Fear"

It is about the fear of pain and powerlessness of those who support euthanasia but also of those who condemn it, who have disabilities and fear that society may consider them, in the near future, candidates for the procedure, without their consent. And the fears are not unfounded because a 10-year study in the Netherlands revealed that every year there are patients who have been euthanized without their consent (Onwuteaka-Philipsen et al. 2003).

There are fears related to other aspects: the geriatric sector could be seen as unprofitable for the economy of society, and this would lead to a cease of research activities in this field. Another problem would be the alteration of relations between patients and their relatives who could exert pressure and reproach to the sick because they are a burden to those around them. For these reasons, even if the debate refers to incurable conditions causing a lot of physical and psychological pain, euthanasia can relatively easily slip on a negative slope, overturning moral principles and destabilizing social relationships.

Alternatives to Euthanasia

Palliative medicine aims to achieve two goals, prolong life and alleviate suffering. The American physician Cassel (1982, 639-645) explained that this branch of medicine deals entirely with the problems faced by patients with terminal illnesses, in a way they do not lose their self-esteem. This solution avoids two possible risks of the euthanasia procedure: a faulty logic in the assessment of each case and a dangerous extension of the circumstances in which the procedure would be authorized.

In the Netherlands, euthanasia was not practiced only for people with terminal illnesses. Since the introduction of the special law, the practice has been extended to mentally ill people, as well as newborns with disabilities and older children. In Belgium, euthanasia is now being applied to children and it is being examined whether this decision can also be made for people with dementia, whose organs can later be used for transplants (Ysebaert et al. 2009, 585–586).

There is a risk that as people and doctors become accustomed to euthanasia, the question will arise: "Why are not just the relief of suffering and the respect for autonomy, the basis of this decision?" Is it possible that there will also be justifications now considered aberrations, but will later be viewed differently? A negative example is the use of the argument of social progress according to which society should eliminate the physically or mentally incapable, a theory applied by Nazi Germany. Moreover, another example is taking measures based on economic arguments aimed at saving the

high funds needed to the medical and social care of those who could instead be euthanized and thus the financial resources dedicated to them would be redistributed, more efficiently, to other health sectors (Tunde & Șamotă 2008, 201).

On the other hand, if a person has the right to dispose of his own life (according to the supporters of euthanasia), then the respect for the autonomy of the person is a sufficient justification for that person to request euthanasia, without any medical condition justifying it. This approach appears in a Dutch proposal that euthanasia should be available to those "over 70 who feel tired of life" (Smith 2010).

How is the issue of euthanasia presented by the international press?

A distinction must be made between the Netherlands, where discussions are focused on the categories of persons to whom the procedure may apply, and other countries, where euthanasia is illegal and punishable, where current debates aim at deciding whether to legalize it. A study conducted by Radboud University (Krieken & Sanders 2016) shows that since the 2002 Act on the Termination of Life on Demand and Assisted Suicide came into force, the Netherlands has become the first country to legalize euthanasia under certain conditions, and death has no longer belonged to the theological but to the medical field. Based on these conditions of assessment debates have immediately begun to arise and disinformation from the press started to spread, in the pursuit of the sensational headlines.

The rule is as follows: the Dutch patient is informed of his state of health, formulates his intention of euthanasia but the final decision is made by the doctor, after examining in detail the situation of each patient. It is not guaranteed that all applications for euthanasia are automatically approved by the physician. From here, there arise discussions, provoked by the media that claim the moral right to self-determination and personal autonomy.

A large proportion of the doctors involved in the Radboud University study said that patients are influenced and confused by the press and thus do not understand the limits of euthanasia. The influence of the media on news consumers is greater based on the addressed subject. Through press-specific techniques, less known to the public, public are easier to influence. Pollock and Yullis (2004, 281-307) illustrated the media influence in the case of American pathologist Dr. Kevorkian also called Dr. Death. He was convicted in 1998 for the murder of an immobilized patient, by giving them a lethal injection. The motivation of the doctor was that the patient was in the terminal phase of his disease, Amyotrophic Lateral Sclerosis. Dr. Kevorkian admitted in a television interview that he witnessed the suicide of more than 130 people between 1990 and 1998 and was released on probation after serving eight years in prison. Although he was initially disregarded and blamed, it was the media that changed his image and turned him into a famous advocate of the right to self-determination, who bravely fought against an outdated legal system that restricts individual freedom.

The Los Angeles Times (2014) disputed Kevorkian's myth, claiming that in 1997 the Detroit Free Press investigated the lives and deaths of 47 people whose deaths were publicly linked to Kevorkian, and research revealed that Dr. Death lied when he said he followed the doctor's assisted suicide procedures and lied when he said he consulted psychiatrists to determine the mental state of the patients. The survey found that "at least 60% of patients whose suicide was assisted by Kevorkian did not suffer from terminal illness." At least 17 of his patients could have lived without a doubt and in 13 cases the people who chose to commit suicide did not suffer at all. The American pathologist Dr. Kevorkian aka Dr. Death divided the American civil society into two parts: supporters and opponents of euthanasia, and the press presented a lot of news, reports, and research on this case. Why do journalists prefer euthanasia debates? In an article, Van Brussel (2014, 125-135) explains why journalists prefer to uphold this

position of the ordinary man who is described as a courageous hero that needs help to go through the moment of death. This is in opposition to palliative sedation which has nothing spectacular and is seen as a "rush to the finish, nothing impressive." The fear of degradation of the quality of life through dementia or degenerative disorders is the fear of losing dignity through the loss of autonomy, through the usage of diapers which is the supreme symbol of indignity. "People who wear diapers, who don't know what day it is and think the doctor is their son, are not worthy to live anymore. No one should have a meaningless life. When a man's dignity depends on a diaper, he's worth nothing."

There are also opinions contrary to this statement – "people have dignity simply because they are human beings and the value of each is in our common nature, not in the individual characteristics. In short, human dignity does not depend on autonomy or subjective choices made" (Sulmasy 1994, 30).

Specific aspects of Romania

Romanian medical norms, compared to the laws of other European countries, are not very clear regarding the procedures for patients in a terminal state because situations of interruption, resuscitation or treatments, techniques necessary to support life are not well stipulated. For this reason, the doctor is obliged to do everything from a medical point of view, regardless of the will and the right to self-determination of the patient, otherwise the doctor can be held accountable in the eyes of the law (Stănilă 2014, 43). The Romanian code of medical ethics stipulates, "euthanasia and medically assisted suicide are unacceptable." In the New Criminal Code, at Art. 191 "Determining or facilitating suicide" shall be punishable by imprisonment.

Regarding the Romanian online press articles, they do not write about pro-euthanasia legislative projects or citizens' petitions in support of the legislation on euthanasia procedures in Romania. Instead, the Orthodox Church has a strong opinion, formulated through its own media, condemning euthanasia and the permissive policies of Western states. Therefore, there is no option for euthanasia procedures in Romania. Thus, what about palliative care, which is the only legal option in Romania for a terminally ill person?

The press articles (seven articles written in 2018-2020, mentioned in the bibliography) show an inadequacy of this network of care services, although it represents an ethical alternative to euthanasia by providing psychological and spiritual support to both the patient and his family. The patient thus maintains their quality of life until the end; they do not feel pain or other symptoms related to the disease.

The first palliative care unit in Romania, which introduced this concept, was "Hospice Casa Speranței" in Brașov, founded in 1992 and which has become, over the years, a center of excellence for Eastern Europe (Parghel 2014, *Express Monitor*). Only after 26 years from its establishment, the Ministry of Health regulated the organization of palliative care in Romania, by Order no. 253/2018. However, these services have an extremely slow pace of development at the national level and, in 2018, only 9% of the over 172,000 patients who needed such care could benefit from it (Ziare.com 2018).

The situation described above reflects, in fact, the standard of modernity achieved by Romania, while European societies entered a new stage of modernity at the end of the twentieth century, with an emphasis on reflexivity (Vlăsceanu 2007), Romanian society has a biased modernity. Progressive actions and ideas remain partially applied and the evolution of institutions is extremely slow. Therefore, there is no possibility of euthanasia and there is also a lot of talk about palliative care which is done on a small of a scale in Romania. Consequently, only 9% of those who need palliative care can benefit from qualified help. Then, what happens to the other Romanians? They die in

silence, rejected by society, in conditions unworthy of this century, or choose assisted suicide in a country that allows this.

The Romanian press has so far presented only one case of a Romanian citizen (Andrei Haber) who requested and received help from the "Dignitas" clinic in Switzerland for medically assisted suicide (România Liberă, 2009). The press also presented the case of the 29-year-old, Eugen Anghel, who asked the President of Romania for approval of euthanasia, but whose request was rejected. Eugen later died in hospital in 2008, after a long period of suffering (Schipor 2008, *Libertatea.ro*).

To follow the interest shown by the subject of euthanasia in the top of Romanian publications, I looked for a ranking of them and identified one from 2018, according to the criterion of advertising sales (made by BRAT). I will approach them in descending order of this hierarchy. Click newspaper, with the most advertising sales, does not comment on euthanasia; Libertatea newspaper (a total of 11 articles) presented international cases as well as the pro-euthanasia interest shown in Italy, Spain and New Zealand for possible legislative changes; Ziarul Financiar (3 articles) wrote about the legislative evolution in the Netherlands and Great Britain, and at the national level about the collective euthanasia request of IPCUP Ploiești employees from 2013, not being a problem related to a terminal illness but an alarm signal on some pressing salary issues: the "collective euthanasia request" was signed by 33 of the 54 employees who had not received their salaries for a very long time (Ziarul Financiar, 2013); Gazeta Sporturilor presented the case of the champion at the Paralympic Games Marieke Vervoort who died of euthanasia at the age of 40 (Fleșeru, 23.10.2019, Gazeta Sporturilor); Romania Liberă (7 articles) wrote about law enforcement in the Netherlands and Belgium, as well as about palliative care in Romania; Adevărul (9 articles) wrote about the opinion of the Romanian Orthodox Church and the College of Physicians in our country, and internationally - the application of euthanasia in the Netherlands; Evenimentul Zilei (16 articles) wrote about the situation in the Netherlands and presented the negative opinion of the Vatican on euthanasia. The Romanian online press shows compassion in presenting the famous international cases of people who requested euthanasia but does not tend to describe the beneficiaries as heroes but rather as the initiators of a pro-euthanasia current. In addition, the picture of the evolution of the legislation in the countries that have adopted the specific law (Netherlands and Belgium) is most often accompanied by the presentation of the fears regarding the extension of euthanasia in the case of vulnerable categories of patients who are not in the final stages.

The international trend is the adoption of pro-euthanasia laws in several states, while in Romania all the voices of doctors and representatives of different religions deny the need for such an intervention in social relations. They promote palliative care as an ethical option for patients, although it is not a universal solution, as it cannot be applied on a large scale due to insufficient resources.

Conclusions

It is difficult to assess whether a pro or anti-euthanasia physician's decision regarding a terminally ill patient is correct. Some believe that euthanasia is the only option, that is, a mild and painless death, but on the other hand there are others who choose not to give up and they continue to apply treatment schemes even when they are no longer sure of their usefulness. They hope for a miracle, for a spectacular healing of the patient.

All doctors are guided by the same fundamental principles, not to harm and to always protect people's lives, but sometimes the solutions they choose are radically different. Whether they agree with the patient's choice to give up life or, on the contrary, insist on aggressive therapy, their professional attitude is extreme; death

should not be rushed, but at the same time, the patient has the right to refuse certain treatments when they are disproportionate to the prognosis of the disease and disrupt the transition to death.

An alternative between the two extremes would be to provide medical care proportionate with the diagnosis of the disease and the ability of each patient to fight. A doctor must also assess the degree of support of the family because not all patients can benefit from palliative care in specialized centers and the period of suffering and dependence on care can sometimes be extended for years.

Euthanasia is justified in certain situations, and the procedures must be very well provided for by law, enforced under strict supervision and with respect for the rights of all citizens. This is my opinion, but now, I think that the pro-euthanasia legislation in Romania could lead to dangerous slips. We have a weak economy (unable to make accurate estimates of the budget allocation), a less educated mentality and a temptation to lower the quality of services when the law allows interpretation and all this leads to the vulnerability of people in need of state protection. The international trend is now in favor of expanding the practice of euthanasia, as it is in line with the level of development and emancipation of those societies. In Romania, currently the society is not interested in this euthanasia option and declares itself a follower of the development of palliative care.

In the hope of increasing the number of places in palliative care centers in Romania and at the same time, of the authentic modernization of all institutions and mentalities, I will continue to observe the evolution of specific international legislation and the progress of medical technology.

References

Attell, B., & Brandon, K. 2017. *Changing Attitudes Toward Euthanasia and Suicide for Terminally Ill Persons, 1977 to 2016: An Age-Period-Cohort Analysis*, GHPC Articles 39.

Baume, P., O'Malley, E., & Bauman, A. 1995. „Professed religious affiliation and the practice of euthanasia." *J. Med. Ethics* 21(1): 49-54.

Berger, P. 1979. *The Heretical Imperative:Contemporary Possibilities of Religious Affirmation*. New York.

Boudreau, J.D., & Somerville, M.A. 2014. Euthanasia and assisted suicide: a physician's and ethicist's perspectives:" *Medicolegal and Bioethics* 4:1–12.

Breck, J. 2001. *Darul sacru al vieții [The sacred gift of life]*. Cluj-Napoca: Patmos.

Cassel, E.J. 1982. „The nature of suffering and the goals of medicine." *N Engl J Med* 306(11):639-45. doi: 10.1056/NEJM198203183061104.

Ciuraru, M.L. 2014. *Tradițiile religioase în epoca modernă seculară [Religious traditions in the modern secular age],* Studies and Articles, Volume III, Section: History, „Petru Maior" University Press, pp. 735-742.

Dancă, A. 2019. „Declarația semnată la 28 octombrie 2019, în Cetatea Vaticanului" [Declaration signed on October 28, 2019, in the Vatican City]. *Vatican News,* published online: https://www.vaticannews.va/ro/papa/news/2019-10/declaratie-comuna-religii-monoteiste-eutanasie.html.

Deaconescu, C. 2005. „Eutanasia în proiectarea sa multidisciplinară" [Euthanasia in its multidisciplinary design], în *Revista Română de Bioetică [Romanian Journal of Bioethics],* vol. 3, no. 4.

Fleșeru, R. 2019. Gazeta Sporturilor. Available: https://www.gsp.ro/sporturi/altele/decizia-tragica-pe-care-a-luat-o-marieke-vervoort-campioana-la-jocurile-paralimpice-a-ales-sa-fie-eutanasiata-580930.htmlâ

Forbes. 2019. „Top national newspapers with the highest advertising sales in 2018." https://www.forbes.ro/topul-ziarelor-nationale-cu-cele-mai-mari-vanzari-de-publicitate-anul-2018-133525.

Fulton, R. 2007. *The sociology of death*, Center for Death Education and Research University of Minnesota, Minneapolis, published online on August 14, 2007. http://dx.doi.org/10.1080/07481187708252875.

Giddens, A. 2000. *The Consequences of Modernity, 1990* – Consecințele modernității, traducere de [translation by] Sanda Berce, Bucharest: Univers Publishing House.
Gula, R.M. 1994. *Euthanasia: Moral and pastoral Perspectives.* Mahwah, N.J.: Paulist Press.
Holody, K.J. 2011. *Constructing the end: Framing and agenda-setting of physician-assisted suicide*, Bowling Green, OH: Bowling Green State University.
Howarth,G., & Jefferys, M. 1996. „Euthanasia: sociological perspectives." *British Medical Bulletin* 52 No. 2, pp. 376-385.
Howarth,G., & Jupp, P.C. 1996. *Contemporary Issues in the Sociology of Death and Disposal.* New York: Palgrave Macmillan.
Kearl, M. 1989. *A Sociology of Death and Dying*. Oxford University Press.
Kennedy, J. 2002. *Een Weloverwogen dood. Euthanasie in Nederland*. [*A Well-considered Death. Euthanasia in the Netherlands*] .Amsterdam: Uitgeverij Bert Bakker.
K.W.M.van Krieken and Sanders, J.M. 2016. Euthanasie.Doodnormaal.Framing van euthanasie in de Nederlandse landelijke dagbladen en de professionele gezondheidsvoorlichting.
Malanca, M. I. 2012. *„Criza identității. Între modernism și postmodernism" [Identity crisis. Between modernism and postmodernism].* In *Tabor*, year VI, no. 5, pp. 77-78.
Morar, S. 2005. „Eutanasia: între dreptul la viață şi dreptul de a muri demn" [Euthanasia: between the right to life and the right to die with dignity]. *Revista Română de Bioetică [Romanian Journal of Bioethics]*, vol. 3, no. 4.
Mureșan, C.O., Ciocan, V., & Enache,A. 2013. „Eludarea principiilor eticii medicale – repere istorice ale utilizării monoxidului de carbon" [Bypassing the principles of medical ethics - historical landmarks of the use of carbon monoxide]. *Revista Română de Bioetică [Romanian Journal of Bioethics],* Vol. 11, no. 3, July-September 2013.
Onwuteaka-Philipsen Bregje D., Agnes van der Heide, Koper Dirk, Keij-Deerenberg Ingeborg, Rietjens Judith A. C., Rurup Mette L., Vrakking Astrid M., Jean Jacques Georges, Muller Martien T., Gerrit van der Wal, & Paul J. van der Maas. 2003. *Euthanasia and other end-of-life decisions in the Netherlands* in 1990, 1995, and 2001, Public Health - Published online June 17, 2003, available at: https://www.thelancet.com/pb-assets/Lancet/extras/03art3297web.pdf.
Oregon Death with Dignity Act Annual Reports. 2014. Available at: http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ar-index.aspx. Accessed April 2, 2014.
Parghel, M. 2014. „Hospice ‚House of Hope', a model for Europe." *Monitorul Expres.* https://www.old.monitorulexpres.ro/?mod=monitorulexpres&p=eveniment&s_id=140296.
Patriarhia.ro. „Euthanasia." Romanian Orthodox Church website: http://patriarhia.ro/eutanasia-445.html.
Pivniceru, M.M., & Dăscălescu, F.D. 2003. „Limita inferioară a dreptului la viață: între protecția fetusului uman, dreptul la avort şi progresul ştiințelor biomedicale" [Lower limit of the right to life: between the protection of the human fetus, the right to abortion and the advancement of biomedical sciences]. In *Revista Română de Bioetică [Romanian Journal of Bioethics],* vol. I, no. 4.
Pârvu, I. 2013. *Ortodoxie şi Modernitate [Orthodoxy and Modernity]*. Available at: http://fto.ro/altarul-reintregirii/wp-content/uploads/2018/06/2013_2_7.-Ion-Parvu-studiu-AR.pdf.
Pollock, J.C., & Yulis, *S. G.* 2004. „Nationwide Newspaper Coverage of Physician-Assisted Suicide: A Community Structure Approach." *Journal of Health Communication* 9(4) 281–307.
Rarița, M. 2009. *Emile Durkheim: Sinuciderea – o abordare socială [Emile Durkheim: Suicide - A Social Approach]*, Analele Universității Dunărea de Jos, Seria Filosofie.
Rogobete, S. 2002. *Religie și schimbare socială. Câteva reflexii asupra rolului religiei în societatea contemporană [Religion and social change. Some reflections on the role of religion in contemporary society]*. Bucharest: New Europe College.
Romania Liberă. 2009. „The controversial case of a Romanian who assisted suicide in Switzerland." https://romanialibera.ro/special/controversatul-caz-al-unui-roman-care-s-a-sinucis-asistat-in-elvetia-154196/.
Schifirneț, C. 2009. *Modernitatea tendențială [Trendy modernity]*, SNSPA, Available at: https://www.researchgate.net/publication/267950991_Modernitatea_tendentiala.
Seale, C., & Addington-Hall J. 1995. „Euthanasia: the role of good care." *Soc Sci Med* 40(5): 581-7. doi: 10.1016/0277-9536(94)00171-o.
Soulier, J.P. 1991. *Enigma vieții [The enigma of life]*. Bucharest: Medicala Publishing House.
Smith, W.J. 2010. *Euthanasia Created Dutch Culture of Death: Elderly "Tired of Life." Next Category for Termination*. By Wesley J. Smith, J.D., Special Consultant to the CBC.
Stănilă, L. 2014. *Obsesia terapeutică. Pro şi contra eutanasiei – noi provocări ale legislației româneşti [Therapeutic obsession. Pros and cons of euthanasia - new challenges of Romanian legislation]*, Universitatea de Vest din Timişoara, Facultatea de Drept, Available at: https://drept.uvt.ro/administrare/files/1481047525-lect.-univ.-dr.-laura-sta--nila--.pdf.

Schipor, C. 2008. „The young man who requested the euthanasia died." *Libertatea.ro.* https://www.libertatea.ro/stiri/tanarul-care-a-cerut-eutanasierea-a-murit-297857.

Sulmasy, D. P. 1994. "Death and Human Dignity" in *Linacre Quarterly* 61(1994).

Swaab, D. 2012. "Elderly people demand the right to assisted suicide." *Dutch publication Volkskrant*, 8 March.

Tünde, P., & Iosif, Ş. 2008. Eutanasia Pro şi Contra [Euthanasia Pros and Cons]. *Jurnal Medical Brașovean – Aspecte Bioetice [Brașov Medical Journal - Bioethical Aspects].*

Van Brussel, L., Van Landeghem, P., & Cohen, J. 2014. „Media coverage of medical decision making at the end of life: a Belgian case study." *Death Studies* 38(1-5): 125-135.

Vlăsceanu, L. 2007. *Sociologie și modernitate.Tranziții spre modernitatea reflexivă [Sociology and modernity. Transitions to reflexive modernity].* Iași: Polirom.

Weyers, H. 2006. „Explaining the emergence of euthanasia law in the Netherlands: how the sociology of law can help the sociology of bioethics." *Sociology of Health & Illness* 28(6): 802-816.

Willmont, H. 2000. *Death. So what? Sociology, sequestration and emancipation*. UK, Oxford: Blackwell Publishers.

World Values Survey. 2008. Available online at http://www.worldvaluessurvey.org/WVSContents.jsp.

Wright, M. 1959. *The Sociological Imagination*. Oxford University Press, 33.

Young, Y.K. 1994. „A cross-cultural historical case against planned self-willed death and assisted suicide." *McGill Law J.* 39: 657–707.

Ysebaert D., Van Beeumen G., De Greef K. et al. 2009. „Organ procurement after euthanasia: Belgian experience." *Transplant Proc.* 41(2):585-6.

Ziare.com. 2018. „Palliative care has been officially regulated in Romania." Available at https://ziare.com/social/romani/ingrijirea-paliativa-a-fost-reglementata-oficial-in-romania-dupa-26-de-ani-de-la-aparitia-primelor-servicii-de-acest-fel-asigurate-de-voluntari-1506734.

Ziarul Financiar. 2013. „Ploieşti: Request for euthanasia." Available at https://www.zf.ro/eveniment/ploiesti-cerere-de-eutanasiere-semnata-de-33-de-angajati-ai-institutului-de-utilaj-petrolier-10784639.

RESEARCH ASSOCIATION FOR INTERDISCIPLINARY STUDIES