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Front Pages

Athens Journal of Law

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The ***Athens Journal of Law (AJL)*** is an Open Access quarterly double-blind peer reviewed journal and considers papers from all areas of law. Many of the papers published in this journal have been presented at the various conferences sponsored by the Business, Economics and Law Division of the Athens Institute for Education and Research (ATINER). All papers are subject to ATINER's Publication Ethical Policy and Statement.

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The current issue is the fourth of the ninth volume of the *Athens Journal of Law (AJL)*, published by the *Business and Law Division of ATINER*.

Gregory T. Papanikos
President
ATINER

Athens Institute for Education and Research

A World Association of Academics and Researchers

21st Annual International Conference on Law
15-18 July 2024, Athens, Greece

The Law Unit of ATINER, will hold its **21st Annual International Conference on Law, 15-18 July 2024, Athens Greece** sponsored by the Athens Journal of Law. The aim of the conference is to bring together academics and researchers from all areas of law and other related disciplines. You may participate as panel organizer, presenter of one paper, chair a session or observer. Please submit a proposal using the form available (https://www.atiner.gr/2024/FORM-LAW.doc).

Academic Members Responsible for the Conference

- **Dr. David A. Frenkel**, LL.D., Head, Law Unit, ATINER & Emeritus Professor, Law Area, Guilford Glazer Faculty of Business and Management, Ben-Gurion University of the Negev, Beer-Sheva, Israel.
- **Dr. Michael P. Malloy**, Director, Business, Economics and Law Division, ATINER & Distinguished Professor & Scholar, University of the Pacific, USA.

Important Dates

- Abstract Submission: **12 December 2023**
- Acceptance of Abstract: 4 Weeks after Submission
- Submission of Paper: **17 June 2024**

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6-9 May 2024, Athens, Greece

The Business, Economics and Law Division (BLRD) of ATINER is organizing its **11th Annual International Conference on Business, Law & Economics, 6-9 May 2024, Athens, Greece,** sponsored by the Athens Journal of Business & Economics and the Athens Journal of Law. In the past, the six units of BLRD have organized more than 50 annual international conferences on accounting, finance, management, marketing, law and economics. This annual international conference offers an opportunity for cross disciplinary presentations on all aspects of business, law and economics. This annual international conference offers an opportunity for cross disciplinary presentations on all aspects of business, law and economics. Please submit an abstract (email only) to: atiner@atiner.gr, using the abstract submission form (https://www.atiner.gr/2024/FORM-BLE.doc)

Important Dates

- Abstract Submission: **3 October 2023**
- Acceptance of Abstract: 4 Weeks after Submission
- Submission of Paper: **3 April 2023**

Academic Member Responsible for the Conference

- **Dr. Gregory T. Papanikos**, President, ATINER.
- **Dr. Michael P. Malloy**, Director, Business, Economics and Law Division, ATINER & Distinguished Professor & Scholar, University of the Pacific, USA.
- **Dr. David A. Frenkel**, LL.D., Head, Law Research Unit, ATINER & Emeritus Professor, Law Area, Guilford Glazer Faculty of Business and Management, Ben-Gurion University of the Negev, Beer-Sheva, Israel.

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An Economic Perspective of the Justice Digitalisation Process: The Questions of Efficiency and Equity

By José Manuel Castillo López[*]

The general problems of the Judicial Administrations in Europe, and particularly in Spain, are profound and diverse, but perhaps the most relevant and evident are the time delay in legal resolutions and the influence of economic conditions of users both regarding simple access to the Judicial Administration and in the very sense or result of different legal proceedings. In fact, one of the most serious deficiencies of the Spanish public administration is the notable opacity or scarce transparency for citizens and, as a result of this, the high level of corruption and the unequally distributed benefits thereof. This situation is of course transferred to the Judicial Administration, judges, lawyers and procuradors (formal representatives before the courts) via private proceedings. The digitalisation process of the Judicial Administration is bringing with it perceivable changes in the efficiency of the system, deriving from better access to information on legal proceedings on the part of citizens, deemed on the whole to be positive and, deriving from it, improvements in the functioning of the economic model. Nevertheless, on the side of iniquity as regards access to justice and legal resolutions, the "inequality of arms", the available predictions and studies are inconclusive, putting forward, furthermore, serious concerns regarding the effect on legal guarantees and the right to honour and privacy of citizens. In this study, which is interdisciplinary in nature, I preferentially use the perspective and instruments of the Economic Analysis of Law to address and substantiate the aforementioned questions.The processes of digitalisation and artificial intelligence are topics of scientific, professional and popular relevance, particularly in the Judicial Administration. They are in reality complex matters and in my judgement are not being produced with the required rigour, at least in the public and private professional Judicial Administration sphere, not even in the terms and denominations employed, nor in the correlative concepts they seek to reflect. In this essay, after briefly analysing the starting premise and presenting the institutional framework in which these processes and correlative debates are taking place, I shall put forward a taxonomic proposal. I shall then analyse the effects it has on the efficiency and equity of the legal system and with a general reflection on the role of algorithms and artificial intelligence in modern society. I shall end with the diverse challenges that are being considered and the preventions that should be put in place prior to the application of the innovations in question.

Keywords: *corruption; digitalisation; efficiency; equity; Judicial System*

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Introduction

Before analysing the effects that the process of digitalisation, other modernisations, and technological innovations will presumably have on Judicial Administration proceedings in the immediate future, I present a summary of the main aspects of the current situation.

Current Situation of Judicial Administrations in Europe and Spain

The World Justice Project (WJP)[1] has for half a century been publishing the Rule of Law Index in numerous countries, and it constitutes a tool in whose construction participate prestigious academics and researchers in over 17 disciplines, in other words, interdisciplinary in nature, and furthermore, representing over 100 countries.

The WJP Rule of Law Index calculates scores and classifications for 8 factors and 44 subfactors.

Table 1. *World Justice Project. Rule of Law Index (2020): Spain*

	Factor Score	Score Change	Regional Rank	Income Rank	Global Rank
Constraints on Government Powers	0.73	0.00	18/31	22/43	23/140
Absence of Corruption	0.73	0.00	16/31	23/43	23/140
Open Government	0.70	0.00	18/31	22/43	22/140
Fundamental Rights	0.79	-0.01	14/31	15/43	15/140
Order and Security	0.83	0.00	24/31	30/43	34/140
Regulatory Enforcement	0.70	-0.01	19/31	26/43	26/140
Civil Justice	0.66	-0.01	19/31	28/43	30/140
Criminal Justice	0.68	0.01	17/31	23/43	23/140

Source: World Justice Project (2023).

Taking into account the situation of 140 countries in the world in 2022, Spain occupies position 23/140 with a global index of 0.73, having undergone a slight improvement since the year 2015 when it occupied position 24/102 with a global index of 0.68.

This reduced improvement is positive in criminal justice and negative in fundamental rights, regulatory enforcement and civil justice.

However, if this current position of the Rule of Law in Spain is analysed along with the other countries of the European Union[2] (EU) it occupies position 15 out of 27, with its western surroundings (including EU, EFTA (European Free Trade Association) and North America) the quality of the legal system is not so positive, as it occupies position 18/31 and 23/43 among the world's richest countries.

[1]World Justice Project (2022).
[2]Council of Europe (2022):

Situation of Justice in Spain

Justice resonates extensively in the Spanish Constitution of 1978, which is inevitable given that its historical development goes hand in hand with the birth of the State itself.

The situation can be summarised as follows:

A) Magnitudes of Justice in Spain

Table 2. *Some Magnitudes of Justice in Spain (Per 100,000i)*

Implemented judicial system budget (per 100,000i)		
	SPAIN	COEU
Population	47,344,649	447,000,000
GP Per capita (%)	0.37	0.30
Courts	87.90	64.50
Prosecution services	5.37	11.10
Legal aid	6.03	3.06

Source: Council of Europe (COEU) (2022).

Particularly noteworthy is the number of prosecutors per 100,000 inhabitants (5.37) which is lower than 50% in Spain compared to the COEU countries (11.10).

This circumstance once more confirms that the meaning of legal resolutions in Spain depends on citizens' level of income. In this case, the victim of a crime has more possibilities of being compensated if they have a high income level that permits the hiring of good lawyers and other professionals, whereas those with lower income levels must remain dependent on the discretion of the General Prosecutor's Office, the means at its disposal and, ultimately, the criteria and opportunity of the court appointed prosecutor.

Table 3. *Human Resources of Judicial System*

	PROFESSIONAL JUDGE		NON-JUDGE-STAFF		PROSECUTOR		NON-PRESECUTOR-STAFF		LAWYER	
	SPAIN	COE Average	SPAIN	COE Average	SPAIN	COE Average	SPAIN	COE Average	SPAIN	COE Average
2020	11.24	17.6	102.69	56.13	5.37	11.1	4.82	15.22	303.54	134.51
2018	11.53	17.94	101.36	59.69	5.24	11.22	4.55	14.98	304.6	127.08
2016	11.53	17.63	105.71	59.3	5.31	10.86	4.48	14.6	305.3	120.25
2014	11.53	18.06	104.57	55.33	5.22	10.27	4.11	14.57	290.7	110.17
2012	11.2	17.41	97.26	54.46	5.31	10.44	5.21	14.56	285.5	112.56
2010	10.2	16.88	NA	61.05	5.24	9.83	4.19	12.94	272.3	102.03

Source: Council of Europe (2022).

Regarding the number of judges it is noteworthy that in 2020 and in a similar way to the previous years, the COEU average had 64% more judges than Spain per every 100,000 inhabitants and in non-judge personnel this figure was 180% lower.

In terms of prosecutors the number in Spain is 50% of the European average with non-prosecutor personnel being 30%.

However, what really stands out is that the number of lawyers in Spain is 2.26 times that of the COEU average, which largely explains the high levels of litigation

in Spain. We are once again looking at a case of a *supply that creates its own demand*[3].

Table 4. *Absolute Gross Salaries (Euros)*

	Salary at Begining of Career		Salary at End of Career	
	SPAIN	COUE	SPAIN	COUE
Judge	51,946	46,159	130,654	90,287
Prosecutor	51,946	37,304	130,654	67,051

Source: General Council of the Judiciary and own creation (2010-2022)

As of 2022 in Spain the salary of judges at the end of their careers stands at 130,654 euros, the same as for prosecutors, whereas the COEU figures are 90,287 euros for the salary of judges, which represents 69% of that of their Spanish colleagues, and European prosecutors have a salary of 67,051 euros, which represents 51% of that of prosecutors in Spain.

Currently Spanish Judges are, following a recent conflict for the same reason as the former *secretarios* or court registrars, now referred to as *letrados de la Administración de la Justica* (Judicial Administration Clerks), are planning a labour conflict demanding salary increases, which has extended to administrative non-judge/prosecutor personnel.

Table 5. *Efficiency of Judicial System*

	CLEARANCE RATES			DISPOSITION TIME (days)		
	1st Instance	2nd Instance	Higher Instance	1st Instance	2nd Instance	Higher Instance
Civil	86.3	116.9	74.7	468	227	888
Criminal	95.1	103	74.3	227	59	412
Administrative	99.5	94.1	88.8	406	452	350
Clearance Rate = (Resolved cases/Incoming cases) *100						
Incoming cases = all new cases at that instance within the year						

Source: General Council of the Judiciary and own creation (2010-2022).

The duration of legal proceedings together with their origin and result, that is, the economic capacity of the litigants, constitute the main deficiencies of the Spanish Judicial System.

The length of a civil claim for a sum that is needed for daily family life or the normal functioning of a small business, for example, of four and a half years, or the unfair dismissal of a civil servant, which can be resolved in 3 years and four months, plus lawyer and procurador[4] fees, are only in the reach of citizens with very high income levels.

In short, in order to achieve solid economic development, it is necessary to have an efficient judicial system.

[3]See Castillo (2023).

[4]In Spain the figure of *procurador* is the formal representative before the courts for citizens involved in legal proceedings, for whom it is not possible to engage in formal communications with these legal institutions on their own behalf.

Coase[5], in his pioneering and basic work of economic thinking "The Problem of Social Cost"[6] stated that for a market to operate efficiently there is a need for freedom of contract between economic agents and a body to revise the clauses of the contracts and guarantee compliance.

Later, Acemoglu & Johnson[7] added that property rights also protect citizens against abuses on the part of the government or powerful economic groups.

A Prior Question: How can the "Efficiency" of Justice Be Measured?

There are various ways of measuring the efficiency of justice: Judicial congestion rate (t), Pending cases (t-1), New cases (t)/Resolved cases (t).

It is the quotient where the numerator comprises the sum of pending cases at the beginning of the period and those registered during said period and where the denominator is cases resolved in said period.

Resolution rate (t)=Resolved cases (t)/New cases (t). Quotient between the cases resolved and cases filed over a specific period.

Pendency rate (t)= Pending cases at the end (t)/ Resolved cases (t). It is the quotient between pending cases at the end of the period and those resolved in this period.

Table 6. *Evolution of Key Indicators*

	2010	2012	2014	2016	2018	2020	2022
Congestion rates	1.35	1.32	1.29	1.37	1.45	1.6	1.52
Resolution rates	0.99	1.01	1.02	1.03	0.96	0.95	0.97
Pending rates	0.35	0.32	0.29	0.37	0.45	0.6	0.53

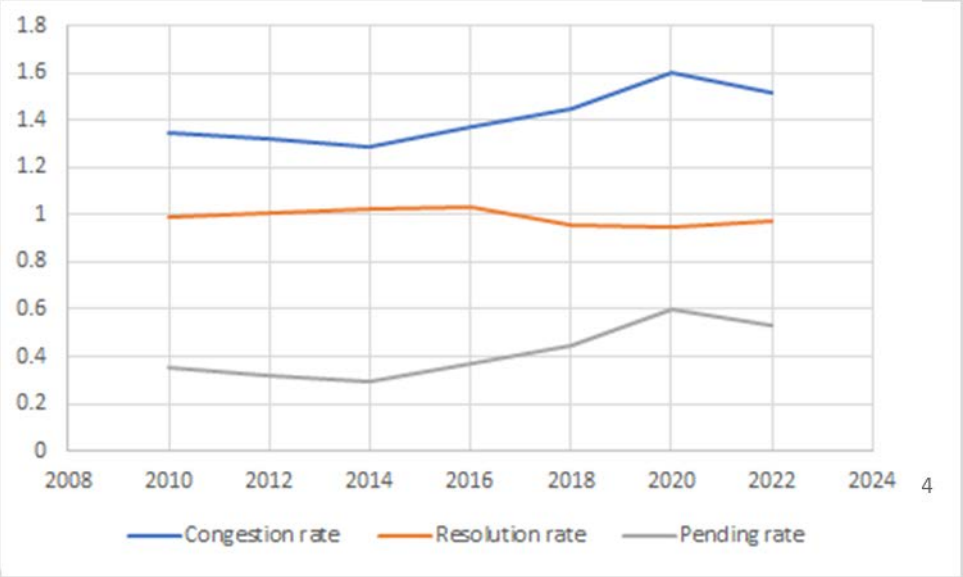
Source: General Council of the Judiciary and own creation (2010-2022).

[5]Coase (1960).

[6]It was followed by others such as "The Institutional Structure of Production" (1992) by the same author, not forgetting other later ones (1992) and the works of North (1981), (1991) and (1994).

[7]Acemoglu & Johnson. (2005).

Graph 1. *Evolution of Key Indicators*



The congestion rate is growing year on year despite the increase in means available to courts and the reduction in the number of claims filed, but the resolution period is increasing to a greater extent.

The resolution rate is stable.

The pendency rate is rising mainly due to the increase in resolution periods.

The Opinion of Citizens, Professionals and Judges Themselves

Different institutions more related to the Judicial Administration in our geographical and institutional environment, such as the European Commission[8] and in Spain, such as the General Council of the Judiciary[9], professional bar associations and Metroscopia[10], but in particular the opinion of users on the barometers of the Sociological Research Centre (*CIS - Centro de Investigaciones Sociológicas*)[11] and the Ministry of Territorial Politics and Public Function (*Ministerio de Política Territorial y Función Pública*) present the Executive as the penultimate institution amongst the nine worst valued by citizens and in last place is, precisely, the Judicial Administration[12].

The majority of Spanish citizens have a mistrust of the judicial system and uphold that it is not independent, rather, the judges are subject to different types of pressure that modify their resolutions.

[8]European Commission (2023). https://spain.representation.ec.europa.eu/noticias-eventos/noticias-0/informe-sobre-el-estado-de-derecho-de-2022-la-comision-formula-recomendaciones-especificas-los-2022-07-13_es

[9]Consejo del Poder Judicial (2023): Justice datum to datum https://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial.es

[10]See Metroscopia (2023).

[11]Centro de Investigaciones Sociológicas (CIS). Various years.

[12]An extensive discussion on these topics can be seen in this same journal in Castillo (2023).

Particularly worthy of mention is the fact that a radically differing opinion than that stated by other citizens who are justice professionals regarding the functioning of the judicial system is precisely that held by the judges themselves. Amongst other assertions, 98% of judges consider they are "guardians and guarantors of the rights of citizens", 99% feel totally independent when making their decisions, despite 84% admitting that governments and those in their environment attempt to influence their decisions and, in particular, 72% of the judges interviewed recognised they felt pressured by the media.[13]

Attention may be drawn to the scarce number of responses that show disconformity with legal rulings (12.06%), regarding deficiencies in attention to citizens indicated by them (36.56%) and, above all, efficiency measured by the duration of proceedings and delay in obtaining due and definitive resolutions (53.69%) ("slow and late justice is not justice") and obscurantism for the affected party, finally, in the case of lawyers, lack of deontological behaviour (35.5%).

In general, the deficiencies of the judicial system in Spain generate inefficiency in the economic system but also social inequity given the existence of a large dose of uncertainty in the resolution of social conflicts and, in any case, with such conflicts being shown to be significantly influenced by the economic capacity of the litigants.

Given that the well-being of European and Spanish citizens is strongly influenced by access to and functioning of justice, the carrying out of reforms in this sphere is justified and recommended. The application of modern techniques in the management of the Judicial Administration will favour the reduction in periods of time employed in resolutions, improve the transparency of proceedings and the provision of systems that offer an alternative to traditional justice imparted by jurisdictional bodies.

I have, elsewhere, studied the possible effect of the provision of alternative systems to traditional justice[14], particularly mediation, and here I shall address the possible effects on the judicial system of the modernisation of the management of its administration, particularly digitalisation and artificial intelligence, in terms of efficiency, transparency and equity.

The Problem of Judicial Corruption

Spain has a high level of public corruption, which constitutes the main inconvenience in achieving an efficient assignment of public resources and fulfilling other constitutional mandates, in this regard, in matters of equity. Of the 180 countries evaluated by the organisation Transparency International, it occupies 35th place, situated on a par with other less developed countries such Botswana, Cape Verde and Saint Vincent and the Grenadines. In the EU it occupies 14th place out of 27 countries, slightly above Portugal and Lithuania.

Public and, in particular, judicial corruption is one of the main explanatory factors for the deficiencies of the Rule of Law in Spain and perhaps that which

[13]Consejo General del Poder Judicial (2023).
[14]Castillo (2023).

bears the most weighting amongst those that impede the abandonment of the lowest positions in the respective European rankings.

Corruption profoundly weakens the administration of justice as it generates a substantial impediment to the exercise of the right of people to an impartial trial and seriously reduces public trust in the judiciary.

Judicial corruption is, if possible, more serious than other types of public corruption because the action of the judicial system is the last resort available for citizens to obtain an adequate response from the Rule of Law, beyond of course frustration, detachment from institutions or even the search for individual solutions outside of the law.

Judicial corruption is the main reason for the conviction amongst citizens and particularly students (who because of our occupation see it confirmed on a daily basis), that there are other more effective and profitable procedures for achieving economic, professional or political objectives than systematic study or honest work.

The corruption of first instance judges is explained in the same way as other types of administrative corruption by *ex ante* profitability, nearby influences and, finally and where appropriate, they shall be tried by other judges. On the other hand, the corruption of the higher courts is related to their connection to political power and also, of course, to both its *ex ante* and *ex post* profitability.

Amongst the high number of complaints lodged by Spanish citizens before the European Commission reporting systemic corruption, particular of note are those that refer to the collusion of some judges with lobby firms representing lawyers and large companies and the proliferation of revolving doors via which judges who recently oversaw diverse proceedings now work for the accused.

There is a popular saying in Spain that a corrupt judge is like “a fox guarding the henhouse”.

This is despite the fact that article 14 of the Spanish Constitution stipulates that:

"All Spaniards are equal before the law, without discrimination on any ground such as birth, race, sex, religion, opinion or any other personal or social condition or circumstance”, but the reality is that for one reason or another in Spain there are more than 10,000 people are granted privilege.

In the case of Spanish judges, they enjoy double privilege, one legal and the other real. On the one hand, when a citizen considers a judge to have committed an offence, they have to hire and pay high fees to a lawyer and procurador and in the unlikely event that the complaint or lawsuit be admitted for processing, the proceedings will be plagued by difficulties and inconveniences to then finally be tried by a higher court intermediated by political power and even other judges. In summary, in Spain if a citizen feels attacked by a judge they have serious difficulties in simply exercise their rights. It is not easy to find a lawyer who wants to go against a judge, above all if their professional works coincide in the same territorial sphere.

The conviction of a judge in Spain, save for influence, reprisals or personal revenge by other judges or politicians, is pure fantasy. Despite the self-interested lack of official published data in this regard, between 1995 and 2018, only 1.55%

of complaints or lawsuits against judges and prosecutors in Spain ended in a conviction. For other citizens the percentage of convictions is higher than 50%.

Regardless of the resistance of the affected groups that even marginalise and harass those who do not wish to participate in corrupt acts and even more so if they are complainants, it is highly useful from a social perspective to recognise the existence of judicial corruption. This is because nobody can live by hiding from reality but also because only through this recognition can mechanisms of prevention and repression be put in place.

From the point of view of the other operators in the judicial system, justice in Spain is extremely costly and as a result unequal, depending on the level of income of litigants. In reality, as in other orders in life, there are two types of justice, *one for the rich and one for the poor*.

Large companies, banks, institutions, white collar criminals, drug traffickers, etc. hire the best lawyers and thus, in part, achieve a high percentage of success in their legal proceedings. Market fees for these lawyers are prohibitive for the majority of the population and for this reason those lacking fortune, in the event they decide to initiate legal proceedings, must entrust their cases to duty lawyers who, save for a limited and manifest number of exceptions, are not found to be amongst the most prestigious and experienced.

Amongst others, practices almost medieval in nature such as compulsory membership, *la venia* (consent between lawyers), *la jura de cuentas* (fast payment guaranteed by law), the figure and role of the procurador etc. complicate formal and real access of citizens to the public service of Justice[15].

The figure of compulsory membership is in part responsible for this abomination. In reality there is no competitive legal services market. The figure of compulsory membership practically makes the private law sector a monopolistic company.

Table No. 3 reflects the fact that the number of lawyers in Spain is higher, in the same way as the growth thereof, than the European average. This excess supply of lawyers induces them to incentivise citizens to the increase in the demand for their services, creating as a result costly and interminable legal proceedings in order to supposedly resolve conflicts that, undoubtedly, could be dealt with more efficiently and fairly through other not strictly judicial procedures but this would clearly be in detriment to their fees.

Mora-Sanguineti and Garoupa[16] have found evidence that for each 1% increase in the number of lawyers, the rate of litigiousness grows by 1.4%. As a result, the increase in and excess supply of lawyers is not resolved with a reduction in the cost of their services, but with the creation of new judicial procedures.

On the other hand, the moral practice of the lawyer in Spain consists in complying with legal regulations, included in the code of ethics that comes from the compulsory professional membership, among others via the figure of professional secrecy that permits damage to be occasioned to others through the concealment of information and even directly cause unfair detriment to other parties unconnected to their clients.

[15]See Castillo (2023).
[16]Mora-Sanguineti. & Garoupa (2015).

The large majority of lawyers in Spain consider that morals are something that is basically related to their private lives, not the exercising of their profession.

A Catalan lawyer of great prestige in Spain and, especially among social groups, Loperena, with first-hand knowledge of this situation, has masterfully expressed it thus[17]:

> *One piece of advice: never go to hospital or court on your own initiative. If you have no other choice - when they take you on a stretcher, handcuffed or the law forces you to go, do so, but never cross their thresholds without having thought it through a thousand times. Because, although it is known where the entrance leads, the exit can lead you to the cemetery or jail. When you read this, many of you will wonder if lawyers who are competent, honest, decent fair and staunch defenders of the weakest still exist. Without wanting to sound corporatist, I can assure you that they do. Of course there are! During the 40 years that he practiced law, he met more than 100.*

Therefore, the main problems shown by Spanish justice are firstly corruption and, deriving in part from it, ineffectiveness, inefficiency and the inequity of the Judicial System, which constitute systemic characteristics.

The existence of an independent judicial system is a fundamental requirement for the viability of mixed economies. On the one hand, in order for transactions in the market to occur it is essential that there be property rights and fulfilment of obligations of the parties, with the guarantee of protection corresponding to the judicial administration. On the other hand, a social state is not possible without the existence of an independent judiciary that guarantees the rights of citizens and operates as a safety net in the face of the excesses of the state.

Impact of Digitalisation and Artificial Intelligence on Society

The Human Rights Council on the Right to Freedom of Opinion and Expression, in particular Council Resolution 20/8 of 5 July 2012 and 26/13 of 26 June 2014, on the promotion, protection and enjoyment of human rights on the Internet:

> *Recognizes the global and open nature of the Internet as a driving force in accelerating progress towards development in its various forms, including in achieving the Sustainable Development Goals.*

The internet, and the technologies that have arisen around it, have fostered a digital revolution that is progressively modifying the daily life of people, along with the economy as a whole, but, is technology neutral?

In reality, errors frequently occur in many cases of technological innovations and the instruments via which they are put into practice. They tend to automatically be credited, without the slightest degree of critical analysis, with virtues such as

[17]See Castillo (2023).

truth, rigour, social improvements, etc. which in reality due to their very nature they lack.

Frequently, to justify the outcomes of certain economic and social processes that mere intuition can indicate as uncertain, highly dangerous or simply perverse, there is an attempt to present arguments such as: "it has been resolved via computer", that "an extremely sophisticated algorithm has been applied", that "the established protocol has been scrupulously followed" etc. as irrefutable proof that guarantees their veracity.

A number of forums defend the technique as a neutral act that lacks connections with ethical, political, social and environmental dimensions. But in reality the complex and even basic commands such as add, subtract, etc. and the technologies applied such as the abacus, the calculator, computers and so on are not neutral, mainly due to the main reason for their development and the use made of their results.

The promotion and funding of certain technical investigations, the effect regarding some of them of their dimensions and, above all, the use and applications thereof determine ways of economic, social and technological development and, as a result, the correlative social organisations and formations.

In my closest scientific sphere, economics, the existence of a gap between technology and humanism was closed centuries ago, even in terms of conventional economics, upon categorising visions of positive and normative economics as having been surpassed.

In the interrelationship of human beings with their environment and the different social dynamics, increasingly measured by technology, we can observe the "emerging complex systems", defined by the interaction of human and social activities with technology, and which it is not possible to explain in an exclusively mechanistic way.

*Concept*s

It has been a long time since Whorf, B.L. (1949),[18] and more recently, among others, Bueno, G.[19] demonstrated the connection between the different ways of naming, concepts and ways of thinking.

A) Analogue and Digital Formats

To begin with, in regards to the denominations of "digital" versus "analogue" format, the Real Academia Española (RAE) contemplates various definitions for the term digital and the two most utilised are very likely *1) adj. Belonging or relating to the fingers and 2) adj. Said of a device or system: That creates, presents, transports or stores information via a combination of bits and 6) adj. Said of a handpicked appointment.*

I shall return to the first and sixth definitions further on, but now of course the reference for our object of study is definition 2.

[18]Whorf (1971) at 249-262.
[19]For all see Bueno (2009).

Analogue is that based on the analogy: a connection of similarity between different elements. Analogue apparatus, in this framework, present information via a continual physical magnitude that is proportional to the value of the information itself. Analogue formats are paper, vinyl, film, videotape, cassette tape, etc.

In contrast to the paper format in which information has traditionally materialised, now the analogue signal is continuous and can record infinite values.

On their part, digital formats are magnetic disks, diskettes, optical disks, memory cards etc. The digital signal is discontinuous and can only record 0 or 1 values or states.

B) *Algorithms and Artificial Intelligence*

According to the RAE, an algorithm is an *ordered and finite group of operations that permits the solution to a problem to be found.*

An algorithm of medium complexity is, for example, the set of rules that develop the arithmetic operation of multiplication. Although of course others are more complex[20].

The RAE defines artificial intelligence as the *scientific discipline concerned with creating computer programs that execute operations comparable to those carried out by the human mind, such as learning or logical reasoning.*

Thus, neither the algorithm or artificial intelligence are the panacea or guarantee or anything. They are designed by humans, to which the results obtained from their application depend on their logical structure and the objectives of the subject who built them or the individual who ordered it. Therefore, the transparency of algorithms requires knowledge of their design but also their maintenance, the results obtained and, finally, their controls require an authority with technological competencies that guarantee their independence and correct functioning.

Thus, in my opinion, certain order must be applied to the concepts with the aim of substantiating our conclusions or analysing those of others with rigour.

Efficiency, Equity and Digitalisation

The main unarguable benefit of the digitalisation process in economic activity comes from the efficiency of both private and social productive processes and even new business opportunities.

If 43.1% of the population in Africa and 93.4% in North America have internet access this betrays the fact that these digital divides are not collaborating towards reducing the economic and social inequalities in the world, quite the opposite.

[20]Logistic or linear regression, Instance based Algorithms such as k-Nearest Neighbor (k-NN), Decision Tree or Random Forest, Bayesian Algorithms such as Naive Bayes, Clustering Algorithms such as K-medians, Neural Network Algorithms such as XOR gate, Deep Learning Algorithms such as Convolutional Neural Networks, Dimensionality Reduction Algorithms such as Principal Component Analysis (PCA), Natural Language Processing (NLP) such as Text Generation with GPT-2, etc.

In Spain, the 2020 Survey on Information and Communication Technology Equipment and Usage in Households of the Statistics Institute of Spain (INE), shows that the access and penetration capacity of Information and Communication Technologies (ICT) in Spain is high: 95.4% of households have an internet connection and 81.4% of households dispose of some type of computer. Nevertheless, the differences are explicative: 26.6% of poor households lack any type of computer, double the figure for rich households.

The percentage of households lacking connectivity is low (4.6%) but the poorest tend to connect via mobile telephones. This lack of connectivity explains that just 43.1% of poor individuals have low or no digital skills whereas for non-poor individuals this percentage stands at 24.2%.

There is also a generational gap to which inactive individuals over the age of 65 show a lower usage percentage for new technologies than the active population and, finally, usage is lower in rural than in urban areas.

Regarding the specific aspect of the impact of gender, a growth in access to digital technologies is occurring on the part of women. However, the gap between men and women persists, mainly due to the different quality of internet access and secondly because of the manifestation of substantial differences regarding digital skills. These differences are lesser between young people and high level professionals but extremely prominent in women with low level skills.

There is a need, therefore, for a public action destined towards overcoming digital divides due to gender but, furthermore, the creation of new jobs due to the digitalisation processes of activities is greater in the case of men than it is for women[21].

Remote working undoubtedly favours the work-life balance possibilities of women with family responsibilities, thus helping to reduce the aforementioned difference but, in reality, it is a double edged sword because it can deprive them of the socialisation factor provided by an external work activity.

The scarce presence of women in the design and production of new technologies contributes to the fact that in general the field does not contemplate the gender perspective and, as a result, discourages the presence of women in the digital industry.

The Digitalisation of the Judicial Administration

The modernisation and digitalisation of the Judicial Administration will presumably give rise to personal and social benefits, particularly, by improving transparency and thus efficiency but, also, in specific circumstances, equity although it is unclear that this is the case for the latter.

[21]See Sáinz, Arrollo & Castaño (2022).

Impact of Digitalisation on the Efficiency of Justice[22]

In this sphere it is necessary to point out that amongst the costs incurred and services obtained from the Judicial Administration, it is not only necessary to contemplate the strictly monetary magnitudes but also others that have no market price, such as the stigmatisation of the person being put on trial, the delays in legal rulings and even more so in the delays in enforcements of judgments, the stress provoked by the actions of civil servants and police in judicial proceedings in regards to the majority of citizens, etc. In short, it is essential to consider all costs and income both in terms of those that are public corresponding to the Administration and those of a private nature assumed by citizens, now referring to monetary and other not strictly monetary magnitudes.

The digital process will afford a greater social efficiency to the judicial system given that, amongst other reasons, it will even collaborate in reducing the problems of CO_2 emissions that are affecting climate change. It is therefore foreseeable that there will be a reduction or elimination of paper, the need for citizens and professionals to make fewer physical journeys, reducing the concentration of workers in office complexes, etc., helping to reduce the influence of the activity of the administration and of the judicial services on climate change.

The analysis of a good proportion of the abundant literature in this regard reveals that the public and even professional debates currently unfolding are too often approached extremely poorly. It may appear that the digitalisation of the Judicial Administration is highly novel, as if many courts had not been for a while now using the digitalisation of documents and even, in some, at least primary stages of algorithms or artificial intelligence, of course in their widest senses. In reality there are a considerable number of courts where paper has hardly been used for a number of years and which have programs and platforms that facilitate the information and telematic management of administrative procedures.

However, it is also the case that there are courts in which even today the desks of the public employees are covered with mountains of folders and documents and the court archives normally located in basements are dirty places with a chaos of boxes and papers stored without any sort of criterion.

Therefore, it would be more correct to speak about modernisation of the Judicial Administration via the employment of new management tools and procedures currently used in both other administrations and the private sector, amongst which of course are digitalisation and some initial levels of algorithms and, finally, artificial intelligence.

The digitalisation of the Judicial Administration in Spain constitutes a process already started quite a long time ago and that, of course, is not going to be completed or finalised immediately, regardless of how many regulations are published hastily ad hoc, given that innovation after innovation they reveal a lack of miracle making power.

Impact of Digitalisation on the Equity of Justice

[22]Efficiency refers to the relationship between entries to the judicial system (personnel, equipment, energy, etc) and exits (judgments, rulings, etc), conventional economics refers to the relationship between input and output.

The effects on equity in the development and results of legal proceedings of their modernisation and digitalisation in principle, particularly due to transparency, seemed it was going to be in a positive sense but it will not in reality occur thus. The inequality of arms and its translation to diverse legal rulings is one of the main inconveniences of our judicial systems and no reason appears to be on the horizon for this to change with the mechanisation and modernisation of their administrations.

Firstly, the most vulnerable will end up in a worse situation than before the initiation of the Justice digitalisation process. This group will have the same problems they had before, now added to which are the difficulties they face as regards using the new technologies, not to the mere possession thereof and, furthermore, predictably, the new difficulties for carrying out the necessary and traditional communications in person with the Judicial Administration.

Regarding equity and equality in justice, paradoxically they are not identical concepts. Equality is treating those who are unequal in the same way, whereas equity is treating those who are unequal in an unequal manner in order to reduce differences.

Amongst others, Article 9.2 of the Spanish constitution (CE - Constitución Española) is a precept that commits the action of public powers to enabling the achievement of substantial equal between individuals, independently of their social situation. (Constitutional Court Judgment [STC - Sentencia Tribunal Constitucional] 39/1986, 31 March).

For its part, Article 31.1 of the Spanish Constitution contemplates equity and not equality in tax matters. It does not stipulate that all Spanish citizens must bear the same fiscal load, rather, that everyone must pay an unequal amount according to their income and riches.

Despite being a question scarcely dealt with in scientific literature and completely ignored in the legal profession, in reality the majority of judicial systems are completely opaque for ordinary users. The obligatory intermediation of lawyers and procuradors constitute more often than desired the only justification of their interventions in legal proceedings. In a large number of cases of simple procedures a common objective of lawyers consists in concealing the avatars of the proceedings from the litigants, including the expertise or lack thereof shown by the lawyer and the procurador in their actions. Many lawyers use the argument of lack of legal knowledge on the part of the clients for not informing them and in the case of the procuradors because this opacity precisely constitutes the excuse for their professional action.[23]

In principle, the digitalisation of the judicial administration with one of its main instruments such as the electronic legal case file and its access both to professionals and citizens shall provide a considerable amount of transparency and efficiency to the judicial system. In the same vein, other information such as that

[23]In a recent meeting of jurists and other professionals in which Dr Fernando Esteban Delarosa, a well-known senior Law Professor at the University of Granada, presented the current justice digitalisation process in Spain, a procurador from the Professional Association of Granada showed her indignation to the new legislation and asked why users were going to have access to the electronic case file when they had already been appointed a lawyer and procurador.

deriving from the right to access judgments on the topic and issued by specific judges, the duration of proceedings in different courts and their effectiveness in the enforcement of judgments, archived cases, etc. shall permit citizens to make rational decisions.

In fact, the majority of economic models regarding law and other objects start out from the basis of perfect information, that is, that all operators know the working mechanisms and real and expected magnitudes of the proceedings. In these conditions, a significant proportion of well-informed litigants will seek alternative means to resolve their disputes.

In general for citizens the judicial system can be less costly and more accessible when the intervention of lawyers and, above all, procuradors, is not obligatory.

Preventions and Precautions

General Approach

When applying algorithms and artificial intelligence plans it is first necessary to consider and decide on various questions recommended by the available logic and experiences.

A) Requisites

The analysis of algorithms and of artificial intelligence in general can be very proliferous and technical, but to discover its impacts it is necessary to at least consider the following aspects:

- Are all the variables or at least the most relevant considered?
- How can it be guaranteed that the artificial intelligence and the algorithms that use the available data are correct?
- Where are the internal logic and the mathematical formulation of the algorithm made explicit?
- What happens if the results that are the consequence of the use of algorithms do not coincide with logic and particularly the subjective and experienced viewpoint of a judge?

The first conclusion is immediate: the artificial intelligence and algorithm systems should only be used if there are mechanisms available to control them and which guarantee the reliability of their results. The next is correlative: neither judges or lawyers or the majority of citizens are familiar with these materials.

Predictive digital justice can only be implicated in orientations as regards lines of investigation, due precautions and controls with predictions, but never in judicial decisions. The latter must be based, of course, on the available objective data but also and above all on the subjective assessment of the judger of the most relevant data, the study of the environment and the application of the regulations.

B) Dangers

There must be a precautionary analysis and where appropriate elimination of actions that pose significant danger to:

- The protection of honour due to undue disseminating of the proceedings and dangers of remote statements: Non-observance of non-verbal language.
- Algorithms may contain serious errors or go against human rights
- Difficulties for vulnerable sectors of the population, elderly, disabled, etc. in accessing online communications
- The behaviour of individual humans cannot be reduced to a series of standardised variables specific to typical economic and social rationalities.
- There is a danger of government manipulation of judges via information and algorithm management and even the prediction of their resolutions and judgments.

Online Communications and Oral Hearings

One of the great advantages that the digitalisation of the Judicial Administration is bringing with it is undoubtedly the access to the information of proceedings, in general, the ease of access to the electronic case file, the incorporation of new documents into the proceedings and even the undertaking of simple appearances on the part of litigants, of course with the due precautions.

It is foreseeable that administration costs are reduced significantly for legal operators, above all in terms of the reduction in journeys, paper, printing and, as a result, a reduction in social environmental costs.

This process also unquestionably brings with it a series of dangers that, left unmitigated, will cause problems to the equity of proceedings and legal guarantees.

For example:

- In this type of communication the principle of immediacy is harmed for a number of reasons.
- Communication via videoconference demands a number of precautions to verify both the authenticity of the person communicating and that their interventions are not obstructed or directed by individuals not authorised to do so. It is necessary to have a simultaneous and complete view of all participants, judges, court registrars, litigants, lawyers, procuradors.
- It does not permit the provision of documents to all participants simultaneously
- It does not permit communications between lawyer and client with the required confidentiality
- Information provided by non-verbal language of participants, etc. is lost.

And perhaps amongst the most worrying is

- The presence of the public online poses problems relating the right to privacy that are difficult to resolve, such as the dissemination of images of the proceedings

The Application of Artificial Intelligence to a framework that is traditionally "not very intelligent"

Here my contemplation, as a mere exercise, is not even the substitution of judges and lawyers with robots, although I must recognise that given the unfortunate actions in some cases the temptation arises to do so.

The complexity of the human mind, both in regards to diverse rationalities and to value judgements, disregards any attempt at substituting physical judges with machines.

However, it is true that the modernisation and mechanisation of the Judicial Administration may collaborate in making legal rulings easier and more reasoned. But in any case, there are various questions that must be considered and analysed.

The application of artificial intelligence to the Judicial Administration presents an added problem, that is, the application of artificial intelligence to an object that is "not very intelligent". From the beginning of their training in law faculties, judges receive habitual study material and learning methodology that is more memory based, that is, scarcely analytical, lacking any scientific rationality whatsoever.

The final product, in other words, the applicable legal judgments, are not constructed with scientific reasoning, but via a mere administrative hierarchy, to the extent that what is decided by higher courts has more weight that what first instance courts decide, with the latter even being annulled if they do not coincide with the former.

As the judges do not have an in-depth understanding of the case they are trying, particularly when they involve topic of complexity, in order to set the facts they must resort to experts in different matters, with the judgment subject to so-called reports. This inconvenience is so manifest that in numerous judgments it can clearly be observed that the judge does not enter into the crux of the matter, deriving the proceedings either to lateral or merely formal questions, because in reality they do not wish to show their ignorance or base the judgment solely on the opinion of an external third party.

To this difficulty we must add the complete lack of experience in the use and moreover ignorance of the basics of the new technologies, to which neither are they going to understand the methodologies of the reasoning and the evidence presented by the parties. In short, to the "arrogance of the ignorant" often exhibited by many judges we must now add the ensuing but guaranteed incomprehension of the technical environment or algorithms and artificial intelligence etc. in which legal proceedings are going to be carried out.

In summary, either it is necessary to urgently proceed to train judges in the scientific disciplines most applied to artificial intelligence, which is improbable, at least successfully, or there is an essential urgent need for the installation of an authority with technological competencies that guarantee the independence and correct working of the new proceedings.

Artificial Intelligence and the Algorithmisation of Life and Justice: Solution or Problem?

For a number of years now the professional and some general communications media have been awash with statements and predictions regarding the application of artificial intelligence. This topic is normally addressed as if it were a novelty occurrence and in the short term we are going to leave the administering of justice in the hands of robots.

In my opinion and as it has been demonstrated in other social processes, there is an information overload that exceeds individual capacity to assimilate and process, and which makes it difficult for citizens to be truly well informed.

Firstly, the modernisation processes relating to the management of the Judicial Administration, including digitalisation, as in other administrations and the private sector is not a novel question, be it for legal prescription or simple rationality, but neither is it going to culminate in a brief period because the situation is extremely unequal in the different administrations and countries and it will be a constant, long-term process.

Thus, this debate is unfolding with a lack of an intellectual dimension, beyond the ongoing innovation, in terms of its application to the administrations and finally its legal dimension.

Something else would be the substitution of the human intelligence of physical judges and other legal practitioners with robots fitted with the unfortunately named artificial intelligence, which is impossible at least in all of its magnitudes and perspectives.

A robot can have a series of algorithms installed by way of rational behaviours to the effects of a pattern fixed by its "creator". But individual human behaviour does not follow any pattern because it is plagued by value judgements, prejudices, ethical and political behaviours, legal and individual restrictions, etc. removed from typical, fixed and predictable behaviour.

Nonetheless, well directed robots can develop a series of basic mechanical tasks that can free up in judges the use of mental and physical resources necessary for their execution, which can allow them to focus on higher intellectual tasks.

To summarise, artificial intelligence is not capable of issuing FAIR judgments but may be of extremely valuable assistance to judges to issue them.

An Emerging Complex System?

There is an occurrence of frequent errors in the cases of sacralisation of some technical innovations and their instruments, to which they are automatically credited, without any critical analysis whatsoever, with virtues such as truth, rigour, social improvement, etc. which due to their very nature in reality they lack. Frequently, to justify the result of a process that intuition indicates as having an uncertain outcome, plagued with dangers or, directly as perverse, there is an attempt to present arguments such as: "it has been resolved via computer", that "an extremely sophisticated algorithm has been applied", that "the established protocol

has been scrupulously followed" etc. are attempted to be presented as irrefutable proof of their veracity.

A number of forums defend the technique as a neutral act that lacks connections with ethical, political, social and environmental dimensions. But in reality the complex and even basic commands such as add, subtract, etc. and the technologies applied such as the abacus, the calculator, computers and so on are not neutral, mainly due to the reason for their development and the use made of their results.

The promotion and funding of certain technical investigations, the effect regarding some of them of their dimensions and, above all, the use and applications thereof determine ways of economic and technological development and, as a result, the correlative social organisations and formations.

In the closest scientific sphere, economics, the existence of a gap between technology and humanism was already closed even in conventional economics, upon categorising visions of positive and normative economics as having been surpassed.

In the interrelationship of humans with their environment and in different social dynamics, increasingly mediated by technology, we can observe "emerging complex systems", which cannot be explained in exclusively mechanical and functional terms. Some emerging complex systems are the result of the interaction of human and social activities with technology and cannot only be explained mechanically.

Postscript: More Means for the Traditional Judicial Administration?

The problems expounded and the consequent dissatisfaction in citizens caused by congestion in the courts and the corresponding delay in obtaining definitive resolutions cannot be exclusively pursued with means of supply aimed at the Judicial Administration, particularly via the increase of resources and improvement in its organisation. Without spurning away from the possibilities offered by this dimension, the greatest room for manoeuvre to be identified today is on the side of demand, that is, in the reduction in user numbers.

Therefore, the number of requests to access ordinary courts will substantially decrease with the development and establishment of alternative conflict resolution systems, less costly compared to the judicial process, based on different ways of bringing about agreements between parties.

The increase of conflicts and the election of the legal channel for their resolution is related to the bureaucratic empire that affects above all the operators of the Judicial Administration, who manage proceedings in a monopolistic way, lacking constitutional and social justification, as in the case of judges but also and, above all, lawyers and procuradors.

Judges and other judicial administrators are interested in inflating their departments and other areas of influence because their social value and monetary rewards depend on it. Moreover, in the case of lawyers it is more direct: their

rewards depend on the number of legal proceedings in which they represent clients. In short, judges and lawyers are "suppliers who create their own demand".

If the judicial process were afforded greater quantities of information and transparency towards users it would provide them with better knowledge and certainty regarding the result of their conflicts. In these conditions the number of requests to access the courts and the services of lawyers and procuradors would see a substantial reduction. The existence of alternative conflict resolution systems would also contribute to achieving this end, less costly compared to the judicial process, based on different ways of materialising agreements between parties.

Summary and Conclusions

The Rule of Law in Spain compared with the other countries of the European Union (EU) currently occupies position 15 out of 27, but if we analyse the west in general (including EU, EFTA (European Free Trade Association) and North America) the quality of the legal system is not so positive, as it occupies position 18/31 and 23/43 among the world's richest countries.

One of the biggest problems of the Judicial Administration in Spain is the excessive delay of legal resolutions. The congestion rate is growing year upon year despite the increase in means at the disposal of courts and the decrease in the number of lawsuits filed, as the period for the definitive resolution of proceedings is increasing to a greater degree.

In the opinion of Spanish citizens, the deficiencies of the Legal System in Spain create inefficiency in the Economic System but also social inequity due to the existence of a large amount of uncertainty in the resolution of social conflicts and, in any case, these are significantly influenced by the economic capacity of litigants.

Therefore, the main problems shown by Spanish justice are firstly corruption and, deriving in part from it, ineffectiveness, inefficiency and the inequity of the Judicial System, which constitute systemic characteristics.

The foreseeable effects on the efficiency of the digitalisation process of the Judicial Administration will be positive as they will suppose fewer costs both for the Administration itself and for citizens; however, the consequences for equity are neither clear nor homogeneous. In general, it is predictable that the most negatively affected will be the poorest citizens, women and the elderly.

One of the great advantages that the digitalisation of the Judicial Administration is bringing with it is the transparency of administrative procedures, access to the information of the proceedings, and ease of access to the electronic case file on the part of professionals and citizens in general.

It is foreseeable that administration costs be reduced significantly for legal operators, above all in terms of the reduction in journeys, paper, printing and, as a result, the reduction in environmental and other social costs.

Although justice is not nor should it become a mere act of prediction, or a mathematical model that can lead to formulas, it is no less certain that the

employment of AI for specific purposes may be extremely useful in all jurisdictional orders.

This process also unquestionably brings with it a series of dangers that, left unmitigated, will cause problems to the equity of proceedings and legal guarantees.

In summary, digital systems, algorithms, artificial intelligence and other technological innovations may bring efficiency benefits to citizens and the Judicial Administration but should only be used if there are mechanisms for their control and which guarantee their equity, the protection of honour and privacy, legal guarantee and reliability of results. The next is correlative: neither judges or lawyers or the majority of citizens are familiar with these materials.

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The Changes in the Approach to Environmental Protection by the European Union and its Member States and the Regulatory Innovations in Italy

By Gloria Marchetti[*]

This essay analyses the recent changes in the approach to environmental protection by the European Union and its Member States, with particular regard to the Italian regulatory innovations. In particular, it analyses the following topics: the European Union's evolution in protecting the environment and its impact on policies and regulation of the Member States; recognition of the "value" of environmental protection by Italy's Constitutional Court; the Italian environmental reforms (the ecological transition and constitutional reform of 2022 on the matter). The aim of this study is to identify some possible consequences of the new approaches, at European and Italian level, to environmental issues.

Keywords: *Environmental Protection in the European Union and in Italy; Green Deal and Next Generation EU programmes; Ecological transition in Italy; Italian Constitutional reform of 2022 on the matter of environmental protection; environmental, economic and social policies.*

Introduction

This essay analyses the recent changes in the approach to environmental protection by the European Union and its Member States, with particular regard to the Italian regulatory innovations.

The European Union has gradually become aware of the need to take actions to protect the environment. Thus, there has been an evolution of the provisions of the EU Treaties. More recently, the European Union, especially with the "Green Deal" and the "Next Generation EU programs", has strengthened the ecological vision of environmental issues, aimed at ensuring greater protection of ecological elements and sustainable development.

In this context, Italy, as have the other Member States, in compliance with European and international obligations, has launched a process of reforms aimed at strengthening environmental protection. In Italy, in fact, a process of ecological transition has been launched, and there was, in 2022, a constitutional reform on the matter of environmental protection.

Therefore, the purpose of this essay is to examine the following topics: the European Union's evolution in protecting the environment and its impact on policies (not only environmental, but also economic and social policies)

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and regulation of the Member States; recognition of the "value" of environmental protection by Italy's Constitutional Court; the Italian environmental reforms. More precisely, therefore, the aim of the essay is to identify some possible consequences of the new approaches, at European and Italian level, to environmental issues.

Methodology in the Analysis of Topics Covered and Expected Results

The methodology used in the research on problems related to the environmental protection includes an analysis of the regulation and policies adopted by the European Union and by the Italian State in order to protect the environment.

In addition, the essay takes into account the updated literature expressing the theoretical and scientific, as well as practical, findings of the problematic aspects addressed in this study.

A reconstruction of the regulation and policies relating to environmental protection is carried out, within the European Union and in the Member States — with particular regard to Italy's regulation — in order to assess how these have taken a new approach to this issue.

The methodological approach is the legal one and the conclusions are aimed at demonstrating how the regulation and policies relating to environmental protection have laid the foundations for a greater protection of ecological elements (climate, ecosystems, biodiversity, etc.) and the implementation of sustainable development, through policy integration (environmental, economic and social policies)

Therefore, the expected result of the research is to identify some possible consequences of the new approaches, at European and Italian level, to environmental issues.

The European Union's Evolution in protecting the Environment

First, the regulation and policies relating to the environmental protection will be reconstructed below.

The European Union has gradually become aware of the need to take actions to protect the environment. This is also thanks to greater awareness, at the international level, of environmental problems, which led, among other things, to the proclamation of a series of principles at the Rio Conference in 1992; this Conference started a process of elaboration of the so-called "Global conventions" dedicated to environmental problems.

Thus, there has been an evolution of the provisions of the European Treaties, which now include environmental policy among the fundamental objectives of the European Union and foresee a commitment of the Member States to guarantee a "high level" of environmental protection[1]. Moreover, the Treaties attribute an

[1]See Caravita (1990); Caravita (1991); Cassese (1995); Chiti (1999); Maddalena (2000); De Sadeleer (2002); Usui (2003); Bonomo (2005); Ferrara (2005); Lee (2005); Holder & Lee (2007); Scott

important role to the principle of integration between the various policies (environmental, economic and social) and the principle of sustainable development. Lastly, the Treaty of Lisbon, which came into force late in 2009, reinforced the Union's commitment to guaranteeing environmental protection and stressed the need for integration between environmental policies and all other policies, in particular with a view to promoting sustainable development. The principle of sustainable development was reinforced by the Treaty of Lisbon, and it is now no longer regarded as limited to market and economic activities, but rather it is considered in the perspective of economic, social and environmental development[2]. In addition, the Treaty of Lisbon has given the Charter of Fundamental Rights of the European Union, proclaimed in Nice in December 2000, the value of a Treaty, and hence the Charter became binding for European institutions and the Member States. This Charter, as far as it matters here, in article 37, provides that environmental protection should be a policy that must be integrated with other policies that must respect the principle of sustainable development.

Furthermore, the European Union, especially with the "Green Deal" and "Next Generation EU programmes", has recently taken on a new perspective with respect to traditional environmental policies as defined by the Treaties. There was a progressive strengthening of an ecological vision of environmental issues, aimed at ensuring greater protection of ecological elements (climate, ecosystems, biodiversity, etc.) and sustainable development; this principle should be the basis of any European policy, including economic ones[3]. The goal of the Green Deal, indeed, should be to integrate environmental, economic and social policies. This has the purpose of guaranteeing the well-being not only of citizens but also of future generations who must be able to satisfy their needs[4] with the awareness that the excessive deterioration of the environment endangers not only the well-being but also the survival of individuals.

The Impact of the European's Evolution in protecting the Environment on Policies and Regulation of the Member States

It is important to take into account the European evolution in protecting the environment; this is because the European Union's primary and secondary law — but also its soft law acts — and European actions have a strong impact on policies and regulation of the Member States[5].

(2009); Krämer (2011); Krämer (2012); Dell'Anno & Picozza (2012); Nascimbene & Garofalo (2012); Macrory (2014); Caravita & Cassetti (2016); Cordini (2021); Chiti (2022a); Chiti (2022b); Monteduro (2022); Police (2022).

[2]See Chiti (2022a); Chiti (2022b).

[3]See Bruti Liberati (2021); Chiti (2022a); Chiti (2022b); Passalacqua (2021); Moliterni A. (2021).

[4]See Bifulco & D'Aloia (2008); Celotto (2022); Clementi (2022); D'Aloia (2016); D'Aloia (2022); Bartolucci (2021); Bartolucci (2022); Bifulco (2022c); Guarnier (2022); Palombino (2021); Palombino (2022); Bilancia (2023).

[5]See Grassi (2023).

First, each Member State, in drawing up its own environmental policies, had to take into account the "high standards" of environmental protection and had to integrate these policies with all the others, guaranteeing the principle of sustainable development. More recently, then, the Member States have started to take a new approach to the environment which aimed at ensuring greater protection of ecological elements and sustainable development, as imposed by the Green Deal. It is in this context that, as will be better seen below, the Italian reform processes — including constitutional ones — in the field of environmental protection are inserted.

On the other hand, national environmental policies are influenced by European funding. Various programs aimed at protecting the environment have been funded by the European Union and now the Next Generation EU program funds environmental, economic and social policies. It is thanks to the Next Generation EU program that, as will be explained later, Italy has started a process of ecological transition[6].

Furthermore, in view of the evolution of the European Union's approach to environmental issues, some Cuntries with post-war Constitutions — which did not include environmental regulations, unlike the more recent ones (such as the 1978 Spanish one with specific provisions) — reformed them, introducing provisions for environmental protection. This happened in the Netherlands in 1983, in Germany in 1994, in France in 2005 and in Italy in 2022[7]. In this regard, it must be said that Italy introduced the protection of ecological elements into Constitution only in 2022 but, under the impetus of European policies and regulations, the principle of the value of environmental protection had already been constitutionalised by its Constitutional Court.

Recognition of the Value of Environmental Protection in Italy

Even in the light of the European evolution in considering environmental issues, in Italy the protection of the environment has gradually assumed constitutional importance thanks to the jurisprudence of the Constitutional Court.

In this regard, it should be underlined that, before the recent reform of 2022 — which included an express reference to environmental protection in the Italian Constitution — in the absence of specific constitutional references, environmental protection has been positivised by the Constitutional Court.

In fact, the consolidated constitutional jurisprudence has regarded the environment as a "primary constitutional value" that must be guaranteed by balancing it with other constitutional values[8].

[6]See Luchena (2021); De Santis (2023).
[7]See Amirante (2000); Cordini (2002).
[8]See judgments of the Constitutional Court n. 196/2004 and n. 85/2013. See Cecchetti (2000) at 6-47; Cecchetti (2009); Cecchetti (2020a); Cecchetti (2020b); Cecchetti (2021) at 7-58; D'Alfonso (2006); Dell'Anno (2009); Caretti & Boncinelli (2009); Cordini (2009); De Giorgi (2010); Rocella (2011); Maddalena (2012); Michetti (2015); Caravita & Morrone (2016); Riviezzo (2021).

In reality, in Italy, the legislator, the administrations and the judges — namely the subjects called to balance interests — have often made economic interests prevail over environmental ones. If this approach was already questionable in the past, now a number of elements — such as the more ecological perspective of the European Union and the constitutional reform of 2022 — make it unacceptable[9].

The Italian Reforms aimed at Strengthening Environmental Protection

Italy, in the European and national contexts examined above, has launched a process of reforms aimed at strengthening environmental protection.

On the one hand, the Italian Government, with the implementation of the National Recovery and Resilience Plan[10] has started the ecological transition[11], laying the foundations for a strong commitment to address environmental/ ecological issues. In this regard, it should be stressed that Mission 2 of this Plan, dedicated to the "Green revolution and ecological transition", is the one that, in compliance with European guidelines, is destined to have more funds if compared to the other missions.

On the other hand, an important change in the approach to environmental/ ecological issues took place in Italy with the recent approval by the Italian Parliament of constitutional law no. 1 of 2022 implementing "Amendments to Articles 9 and 41 of the Constitution regarding environmental protection"[12]. This law introduced the protection of the environment among the fundamental principles of the Italian legal system. Protection of the environment which was originally mentioned in the Constitution for the sole purpose of distributing the legislative competences between the State and Regions even though — as mentioned above —it has been positivised by the Constitutional Court. The recent constitutional law — through the amendment of article 9 — has instead included in the Constitution an explicit reference to the protection of the environment, biodiversity and ecosystems, also in the interest of future generations. Furthermore, the amendment to article 41 specifies that business activities must not be harmful, among other things, to the environment[13].

[9]See Ronchetti (2021) at 59-117.
[10]See Bilancia (ed.) (2023).
[11]See Papa (2023).
[12]See Cassetti (2021); Cassetti (2022a); Cassetti (2022b); Cecchetti (2021; Cecchetti (2022a); Cecchetti (2022b); Cozzi (2021); De Cesaris (2021); Di Plinio (2021); Frosini (2021); Greco (2021); Guerra & Mazza (2021); Rescigno (2021); Riviezzo (2021); Santini (2021); Bifulco (2022a), Bifulco (2022b); Camerlengo (2022); Cavino (2022); Cioffi & Ferrara (2022); De Leonardis (2022); Di Salvatore (2022); Fattibene (2022); Fracchia (2022); Iannella 2022); Montaldo (2022); Morelli (2022); Morrone (2022); Sorrentino (2022); Flick (2023). See also the speeches of Morrone, Maddalena, Amendola, Palici Di Suni, Porena, D'Amico, Cecchetti, Azzariti, Grasso, Fracchia, Hearings at the 1st Permanent Commission of the Senate of the Republic (Constitutional Affairs) in the context of the examination of the draft constitutional law n. 83, no. 212, no. 1203 and no. 1532 containing amendments to art. 9 of the Constitution on environmental protection (24 October and 14 November 2019; 16 January, 4 February and 23 September 2020). https://www. senato.it
[13]See Cabazzi (2022).

The Innovative Scope of the Reform of Articles 9 and 41 of the Italian Constitution with an EU Oriented Interpretation

The Constitutional reform is considered not only timely and useful but also necessary; this in light of the recent more "ecological" orientation of the European Union which emerges above all from the Green Deal but also from the Next Generation EU[14].

The Constitutional reform read following an EU oriented approach, takes on an innovative scope, imposing a new paradigm of environmental protection on the legislator, public administrations and the constitutional judge[15]. The new paradigm is based on innovative pillars: the introduction of an effective "environmental constitutional principle" in the Constitution; the provision of a constitutional obligation for public authorities to pursue the aim of protecting all elements of the environment, biodiversity and ecosystems, also in the interest of future generations; a different conception of development which must be sustainable not only from an economic point of view but also from a social and environmental perpective.

The Consequences of the Italian Reforms on the Matter of Environmental Protection (in the light of the New European Approach): The Impact on Economic and Social Rights

In this context, it is important to reflect on the consequences of the Italian reforms on the matter of environmental protection. It is evident that the start of the ecological transition, on the one hand, and the constitutional amendment, on the other hand, are destined to influence the decisions of public powers.

In this regard, it should be said that the reforms of environmental protection in Italy must be read in the light of the new European approach to this matter. In particular, as mentioned above, at the level of the European Union, the idea of an economic-social model has been strengthened. Economic development must be balanced with the need for an improvement in the quality of life of people, also in relation to environmental protection. More specifically, the Green Deal is aimed at strengthening the ecological elements and — as mentioned above — integrate environmental, economic and social policies.

Therefore, it can be said that this changes, at both the national and European levels, on environmental matters, imposing a paradigm shift by public powers - a paradigm shift which should lead to consequences not only for the environment.

First consequence: Italian policies should be aimed at strengthening environmental protection, in an intergenerational perspective, and at ensuring greater protection of ecological elements. In particular, a "binding" and "certain" reference, of a constitutional nature, which acts as a parameter of legitimacy of the laws, prevents regressions in the protection of the environment, in line with the

[14]See, in this sense: Bifulco (2022a); Bifulco (2022b); Di Salvatore (2022); Fattibene (2022). In the opposite direction, Di Plinio (2021); Frosini (2021); Severini & Carpentieri (2021).

[15]Among the authors who wished for a reform with a more innovative character, see Cecchetti (2021); Cecchetti (2022a), Cecchetti (2022b); Santini (2021).

principle of "environmental non-regression" recognised at International and European level.

Second consequence deriving from the inclusion of environmental protection as a fundamental principle of the Italian Constitution: the legislator, public administration and the Constitutional Court should consider this protection as a "priority" value in balancing different interests (the interest in protecting the environment with other interests, especially the economic ones)[16]. This does not mean that this value must prevail over other values but rather that environmental protection must be taken into consideration as a "priority" when defining other policies (including economic and social ones). From this point of view, economic values should no longer — as it often happened in Italy in the past — prevail over environmental protection, which should be aimed at guaranteeing the equality and dignity of the individual and the well-being of citizens and that of future generations.

Third consequence of an EU-oriented interpretation of the Italians reform: environmental policies should be more integrated, if compared to the past, with economic and social policies. In other words, the ecological issue should be destined to influence the legislator and the public administration also in the shaping of economic and social policies. The State's intervention should aim at ensuring a balanced economic growth that respects the environment. In fact, economic policies should be inspired by the principle of sustainable development. Moreover, sustainable development should be achieved, by the legislator and public administration alike, through a new approach that aims to combine economic, environmental and social sustainability.

Conclusions

As a conclusion to this essay, it is important to underline that consequences of the new approaches, at European and Italian level, to environmental issues are bound to be significant.

In Italy, in line with the evolution of the European Union on environmental protection, the premises for a strong change have been laid.

However, the reforms are too recent to assess the actual impact, which will depend on the future actions taken by the public powers called upon to implement these reforms.

This will be the challenge of the future: taking concrete actions to preserve the ecosystem and the biosphere. This in order to guarantee sustainable development that does not consider only the quantitative data but also the qualitative ones, focusing on the need to guarantee the equality and dignity of the individual, also through greater protection of social rights.

[16]See Mattarella (2022); Ramajoli (2022).

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Towards New Work Paradigms: Inclusion, Digital, Sustainability, Hybrid Organisations

By Roberta Caragnano[*]

This study analyses the impact of pandemic on new work organisation with a focus on digital platforms and infrastructures in companies and organisations. In this context, the relationship between technological change and work is central, to be observed from various points of view and not only in terms of quantity and quality of employment but also in terms of skills, training, industrial relations, collective bargaining, and newly-organising work. The impact on the labour market is important. The company of the future moves in the wake of a new economic model in which there is a newfound responsibility towards the environment and people, both of whom are once again central to the production process. On this point, the role of national and decentralised collective bargaining is central, and can affect the assessment of workers' skills in a twofold direction: On the one hand, the introduction and implementation of remuneration systems, in terms of rewards and incentives, based on a certification of skills and related to the professionalism expressed by the individual employee; On the other, the agreement of direct and structural interventions on the personnel classification system. In this context, the issue of valorising talent is becoming increasingly central also for companies. The organisational change of processes and "era", as illustrated in this work, which redesigns relationships within the company with a view to greater involvement and empowerment of the worker, requires companies to review and rethink well-being as well as corporate benefits. The changes that organisations must prepare, in light of innovation, however, require investments to deal with the reforms envisaged by the National Recovery and Resilience Plan which impact on the economic and social system of Italy. The measures envisaged by the PNRR are urgent and structural and will have to guarantee the implementation and maximise the impact of the planned investments, to encourage the restart of the Italian system, noting that the impacts deriving from the implementation of the measures contained in the Plan have been assessed in terms of GDP up to +3.6% in 2026. In this process, the Competence Centres will always assume a crucial role, becoming protagonists at European level. These are benchmarks of excellence created to carry out guidance, training and innovative projects that can be of help to Italian companies.

Keywords: *Labour market; Collective bargaining and industrial relations; Gender equality; Inclusion and welfare; Development plans; Transition.*

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Introduction

Scenario and Problem Location

The COVID-19 pandemic has had an important impact on national economies both in economic-financial, social and employment terms, and in health. If on the one hand, in the first instance, it has been a destructive factor for businesses - which have had to turn towards new organisational models - on the other hand it has also represented an element that has accelerated organisational and cultural change by stimulating innovation and generating opportunities.

There have undoubtedly been some organisational difficulties (for companies) in approaching the new work organisation. However, the potential linked to the combination of work and technology has also come to light, both in the direction of creating new market sectors and in implementing hybrid models of work organisation, considering the pervasiveness of new technologies even in conventional ways of working.

The confinement and lockdown measures introduced during the pandemic have accelerated the digitisation of processes.

Digital transformation in itself has had a significant influence on the global economy. In fact, over the years even before the pandemic, the spread of the internet, the development of Artificial Intelligence (AI) and the use of Big Data have progressively transformed working models, business organisation and production processes, in both the industrial and service sectors.

However, there remains the need to create an agile and resilient organisation through digital transformation, which can accompany the processes and strategies for building and sharing value and success, noting that this (digital) transformation represents the greatest social and corporate change since the days of the industrial revolution.

The impact is significant both on business models, which allow products and services to be generated, and on the structure of organisations, which must move from a rigid and fixed set of services and infrastructures to much leaner and more flexible ones. Connectivity is made precisely with the characteristic of being extensible, providing concrete and true flexibility of processes.

In this scenario, the use of digital platforms and infrastructures in companies allows organisations to evolve towards "cloud-like" models (which, according to the dominant doctrine, are fundamental for a successful "digital-first" strategy), the only ones capable of managing the heterogeneity of hybrid environments.

The world of business and work is part of this process. Their dynamics are intertwined not only with the digital transition, but also with other phenomena of change, such as inclusion, sustainability, hybridisation of organisations, which all drive us to rethink work models and review the skills needed to remain part of the production process.

We are in the transition phase called Industry 4.0 which is characterised by two conflicting aspects: the creation of opportunities associated with the generation of new wealth, the satisfaction of new needs, together with the greater efficiency

of production processes, which pass through process innovations; a challenge to sustainability of our social and economic systems.

On this point, already in 2014 when we were facing the "transition", the economists Erik Brynjolfsson and Andrew McAfee[1] stated that "[...] the rapid and growing digitisation risks producing a profound destabilisation of the economies and this will depend on the fact that, as computers become more powerful, businesses will have less and less need for large categories of workers. The technological transformations underway risk leaving behind a large number of people. As we highlight, there has never been a better time to be workers equipped with high skills and adapted to the changes taking place, since these workers will be able to take advantage of the opportunities inherent in new technologies. However, there has never been a worse time for those with traditional skills as computers, robots and other digital technologies are acquiring these skills with extraordinary rapidity […]".

It follows, therefore, that technological innovation also brings with it profound changes in the world of work, which necessarily traverse reskilling and upskilling paths to avoid an increase in unemployment.

Alongside the digital transition, the issue of sustainability of the environment, businesses and production processes is central to the international debate.

The first objective of sustainable development is to preserve the planet and humanity, safeguarding well-being also for the benefit of future generations. In fact, society is showing the limits of both the economic system and the social and inclusion arrangements. To overcome them, transitions are needed (and are underway), in the direction of ever greater economic, social, and environmental sustainability.

As reiterated by the UN we are in an important decade called the "Decade of Action" in which it is essential to outline a sustainability scenario valid for over nine and a half billion people by 2050 [2]; all in a context of continuous and rapid evolution of scientific and technological research in which innovations require not only political support but also suitable and effective governance and financial instrumentation.

The Council of the European Union of 22 June 2021 stated in "A comprehensive approach to accelerate the implementation of the UN 2030 Agenda for Sustainable Development - Building back better after the COVID-19 crisis", as well as highlighting the need for an innovative and decisive common action in order to align investments towards the achievement of the Sustainable Development Goals, approved the definition of structural reforms. The Council also recalled the fundamental importance of other instruments adopted by the Commission such as the European Agenda for skills and the related Pact for Skills[3].

[1]Brynjolfsson & Mcafee (2014).
[2]ASviS (2021).
[3]See European Parliament and of the Council, 2014, Directive MiFID II; European Parliament and of the Council, 2016, Directive IDD; European Parliament and of the Council, 2014, Directive UCITS*;* European Parliament and of the Council, 2011, Directive AIFMD; European Parliament and of the Council, 2009, Solvency II.

The theme of sustainability and sustainable development were introduced in 1987 in the Brundtland Report (Our Common Future), after the General Assembly of the United Nations (UN) established the World Commission on the Environment and Development, and the Report stated that: The environment and development are not separate challenges; they are inexorably linked. Development cannot exist based on deteriorated environmental resources; the environment cannot be protected when growth does not take into account the costs of environmental destruction. These problems cannot be addressed in isolation from fragmented institutions and policies. They are connected in a complex system of cause and effect.[4] The result was a concept of sustainable development understood as satisfying the needs of present generations without compromising those of future generations, articulated in the three dimensions of economic, social and environmental sustainability.

It is on these three pillars that the UN has based the objectives of the 2030 Agenda, an action program for sustainable development signed in 2015 by 193 countries. In this scenario, industrial organisations, as essential stakeholders for global sustainable development, must move towards a new paradigm that emphasises the creation of sustainable value;[5] which is why they must focus not only on the economic-financial impacts but also on the social and environmental ones.

The model developed by John Elkington in 1994 is called the Triple Bottom Line (TBL or 3BL) and is divided into three keywords "people, profit and planet" which must represent points of reference for companies to promote sustainable development.

Furthermore, in the documentary "The Third Industrial Revolution: A Radical New Sharing Economy" (February 2018), Rifkin analyses precisely the aspects related to sustainability and the role of the new generations, which are central to the future of country systems; a new economic model which, starting from tackling the problems related to poverty and fair work to climate change, aims to create a new pillar called the Pact for the Third Economy, in a general scenario in which technology dominates.

Findings/Results

Business Transformations: Inclusion and the Driving Force of the European Commission

The transformations of the economic system together with the digitisation and innovation of production processes today are keeping inclusion in mind.

Becchetti speaks of a civil economy «which breaks with the paradigms of the so-called shareholder model, i.e. the one where the company pursues profit for itself and its shareholders, in favor of a stakeholder model, where the benefits must be extended to all bearers of interest. It is precisely these stakeholders (citizens,

[4]See Our Common Future, 1987, at 32.
[5]Stock, Obenaus, Kunz & Kohl (2018).

businesses and the State) who take on a more active role in this new economic model, centred on the issues of sustainability and inclusion»[6].

While on the sustainability front the advent of these models brings with it the need to streamline the reporting and certification mechanisms (of sustainability) of companies, on the inclusion front many steps forward have been made so far with more to come.

A great impetus over the years has been given by the European Commission which has adopted various policies to strengthen Europe's commitment to equality, starting with the Gender Equality Strategy up to a Strategy on the Rights of Persons with Disabilities[7], an Action Plan against racism, an EU Strategic Framework for Roma and the Strategy for the rights of LGBTIQ people.

The European Pillar of Social Rights[8] establishes 20 fundamental principles and rights to support fair and well-functioning labour markets, structured around the three chapters: equal opportunities and access to the market; fair working conditions; social protection and inclusion.

The proposals and actions put in place by the European Commission imply the support of both the States and the social partners and civil society to fully achieve, by 2030, the objectives set in the sectors of employment, skills and social protection.

Companies are an active part of this process. Indeed, the connection between engagement, diversity and inclusion is one of the imperatives of large companies.

Inclusion takes the form of all those strategies that envisage including collaborators within the company workforce, enhancing them with training courses dedicated to professional development.

Corporate inclusion policies that represent opportunities to bring out individual value, are otherwise also a way to attract and retain talent as part of recruiting strategies.

In the international scenario, therefore, inclusion becomes a real organisational lever, acknowledging that in the era of globalisation, managing diversity is not only a theme linked to sustainability or equal opportunities. Managing diversity also represents a strategic theme for companies to pay close attention to, especially by stakeholder management.

[6]ESG WORLD (2021).

[7]European Commission 2021. *Union of equality: Strategy for the rights of persons with disabilities 2021-2030.*

[8]European Commission 2021. *The European Pillar of Social Rights Action Plan. The Action Plan sets out concrete initiatives to turn the European Pillar of Social Rights into reality. It proposes headline targets for the EU by 2030*.

Discussion

The New Paradigm of Work in the "Transition" of Organisations

As previously stated, the digital transition, which is the matrix of all transitions, has had a strong impact on the work world and its organisation. However, the social costs of both the digital and energy transitions in terms of professionals who need to be re-trained to build new professional skills are important to bear in mind.

In this context, the relationship between technological change and work is central, to be observed from various points of view and not only in terms of quantity and quality of employment but also in terms of skills, training, industrial relations, collective bargaining, and new organisation of work.

It follows that over time «The perimeter of production processes will tend to widen, making the distinction between the parent company and suppliers, between manufacturing and ancillary services, between the performance of codified and programmed operations over time and the supply of spot and on-demand services increasingly rarefied, between tasks carried out by contractual workers and recognisable within a specific production context and self-contractors who relate to multiple organisations at the same time. In other words, it is an unprecedented expansion of the concept of flexibility whose implications on the economic and social organisation and, in particular, on working conditions it is not yet possible to fully foresee»[9].

On the one hand, the enabling Industry 4.0 technologies, as defined by the European Community, of Advanced Manufacturing and the Internet of Things[10] tend towards process optimisation and just-in-time production, considerably increasing the possibility “to customise" the products. On the other hand, the combination of technologies such as Big Data and innovations in the robotics sector make it possible to replace highly complex human tasks in a process of change/adaptation of tasks in what is known as the "economy of digital platforms”, those that Farrel and Greig[11] distinguish between capital platforms and labour platforms, according to the model shown below.

[9]Guarascio & Sacchi (2017).

[10]It means the application of components and technological devices inserted inside physical objects in order to make them "intelligent" and able to communicate and interact with each other and with the surrounding world, through the Internet and thanks to a standardised language.

[11]Farrell & Greig (2016).

The Platform Economy

Source: D. FARRELL, F. GREIG, *Paychecks, Paydays, and the Online Platform Economy. Big Data on Income* Volatility, JP Morgan Chase & Co, 2016

The process described, in which it is necessary and fundamental to activate training courses to re-qualify skills, notes that the platforms expose us to competitive pressure which pose problems regarding the safeguarding of employment and the income levels of the employees.

From other points of view, however, the opportunities that emerge from the platform economy should also be highlighted, such as the possibility of carrying out tasks freely, thus being able to benefit from additional income quotas - for individuals employed in other occupations [12] - as well as the opportunities deriving from the diffusion of self-entrepreneurship.

The Impact on the Labour Market: The Company of the Future within a New Economic Model and the Centrality of the Person

The adoption of technologies represents a part of the transition projects which, however, must be accompanied by a reorganisation of production and decision-making processes. Therefore, the digital transition must be supported by specific policies that allow the utilization of the potential that the new systems can offer. Industrial policies must encourage companies to develop enabling technologies for the transition, while they must also allow the application and integration of such within one's own production system with the aim of maximizing.[13]

The company of the future is shifting in the wake of a new economic model in which there is a newfound responsibility towards the environment and people, who are once again central to the production process.

One aspect to be carefully evaluated is the need to ensure that the algorithms, often used for the management of companies and personnel in the company, are person-centred in order to promote a sustainable and inclusive society, as also reaffirmed in the G20 of Ministers of Research of the Countries of 6 August 2021, in which international organisations such as the OECD and UNESCO also took

[12]Berg (2016) at 74.
[13]Labartino et al. (2019).

part. It concluded by adopting a "Joint declaration on the enhancement of research, higher education and digitisation for a strong, sustainable, resilient and inclusive recovery."[14] On this point, and on the subject of skills, the States have undertaken to "promote technological development centred on the person, increasing access to research and higher education for all," addressing the "digital divide" and mitigating "the safety risks in digital environments in an inclusive and fair way." Hence the need to have neutral and transparent algorithms in order to avoid discrimination (direct or indirect) of workers.

Pope Francis has also spoken several times on the centrality of the person in the workplace and in the economic system, for whom it is "important to work together to build the common good and a new humanism of work, to promote work that respects the dignity of the person who does not only look at the profit or production needs but promotes a dignified life knowing that the good of people and the good of the company go hand in hand"[15] in a more inclusive economy marked by ethics.

A concept taken up by the Holy Father also, more recently, on the occasion of the international conference "Development Lines of the Global Educational Pact" on 1 June 2022: "Above all, the centrality of the person. Leaving from Troy, Aeneas does not bring goods, things with him - apart from the Penate idols - but only the father and the son. The roots and the future, the promises. This reminds us that in every educational process we must always put people at the centre and focus on the essentials, everything else is secondary. But never leave your roots and hope for the future."[16]

In the wake of an economy based on sustainability and on the individual, the doctrinal thread of the aforementioned Third Economy is placed in a path that aims at the "humanisation" of the economy and of the different and sustainable development models. This is also widely taken up by Catholic social doctrine both in Apostolic Exhortation "Evangelii Gaudium" of 2013 and in the encyclical "Laudato Sì on the care of the common home" of 2015. That does not neglect the relationship between ethics and social responsibility of the entrepreneur and places the person at the centre[17].

It follows that the starting point is precisely the centrality of the person and his/her care, in this case that of young people, who will have to live and manage the evolution of society oriented towards a model of sustainability of the economic system, in the light of themes of the 2030 Agenda. "The central role of the person as an engine of innovation and development, both in the valorisation of human resources in production areas, and in the attention to the needs of citizens, whether they are workers, consumers, users of services, savers or taxpayers, a central theme of the current debate as well as the warning that also comes from the encyclical of Pope Benedict XVI." The key word is "human capital."[18]

[14]Ministero dell'Università e della Ricerca (2021).
[15]Gentili (2018).
[16]Saluto del Santo Padre Francesco (2022).
[17]Caragnano & Di Piazza (2020).
[18]Caragnano (2011).

Human Resource Evaluation and Development Plans: Outline of the Role of Collective Bargaining and Industrial Relations

In the enterprise of the future based on the outlined new economic model, the first question that must be asked is how to set up the evaluation, development and training plans of the enterprises in a manner consistent with the organisational strategy, putting people at the centre in a process of transformation, in compliance with the contractual prerogatives. It is important to consider and analyse the issue of skills assessment and certification [19] which cannot be separated from that of personnel classification systems.

On this point, the role of national and decentralised collective bargaining is central. It is capable of affecting the assessment of workers' skills in a twofold direction: The introduction and implementation of remuneration systems, in terms of rewards and incentives, based on a certification of skills and related to the professionalism expressed by the individual employee; The agreement of direct and structural interventions on the personnel classification system.

To give some concrete examples, management and trade union representatives could implement promotional remuneration systems linked to the assessment of the skills expressed by the workers, thus allowing company bargaining to enhance not only employee duties but also the quality of work performance, in a path that would unite the certification processes with the economic valorisation of professionalism with a red thread.

As far as more direct interventions are concerned, however, collective bargaining can intervene with adaptive interventions on personnel qualification systems through the creation of new professional levels and profiles. This would contribute to enriching the job description of the national collective agreement, as well as providing greater proceduralisation of level passages.

From this follows the centrality of personnel training which represents the piece of an organisational model towards which we tend. This is oriented towards accountability, enhancement and retention.

In this direction, during the pandemic, the New Skills Fund was envisaged and activated at a national level, introduced by the Relaunch Decree (law decree 34/2020) - and refinanced with resources more than doubled by the August Decree (n.104/2020) and from the European Social Fund which financed the training hours to which the company, in agreement with the trade union representatives, allocates its workers for some portions of their working hours. Overall, the Fund represented the link between reorganisation processes and the development of workers' skills.

[19]The issue of skills and their certification - which saw the first organic provision in 2013 with the legislative decree 16 January 2013, n. 13, "Definition of the general rules and essential performance levels for the identification and validation of non-formal and informal learning and of the minimum service standards of the national skills certification system" up to the Guidelines that make the national system operational certification of skills (Decree of 5 January 2021, published in the Official Gazette No. 13 of 18 January 2021) - returns to being central in the light of the new scenario induced by COVID with the increase in digital skills, as key skills in the new global scenario.

The art. 24 of the Law Decree n. 17/2022, known as the Energy Decree (converted into Law No. 34 of 27 April 2022) extended the possibilities of using the New Skills Fund intended to support employers for the retraining of employees [20]. On 14 September 2022, the Ministry of Labour and Social Policies signed the implementing decree, which is now awaiting approval of the Ministry of the Economy, with an expected investment of one billion.

Above all, the theme of industrial relations and the role of the social partners within the dynamics of the labour market in the companies of the future remain in the background. It follows that we are witnessing a renewal of industrial relations models called upon to accompany the transitions we are experiencing (digital and economic). This is also a topic of discussion that requires attention through an expansion of the perimeter of action and tools of labour representation.

If skills are expanded, then new social and health risks also emerge. These impact on the discipline of the employment relationship by intervening directly or indirectly on the regulation of work.

As has been highlighted in some recent international studies, [21] the integration of labour law in the discourse on "sustainability" implies the enhancement of a relational approach to labour law. In this innovative vision, the worker is the bearer of interests that go beyond those traditionally protected and that are also placed in the ecological and social sphere. This implies going beyond a vision of the worker as an individual (which is also expressed in the collective dimension where the collective interest is restricted to the sphere of relations between the worker and the company) to embrace the perspective of protecting the worker as a person involved in relations.

In this case we are witnessing a paradigm shift that has effects on the organisation and regulation of the labour markets, in the dynamics of meeting supply and demand (of work), on the industrial relations system and, moreover, on collective bargaining and on the regulation of contractual frameworks.

The Challenges of the Future of Organisations

The business transformation process both internal and external to the company - strongly accelerated by the global pandemic and which is placed in the sphere of stakeholder management - and the new sustainability policies offer great opportunities. However, unknown factors that impact corporate organisations at every level and require new management models are arising.

This level of organisational complexity poses a challenge - above all - of new skills in a constantly evolving social context.

Fully aware of what theorists and scholars call “transitional labour markets” according to the definition given by Schmid in 2011[22] and in a context in which

[20]In detail, not only companies damaged by the consequences of the COVID 19 pandemic and those interested in the ecological and digital transition (DL 146 2021) can apply, but also employers who: a) have signed development agreements for strategic investment projects, pursuant to art. 43 of Legislative Decree 25.6.2008 n. 112, conv. Law 6.8.2008 n. 133; b) have recourse to the Fund to support industrial transition pursuant to art. 1 co. 478 of Law 30.12.2021 n. 234 (2022 budget law).
[21]Novitz (2020).
[22]Schmid (2011).

the paradigm of labour market law is changing, from the theory of capabilities to that of transitional labour markets, these pose reflections and open up new scenarios and perspectives also in the context of legal reflection on the transformation of work.

In such a changing scenario, the winning organisation, as mentioned, is the one that is based on the enhancement of human capital. Following are the central issues of how to retain talent and rethink the concept of corporate wellbeing while also solving the gender gap in open innovation companies.

Retaining Talent in the Company: Some Good Practices

The post-pandemic period is considered worldwide as an era of Great Resignation - or Big Quit or Great Reshuffle or, according to some, Great Attrition.

The term defines a global phenomenon that sees young workers - especially Millenials and Gen Z - with medium-high skills abandon stable occupations to take up new professions with innovative, more flexible and fluid ways of working in line with their needs of private life, in search of a different personal fulfilment and with the aim of seeking more satisfactory economic conditions.

Since the beginning of 2022, the Big Quit has hit the United States where one in four Americans has decided to leave their careers to start independent businesses. In China, on the other hand, the youngest are withdrawing from working arenas in which the individuality of the worker is nullified, while in Australia every other worker is considering giving up their jobs.

The repercussions of this phenomenon, however, also affect the Italian panorama. According to recent research conducted by the Italian Personnel Management Association (AIDP), on the basis of the sample taken into consideration, the resignations of young workers involve 60% of companies, of which 32% in the IT and digital sector, 28% in the production sector and 27% in the world of marketing and sales. Generally speaking, these are subjects between 26 and 35 years of age, placed in companies in northern Italy.

Therefore, the issue of valorising talent is becoming increasingly central for companies.

Over the years, the role of Europe has been important, particularly that of the European Commission (The European Business Network for Corporate Social Responsibility) for which in 2015 it undertook to promote the European Pact for Youth. The objective of the Pact was to strengthen training, stimulating the establishment of partnerships between schools and businesses to support young people in their employment transitions, with a systemic approach. This is a project in which companies, training and research institutions (schools, universities), established associations that work in favour of young people together with all the stakeholders who share and support the same objective, namely the creation of a fair and equitable culture of partnership between businesses, educational institutions and young people in Europe.

The organisations that had adhered to the Pact undertook "to contribute to the achievement of at least one of the objectives identified by it, namely: i) to promote the number and quality of partnerships for dual training for the social inclusion

and employability of young people; ii) reduce the skills gap; iii) contribute to EU and national policies on skills and employability; iv) promote the inclusion and participation in dual training courses of young people of both genders and above all of those under-represented in the reference sectors, belonging to ethnic minorities, or with disabilities."[23]

Consequently, initiatives born of a European stimulus have entered the company and have joined corporate programs and strategies. Among the first companies that joined were Microsoft, Nestlè, Solvay, Google, Huawei, Samsung, Randstad, Engie, IBM Bridgestone Europe, McCain Continental Europe, Bracco Group, Antea Cement, Telefnica, Titan Cement, Deloitte, Enel, BASF, Pirelli and GAN. In the last decade, all have directly experienced and shared the importance of initiatives aimed at young people to design and make training a lever not only of placement, but also of good business practice for the companies themselves.

Cariparma Crédit Agricole, for example, inaugurated in 2009 the Piacenza Campus that has become a new training model toward setting up a real Corporate University. The objective of the project was to launch training activities and encourage integration, growth, and professional development through training courses of a regulatory, technical/specialist, behavioural and managerial nature aimed at the entire company population and based on the needs of the role, key roles and development areas. Alongside Training, the Group has also designed a program for the permanent development of the skills and potential of its members, with specific talent management projects, created on the basis of the characteristics of the various professional communities present in the Group and in synergy with the parent company Crédit Agricole such as new recruits, young people, potential talents, specialists, managers.

Similarly, HERA HerAcademy founded in 2011 with the support of CRISP and the Bicocca University of Milan, which also certified the qualitative and quantitative standards of the training activities, also compared itself with the best successful experiences and with the involvement of the stakeholders. Paths have been launched for the valorisation and development of workers' experiences and skills. The development of training plans and activities articulated along six main axes (such as ethical values and corporate culture; managerial, commercial and market training; quality; safety and the environment; technical-professional; information systems), also envisaged specific programs promoted with universities for the promotion of Masters Degrees and training courses to encourage the entry of young talents into the company.

COVID has inevitably also affected these company policies. Talent Trends Report by Randstad Sourceright (a Randstad company) has identified the ten main trends in personnel management for 2022. In this regard, a survey was conducted on 900 top managers and human capital leaders of international and regional organisations operating in 18 countries of the world (in the most diverse sectors, from manufacturing to banking, from biosciences to the pharmaceutical industry, up to IT) and several trends have emerged. Among these: the needs of employees at the centre of corporate strategy; the protection of diversity; equity and inclusion; fostering responsiveness and collaboration in the era of hybrid work; adaptation to

[23]Rosolen & Seghezzi (2016).

the digital economy. On the talent enhancement front, 84% of human capital leaders and top managers interviewed said they were interested in talent experiences. Therefore, companies are investing in technologies and practices that encourage creativity and enterprise, while fostering solidity of a distinctive, coherent, authentic and engaging employer branding.

In the same vein, the HR Observatory of the Milan Polytechnic for 2022 has highlighted that HR Departments are having to face, among other challenges, the need to recover the ability to attract talent and the level of employer branding in a work market diverging from that of the past[24].

The Rethinking of Wellbeing: Some Food for thought

The organisational change of processes and era, as illustrated, redesigns relationships within the company with a view to greater involvement and empowerment of the worker. It requires companies to review and rethink corporate wellbeing as well.

Indeed, the fragmentary nature of the current landscape of the labour market and the connected emerging problems would not allow for a univocal answer. The regulation of the facets of transitions has had an impact on the labour law models of welfare and corporate organisation.

Businesses increasingly consider wellbeing a strategic tool for the working and organisational climate, as also emerges from the 5th Censis-Eudaimon Report[25].

For both workers and companies, corporate welfare represents a central element of the employment relationship toward an overall wellbeing of the people in the company as a factor of motivation and retention.

With the pandemic, organisations have begun to move away from client centricity in favour of employee centricity[26].

"This means changing the way of relating with one's collaborators, who become the main reference stakeholders. The relationship with the customer remains (and will always remain) the main interest, but today a new attention is developing towards the needs and requirements of male and female workers."[27]

On these bases, there is the need to evaluate a possible rethinking of the systems for assessing the social impact of corporate welfare plans not only in order to verify what the real return/impact is on the company and on the workers, but also to create wellbeing networks. It is precisely these networks which, at a regional tevel, can help create a "short supply chain" logic also making it possible to identify the specific skills and professionalism that a company may need, such as Wellbeing Managers.

Gender Equality in Companies and Gender Certification

[24]Osservatorio HR 2022.
[25]Censis (2022).
[26]Milletti (2022).
[27]Santoni (2022).

Toward this aim, with an impact on organisational models, there is also the theme of gender equality and company policies aimed at encouraging tools and actions to reduce the gender gap. In recent years, in fact, the theme of gender equality and inclusion has conquered an ever-increasing space in corporate culture, to the point of becoming essential. It is also one of the cornerstones of the PNRR.

The gender gap, actions to support female empowerment, women's entrepreneurship and the fight against (gender) discrimination are central issues of the PNRR and in particular of Mission 5 "Inclusion and cohesion" (overall in the PNRR gender equality represents one of the three transversal priorities in terms of social inclusion, together with Youth and Southern Italy).

The objective is to increase the employment prospects of young people, their training and requalification of workers, as well as intervene on active policies and on territorial rebalancing and the development of the South and internal areas.

As underlined by the European Commission in the communication on the Gender Equality Strategy 2020-2025, so far, no Member State has achieved equality between men and women: progress is slow and gender gaps persist in the work world at the level of wages, assistance and pensions as well as in managerial positions and participation in political and institutional life.

Globally, achieving gender equality and the empowerment of all women and girls is one of the 17 Sustainable Development Goals that states have committed to achieve by 2030.

The National Gender Equality Strategy represented the first step in the direction of structural measures that remove gaps and obstacles to equality and can reverse the course for a more equitable development of the work world for all, for men and for women.

The National Strategy for Gender Equality 2021-2026 also similarly aims to achieve a five-point increase in the ranking of the Gender Equality Index developed by the European Institute for Gender Equality (EIGE). Italy, according to the Gender Gap Report of the World Economic Forum 2022, which confirms the 2021 ranking, of the EIGE (European Institute for Gender Equality) is in the last places in Europe for female participation in the economy and opportunities for professional affirmation. The position of our country is in 25th place for the rate of participation and equal pay in the workforce, in 24th for income expectations and the presence of women in top positions. On this point, the mathematical model for measuring gender equality elaborated by the university start-up IDEM – Mind The Gap is interesting: It allows both to punctually evaluate how much the individual variables impact on the measurement of gender equality, and to prefigure, through sensitivity analysis, how gender equality would improve when, in a given time horizon, action were taken on individual variables (e.g.: number of women in managerial positions) or on groups of variables (e.g.: net pay discrimination, percentage of women with variable pay, pay placement compared to the reference market)"[28].

An important piece of European and Italian policies is the one dedicated to the activation of a national gender equality certification system, with the aim of

[28]Fabbri & Addabbo (2022).

encouraging companies to adopt adequate policies to reduce the gender gap in all areas that present the most critical issues, such as career opportunities, equal pay for equal jobs, gender difference management policies and maternity protection.

In this approach, the law n. 162 of 2021, in addition to providing for amendments to the Code of Equal Opportunities and other provisions on equal opportunities between men and women in the workplace, also provided for the establishment, starting from 1 January 2022, of the Certification of equal type. The aim is to recognise the measures taken by employers to reduce the gender gap in relation to growth opportunities in the company, equal pay for equal jobs, policies for managing gender differences and maternity protection. Furthermore, for 2022 a partial contribution relief is foreseen - without prejudice to the calculation rate of pension benefits - for private companies in possession of the aforementioned Equal Opportunity Certification.

The criteria are contained in the UNI/PdR practice, published on 16 March 2022, relating to the "Guidelines on the management system for gender equality which provides for the adoption of specific KPIs (Key Performance Indicators) inherent to gender equality policies in organisations" for which companies that, on the basis of a specific investigation, comply with the criteria can obtain certification, by submitting an application to the accredited conformity assessment bodies pursuant to regulation (EC) 765/2008.

It follows that these provisions also have a significant impact on the contractual management of human resources in the company both for the regulatory aspects and for the purely organisational ones which pertain to the actual drafting of the gender certification models.

The questions and reflections are different: whether these models can fall within the scope of the current discipline of organisational models (called 231 models) or whether they must be considered as additional.

Conclusion

How to lead the change from the Next Generation EU to the National Recovery and Resilience Plan

The changes that organisations must prepare, in light of the innovations illustrated in this paper, however. require investments to deal with the reforms envisaged by the National Recovery and Resilience Plan and which impact on the economic and social system of Italy.

In support, there are funds made available by the European Union and the Government, aimed at the recovery of the economy after the crisis generated by the pandemic and at promoting the transition to a circular and sustainable economy.

In particular, there are the resources of Next Generation EU, which makes 750 billion Euros available to promote the modernisation of the European Union through:

- policies including research and innovation, through Horizon Europe;

- gender issues;
- fair climate and digital transitions, through the Just Transition Fund and the Digital Europe programme;
- preparedness, recovery and resilience, through the rescEU recovery and resilience tool and the new EU4Health health program and also the resources of React-EU.

In fact, the European Commission has assigned 4.7 billion euros to Italy[29] as part of React-Eu, part of Next Generation EU. The resources of the React-EU will be directed towards supporting the resilience of the labour market, employment, small and medium-sized enterprises, and low-income households. These will lay the foundations for facilitating the double green and digital transition, in order to foster a sustainable socio-economic recovery in accordance with the specific 2020 recommendations made for each Member State in the context of the European Semester.

The measures envisaged by the PNRR are urgent and will have to guarantee the implementation and maximise the impact of the planned investments so as to encourage the restart of the Italian system. Of note, the impacts deriving from the implementation of the measures contained in the Plan have been assessed in terms of GDP up to +3.6% in 2026 [30].

According to the managers and insiders interviewed by EY in collaboration with SWG, 92% of the sample agrees on the PNRR as a unique opportunity to modernise and revitalise the country, while 68% trust the government management with respect to implementation.

In terms of the use of the aforementioned resources, active policy interventions are also envisaged aimed at increasing the recruitment of young people and women, as well as enabling workers to participate in training, with particular attention to digital skills, and support tailor-made services for job seekers.

In this process, the Competence Centres will always assume a crucial role, becoming protagonists at the European level. These are poles of excellence created to carry out guidance, training and innovative projects that can be of help to Italian companies.

In Italy, these are the Competence Centres: Manufacturing 4.0, which belongs to the Turin Polytechnic; Made in Italy 4.0, whose lead institution is the Politecnico di Milano; BI-REX, the lead institution of the University of Bologna; Artes 4.0, Sant'Anna School of Advanced Studies in Pisa; SMACT, University of Padua; Industry 4.0, University of Naples Federico II; Start 4.0, which sees the CNR - National Research Council as the lead body; Cyber 4.0, University of Rome "La Sapienza."

[29]The financing is the result of the modification of two programs of the European Social Fund (ESF) and of the Fund for European aid to the poor (Fead). Overall React-EU, as part of the "Next Generation EU" will provide a top-up of €50.6 billion in additional funding (in current prices) to European Cohesion Policy programs during 2021 and 2022.

[30]The National Recovery and Resilience Plan configures three scenarios with an impact on GDP which envisage growth of 2.7% for the "medium" scenario and 1.8% for the "low" scenario.

In concrete terms, the role of the Competence Centres is to put technological progress and universities in contact with companies, large and small, considering that the approach is based on the concept "from companies for companies."

In the current scenario, companies, with the Competence Centres, now have a place to meet and share experiences; the factory thus becomes an inclusive and decisive place for training the operators of the future ("teaching factory"), thus facilitating access to technologies and understanding for all professional categories.

On these bases, there is strong collaboration with the ITS (Higher Technical Education) whose system reorganisation is envisaged in the PNRR.[31] In July 2022 the new framework law was approved to reform the Higher Technical Institutes (ITS), now renamed "ITS Academy."

The goal is to design courses that meet both the training needs of people as well as corporate modernisation in non-business sectors, in a context of building integrations with the local region.

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[31]To the ITS and the Academies, which have a central role in the education system contemplated in the PNRR, the Recovery Plan, for example, assigns non-repayable resources of 1.5 billion euros, an amount to which is added a Fund set up at the Ministry of Education with a budget of 68 million euros for 2021 and another 48 million euros in 2022. The considerable amount of investment is used to increase their number, to enhance laboratories with 4.0 technologies, to train teachers, to develop a national digital platform, to increase the number of subscribers by 100%.

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Climate Change - An Administrative Law Perspective

By Elena Emilia Ștefan[*]

Given the astonishing speed at which society and nature are changing, the issue of climate change can no longer be analysed solely from a legal perspective, but also from an ethical one. It is important to address the phenomenon of climate change, as it has become so widespread in recent years that we are now witnessing litigation involving not only individuals and authorities but also states. The occasion for our analysis is the news in the media according to which, in our country Romania, in January 2023, the first action was brought before the contentious administrative court against the Romanian state for not adopting measures to combat climate change. This prompted us to learn more on this subject. The theme is topical and relevant for both legal professionals and private individuals. The scope of the study is to investigate the extent to which ethical values, such as respect and responsibility, are intertwined with legal analysis of environmental issues and can help us find a solution to mitigate damage caused by climate change. Using methods specific to law, we will underline the conclusion of our paper, namely that the focus should be shifted to respect and responsibility, i.e. to prevention, nature, citizens, international organisations, states.

Keywords: *Contentious administrative; Public authorities; Climate change; Environment; State.*

Introduction

Among the most topical issues of interest to specialists in various fields are those relating to the environment. In the broader context of the analysis of liability issues in administrative law, the relationship between liability and responsibility has been developed[1]. In this study, we take a different approach to legal liability, but we analyse it in relation to the state's obligations towards the environment.

The proposed aim of our essay is to find out as much information as possible about the regulatory framework applicable to climate change, as well as what the most topical issues related to the theme under consideration are. The essay proposes a three-tiered structure, including doctrine, legislation and relevant case-law, both from national and comparative law.

The action brought before the contentious administrative division against the Romanian state was filed with the Court of Appeal of Cluj[2]. From this perspective,

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[1]See Ștefan (2013) at 11-96.

[2]See in this respect public information at https://www.revnic.ro/actiune-impotriva-statului-roman-pentru-neadoptarea-masurilor-pentru-combaterea-schimbarilor-climatice-comunicat

we highlight the absolute novelty of the theme for our country, which gives our investigation topicality. In order to meet the general research scope, we will also try to answer these questions: "*Is there any international legislation applicable to climate changes*?" or "*How can we stop climate change*?".

The following are the specific goals of the essay:

1. to make a review on the specialised literature regarding the general issue of climate change;
2. to identify and present the legislative framework on climate change;
3. to make research on current climate emergency issues;
4. to highlight the case-law on climate litigation from the administrative law perspective.

The novelty of our paper is that all the scientific research supports the development of the phenomenon of current climate change, by providing panoramic information, research being interdisciplinary, starting from administrative law. Given that the issue of protecting nature, the place where we live today, must be of concern to all citizens of the globe, such an issue should not be ignored in general, and even more so by legal specialists.

Literature Review

Researchers worldwide believe that climate issues need to be addressed. In reviewing the literature, we have noted that there are concerns about topics such as climate change in relation to climate emergency, environmental damage, and climate litigation. Recent doctrine considers that:

> "*the risks and difficulties associated with climate change generate a vast process of reconfiguration and conceptual elaboration in disciplines as varied as they are important, such as philosophy, law, ethics, political sciences or international relations*[3]".

Our analysis is undoubtedly based on the idea that the law must be observed in any situation, be it by private persons or authorities, and this follows from the legal interpretation of art. 1 para. (5) of the Constitution: "*In Romania, the observance of the Constitution, its supremacy and the laws shall be mandatory*" in conjunction with art. 16 para. (2): "*No one is above the law*".

According to specialised literature: "*human coexistence increasingly feels the need for security, clarity and order in its inner relationships*[4]" and "*the binding nature of the legal rule undoubtedly derives from general legal awareness*[5]". The medical crisis generated by the Covid virus, the humanitarian crisis leading to large displacements of people, war, pollution, climate disruption, the information

[3]Duțu (2021) at 42.
[4]See Popa (2008) at 63.
[5]See Rarincescu (1936) at 9.

avalanche, digitisation[6] of public administration are just some of the realities of the last 3 years to which society has been forced to adapt. The doctrine also points out: "*contemporary society is faced, inter alia, with an acute crisis of law* [...][7]".

Recent studies insist on cooperation between academia and public authorities. In this respect, the report *Limiting Climate Change and its Impacts: An Integrated Approach for Romania* subject to public debate called for better involvement of the scientific community in public policy making and policy support processes:

> "*the establishment of a National Council for Climate Change along the lines of the European Scientific Advisory Council on Climate Change provided for in the European Climate Act was proposed* [8]".

As one author points out "*the response of the law to climate challenge is part of the emergencies and key approaches to solving the environmental crisis in all its dimensions*[9]". From this perspective, we point to an interesting study that analyses the relationship between climate emergency and the obligation to prevent state extinction. It is rightly assessed that

> "*the effects of climate change are inevitable and are now being felt all over the planet. In what concerns the most vulnerable states to the effects of climate change, such as small island states [...], their capacity to govern their territory and population is already affected, which could alter their status of sovereign states in the long term, even their survival*[10]".

There are concerns in the doctrine about the identification of the causes of climate change in the public or private sector. There is one study which discusses

> "*whether the emergence of climate tort cases, an increasing drive to hold corporations responsible for climate change, and a company focus on voluntary climate action, could lead to the emergence of a new duty of care by corporate actors* […]".[11]

Another work examines responsibility and risk sharing in climate adaptation by conducting a case study of vegetation fire risk in Australia[12]. This article "*explores how law assigns responsibility for climate adaptation by examining its approach to a specific climate impact in Australia: the increasing frequency and severity of bushfire*".

In terms of the litigations that can emerge, specialised literature analysed the case-law regarding the actions in contentious administrative appeals in relation to

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[6]["*Regulating the digital sector (...) implies the formation of new paradigms in the legal area*"] - See Conea (2020) at 11.
[7]See Bădescu (2022) at 13.
[8]Public source at https://www.presidency.ro/files/userfiles/Raport%20Limitarea%20Schimbarilor%20Climatice.pdf at 166.
[9]See Duțu-Buzura (2021) at 10.
[10]See Costi (2022) at 233-267.
[11]See Popa, Kallies, Johnston & Belfrage-Maher (2022) at 185-215.
[12]See Mc Donald & Mc Cormack (2022) at 128-161.

the environment. In this regard, a decision of the Court of Appeal of Cluj[13] was mentioned. In the respective case, the Court noted the following:

> "*environmental damage may be reported by any person, even without justifying any damage other than the legal rules relating to environmental protection, since the law recognises the objective protection of the environment independently of the infringement of a specific type of subjective right and independently of the occurrence of any damage* [...][14]". Furthermore, French doctrine underlines that "*the term of party does not benefit from a genuine definition in contentious administrative*[15]".

Therefore, the court notes the following:

> "*the legal nature of the action for annulment of an administrative act issued by a public authority in the exercise of the legal prerogatives provided for by the legislation on environmental protection is that of an objective action, the plaintiff seeking primarily to defend an objective right or a legitimate public interest, for the purposes of ascertaining whether rights which constitute the content of a legal situation of a general and impersonal nature have been infringed and whether a general rule of law has been infringed*"[16].

In the concerns of specialists, we note the analysis of future generations as the subject of law[17]. We believe that the philosophy of climate litigation before the contentious administrative court is based precisely on the protection of present and future generations. On another occasion, the following was stated:

> *"nowadays, the interests of leaders at the highest level in states are huge and long-term, involving future generations, namely: identifying solutions and mechanisms to increase public confidence in state authorities* […][18]".

The following was pointed out:

> *"Numerous climate disputes have emerged around the world since the 2000s and have multiplied, including in Europe since 2015*[19]". French doctrine held the following: *"Every person has the facility to submit to the tribunals organized by law the petitions which he/she intends to file. […] The right to take legal action, understood in this sense, is not a private right; it is a public right […]*[20]".

Another author states the following:

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[13]C.A Cluj, division III of the contentious administrative and fiscal, Decision no.1195/2019, available at www.sintact.ro *apud* Apostol Tofan (2022) at 47-48.
[14]*Ibid*, at 48.
[15]See Barray & Boyer (2020) at 165.
[16]See Apostol Tofan (2022) at 48.
[17]See Duşcă (2021) at 59-70.
[18]See Ştefan (2017) at 96.
[19]See Torre-Schaub (2021) at 1445-1458.
[20]See Glasson & Tissier (1925) at 415 *apud* Drăganu (2003) at 17.

"*on 24 June 2015, very shortly before the adoption of the Paris Agreement, the Court of First Instance of Hague, in case Urgenda v. The Netherlands*[21]*, delivered a judgment which shook the way in which the possibility for national courts to contribute to the implementation of international provisions on the reduction of greenhouse gas emissions had previously been viewed*[22]". The quoted author details: "*by means of the judgment pronounced in case Urgenda v. The Netherlands, the Dutch State was required to take measures to reduce greenhouse gas emissions by at least 25% by 2020 compared to the levels of 1990*[23]".

Moreover, the doctrine rightly points out:

"*the conflicts and tensions caused by the ecological and social changes, disturbances and complications of the climate are already the subject of a contentious international which is in the process of being identified as such and which requires specific knowledge and approaches*[24]".

Research Methods

The scientific research methods specific to law used in the paperwork include the following: theoretical research of specialized literature, the computer method used to access sources available online, observation, analysis and comparison of the applicable normative acts, collection of case-law, synthesis of information, as well as the deductive method. The collection of data (legislation, case law, doctrine) was followed by their analysis and interpretation in order to reach a result and formulate conclusions.

From this point of view, in order to achieve our proposed goal, the analysis of the topic is interdisciplinary, being at the meeting of several disciplines of study such as: administrative law, environmental law, European Union law. The proposed case studies give importance and topicality to the theme under analysis, being specially selected to underline the conclusion of our paper.

A Brief Review of International Climate Change Legislation

The scope of this section is not to discuss all the legislation of the European Union[25] on climate change, but to point out certain applicable international legal instruments. National law cannot be self-sufficient, as it is obligated to continually adapt to international trends and developments in society as a whole. Our analysis cannot ignore the international efforts made by the countries of the world in response to the threat of climate change. As the doctrine pointed out:

[21]For further details see the public information at http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2020/20200113_2015-HAZAC0900456689_judgment.pdf
[22]See Mitroi (2019) at 268.
[23]*Ibid.*
[24]See Duțu (2021) at 44.
[25]"*The typology of law has been enriched, in real terms, by the European Union's system of law* [...] "- See Fuerea (2016) at 5.

"*notwithstanding, Member States' failure to comply with EU law does, under certain conditions, make them liable for breaching it* [26]".

2023 marks 31 years since the signing of the Rio Convention on climate change. We indicate this first act in order to have a chronology of the applicable legislation in the field. Romania ratified the United Nations Framework Convention on Climate Change of 5 June 1992 by Law no. 24/1994[27]. *Climate changes* are defined in art. 1 of the Framework Convention:

> "*climate changes which are attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods*".

The Kyoto Protocol on climate change is the next international normative act that we briefly mention in this paper[28]. It was adopted on 11 December 1997, entered into force in February 2005 and "*is one of the most important international legal instruments in the fight against climate change*[29]".

Our analysis also includes Paris Agreement of 2016, the first global agreement signed[30] in the field of climate change, a binding legal act[31]. This Agreement, according to art. 2: "*aims to strengthen the global response to the threat of climate change*".

Subsequently, the European Commission communicated in December 2019 the European Green Deal[32], and in 2020 adopted the European Climate Law[33]. The doctrine points out:

> "*under the European Green Deal (...)climate emergency imposed the objective of carbon neutrality and credited the green transition as a continental strategy for sustainable growth* [34]".

According to art.1 of the European Climate Law: "*This Regulation sets out a binding objective of climate neutrality in the Union by 2050 (...)*". Art. 2 para. (1)

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[26]See Popescu (2011) at 213.

[27]Law no. 24/1994 for the ratification of the United Nations Framework Convention on Climate Change, signed at Rio de Janeiro on 5 June 1992, published in Official Journal no. 119 of 12 May 1994.

[28]Public source at https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=LEGISSUM:kyoto_protocol

[29]See in this respect the public source at http://publications.europa.eu/resource/cellar/b2d8257e-bd35-49f6-8356-934286204791.0020.02/DOC_2

[30]Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change, published in Official Journal of the European Union L282/1 of 19.10.2016.

[31]Published in Official Journal of the European Union L 282 of 19.10.2016.

[32]See in this respect the public source at https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:52019DC0640

[33]Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999, published in Official Journal of the European Union L343/1 of 9.07.2021.

[34]See Duțu-Buzura (2021). at 11.

provides the following: "*Union-wide greenhouse gas emissions and removals regulated in Union law shall be balanced within the Union at the latest by 2050, thus reducing emissions to net zero by that date* [...]".

The European Climate Law also covers adaptation to climate change and art. 5 para. (4) provides: "*Member States shall adopt and implement national adaptation strategies and plans, taking into consideration the Union strategy* [...]". From this perspective, it should be noted that the following are adopted at national level: National strategy on climate changes and economic growth based on low-carbon emissions for the period 2016-2020 and National Action Plan for the Approval of the Strategy [...][35].

Current Climate Emergency Issues

In this section, we will analyse the international case-law to learn about the most current climate emergency issues. In the context of global concerns of states to regulate and implement measures with a direct impact on climate change, there is a growing need for regulatory certainty. In this regard, we note an initiative of two countries that felt the need for support on the interpretation of legal instruments to help countries know how to relate to climate emergency.

According to public information, the Republic of Colombia and the Republic of Chile submitted a request for an advisory opinion on climate emergency and human rights to the Inter-American Court of Human Rights on 9 January 2023. The aim of this approach is: "*to clarify the scope of State obligations, in their individual and collective dimension, in order to respond to the climate emergency within the framework of international human rights law (...)*[36]".

By analysing the document, it appears that the questions are grouped in six sections but, in relation to the topic we have analysed, we present only what we consider necessary to illustrate the topicality of our theme, i.e. the questions in section A (first category) and in section F (last category).

In section A – "*Regarding State obligations derived from the duties of prevention and the guarantee of human rights in relation to the climate emergency"*, four questions were formulated.

First question – "*What is the scope of the State's duty of prevention with regard to climate events caused by global warming, including both extreme events and slow onset events, based on the obligations under the American Convention, in light of the Paris Agreement and the scientific consensus which recommend that global temperatures should not increase beyond 1.5°C?"*[37].

[35]Government Resolution no. 739/2016 for the approval of the National strategy on climate changes and economic growth based on low-carbon emissions for the period 2016-2020 and National Action Plan for the Approval of the National strategy on climate changes and economic growth based on low-carbon emissions for the period 2016-2020, published in Official Journal no. 831 of 20 October 2016.

[36]See in this respect the public source at https://www.corteidh.or.cr/docs/opiniones/soc_12023_en.pdf

[37]*Idem*, at 8.

The second question is more complex: "*In particular, what measures should States take to minimize the impact of the damage due to the climate emergency in light of the obligations established in the American Convention?(...).*"[38]

"2.A - *What should a State take into consideration when implementing its obligations: (i) to regulate; (ii) to monitor and oversee; (iii) to request and to adopt social and environmental impact assessments; (iv) to establish a contingency plan, and (v) to mitigate any activities under its jurisdiction that exacerbate or could exacerbate the climate emergency?*

2.B. - *What principles should inspire the actions of mitigation, adaptation and response to the losses and damage resulting from the climate emergency in the affected communities*?"[39]

In section F – "*Regarding the shared and differentiated human rights obligations and responsibilities of States in the context of the climate emergency*" the two questions referred to the Court were:

"1. *What considerations and principles should States and international organisations take into account (...) when analysing shared but differentiated responsibilities in the context of climate change, from the perspective of human rights and intersectionality?*

2. *How should States act (...) to guarantee the right to redress for the damage caused by their acts and omissions in relation to the climate emergency (...)?*[40]"

This legal approach indirectly gives us a topic to reflect on: we must never forget that our actions have consequences and that taking responsibility can be a solution to dealing with an uncertain regulatory framework.

Climate Litigation Case Study - From the Administrative Law Perspective

Following our research, we learned considerably about the precedents that have been set for climate litigation around the world. Therefore, in Romania we are witnessing a first for this type of litigation, widely referred to as climate litigation.

A search of the court portal revealed that in January 2023, at the Cluj Court of Appeal, the first legal action against the Romanian State was filed with the contentious administrative and fiscal division[41], with the following subject matter: "*the obligation to do*". From the public information available on the court portal, it appears that there are six plaintiffs: one NGO and five individuals and six defendants (Government of Romania; Prime Minister; Ministry of Environment, Waters and Forests; Ministry of Energy, plus two interveners (two associations).[42]

By means of the suit petition, the plaintiffs[43] request the following:

[38]*Idem.*
[39]*Idem,* at 9.
[40]*Idem,* at 12-13.
[41]See in this respect the public source at https://portal.just.ro/33/SitePages/Dosar.aspx?id_dosar=3300000000074688&id_inst=33
[42]*Idem.*
[43]Public source at https://instrumente.declic.ro/uploads/Actiune-schimbari-climatice-31-01-2023.pdf

1. "*The obligation of the defendants to take all necessary measures to reduce greenhouse gases (GHG) by 55% by 2030 and to achieve climate neutrality by 2050*;
2. *The obligation of the defendants to take all necessary measures to increase the share of renewables in final energy consumption to 45% and to increase energy efficiency by 13% by 2030*;
3. *The obligation of the defendants to adopt, within no more than 30 days as of the final judgment, concrete and coherent climate change adaptation and mitigation plans, including annual carbon budgets, in order to achieve the targets […].*"

This litigation falls under the jurisdiction of the contentious administrative and fiscal division, according to Law no. 554/2004 of the contentious administrative. Art. 52 para. (1) of the Constitution is also applicable in this case:

> "*Any person aggrieved in his/her legitimate rights or interests by a public authority, by means of an administrative act or by the failure of a public authority to solve his/her application within the lawful time limit, is entitled to the acknowledgement of his/her claimed right or legitimate interest, the annulment of the act and reparation for the damage*".

Therefore, one of the conditions of the action in contentious administrative is that the administrative act infringes on a legitimate right or interest[44].

We mention in this respect Principle 1 of the Stockholm Declaration[45] of 1972:

> "*Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations*". Given the first climate litigation in our country, we can only express our confidence in the favourable resolution of such cases[46].

In other European countries this type of litigation in contentious administrative is no longer new, as we will illustrate below.

We mention in the following a recent case in French case law, from 2021, symbolically called - *L'Affaire du Siecle*, case detailed at length on another occasion[47]. In this case, the French State was found guilty by the Administrative

[44]See Vedinaș (2020) at 451-453.

[45]See in this respect the public source at https://wedocs.unep.org/bitstream/handle/20.500.11822/29567/ELGP1StockD.pdf,

[46]At the time of writing this study, the dispute is before the court and a final judgment has not been pronounced yet. On June 6, 2023, the first court (the Cluj Court of Appeal) decided: *"(…) reject the request us unfounded. The sentence has the right of appeal within 15 days from the communication*".

[47]See Ștefan (2021) at 11-21.

Court of Paris for ecological damage regarding climate changes[48]. Therefore, the statements of the French author Rene Chapus fit in this case:

> "*The right to damages can only be recognised if the conditions for liability are met. There must be a damage which is the direct consequence of the act considered harmful*[49]".

The specialized literature also presented information about the first climate process in the Czech Republic:

> "*In June 2022, a Czech climate lawsuit, Klimatická žaloba ČR, z. s. and others v. Government of the Czech Republic and Others was decided by a first-instance court. The litigation was led against the Czech state for insufficient climate mitigation and adaptation effort*[50]".

The source also states that:

> *"The Municipal Court in Prague largely upheld the plaintiffs' claim that the Czech mitigation measures adopted to date were contrary to the Paris Agreement; and it found that the country must substantially strengthen its reduction rate of greenhouse gas emissions. This result—the first of its kind in the Czech Republic—was a surprise to many in a country whose courts have been conservative in environmental matters*[51]".

Conclusions

In this study, we have tried to find out the extent to which ethical values, such as respect and responsibility, are intertwined with legal analysis of environmental issues, and how they can help us find a solution to mitigate the damage caused by climate change. In view of the information presented, we consider that the research objective of this study has been achieved, i.e. the logical thread of the analysis revealed the synergy between ethical values and legal norms. The proposed structure of the paper included legislation, doctrine and case-law, in order to note the practical applicability of the concepts and to draw some conclusions.

A first conclusion we came to was that there is international legislation applicable to climate change such as the European Climate Law. In relation to the international normative acts referred to in the paper, it is noted that national legislation is bound to harmonise with the Community acquis. Another conclusion relates to the fact that, in our view, we are likely to see an exponential increase of the national legislation in the near future in order to achieve the climate neutrality goal required.

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[48]See in this respect the public information at http://paris.tribunal-administratif.fr/content/download/179360/1759761/version/1/file/19049671904968190497219049 76.pdf
[49]See Chapus (1988) at 746.
[50]See Müllerová & Ač (2022) at 273-284.
[51]*Ibid.*

From the analysis of legislation and case-law, it can be noted that environmental issues are both interdisciplinary and intersectional, seen strictly in terms of time and space. In this way, there is a broad category of subjects involved: individuals, international organisations, states and unions of states. This is why, in the international legislation applicable to climate change, we find the principle of solidarity, shared responsibility and accountability.

In our opinion, in addition to the legal aspects, the focus on ethics and morality in the approach to solutions for limiting environmental damage can also be a solution to clarifying the ideal regulatory framework for environmental protection. The literature search helped us to understand the state of knowledge of the issue we are analysing and to be able to create a research plan on the topic in order to open new research directions, providing a framework for debate and dialogue.

The analysis of the topic gave us a possible result, as an answer to the formulated research question: "*How can we stop climate change*?", only action - *intervention*, as an immediate reaction to the violation of international environmental protection documents, ensuring that the subjects involved are held accountable, is no longer sufficient to achieve a balance in relation to nature, without taking into account *prevention,* i.e. individual responsibility.

In order to add value to the research, the first climate litigation case in Romania was presented for the first time, based on the summarized information publicly available. Therefore, from the documentation carried out, we pointed out that an action was filed with the contentious administrative and fiscal divisions of the Court of Appeal of Cluj on 31 January 2023. From this we noticed that, unlike in other countries such as France or the Czech Republic, in our country there was no case-law for this kind of litigation. In the absence of actions taken by public authorities to fulfil their obligations in relation to the environment, persons whose rights have been violated have resorted to contentious administrative proceedings.

We believe that the litigation introduced in our country is in line with citizens' concerns about climate change awareness. Notwithstanding, we believe that in the not-too-distant future, there is a possibility to presume upon the exercise of access to justice, leading to the promotion of global climate processes. The reasoning that leads us to such an assessment refers to the fact that it may be wrong to approach the problem strictly from a one-way perspective, i.e., only to investigate compliance with state obligations in relation to the environment, without taking into account the responsibility of each of us and the responsibility we must have towards nature and the law.

Finally, in relation to a recent judicial approach of two countries, presented above, even the states have difficulties in regulating the implementation of international law both normatively the measures taken at the international level and practically through administrative acts. Therefore, this approach shows respect and responsibility on the part of the states.

In conclusion, the proposed research topic has not been exhausted and may involve many other approaches. We draw future lines of research to continue our analysis with other topical issues such as the contribution of some public or private entities in causing climate disruption.

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Covid Influence in Insolvency in Romania

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The Covid pandemic installed at the beginning of 2020 influenced the matter of insolvency. A series of measures were adopted to protect de debtors already insolvent on one hand, and new procedures were established on the other hand to ensure the ongoing insolvency proceedings. We can observe a special attention of the legislator in protecting legal person debtors compared to natural person debtors. Although the pandemic deeply affected citizens, they did not access the insolvency procedure of the natural person, but this procedure could represent a solution for overcoming their financial difficulties. The Romanian legislator did not intervene in the modification of the legal text, although the doctrine claimed a complicated procedure, with generally unattractive and interpretable notions. The financial difficulties faced by the business environment convinced the Romanian legislator, in 2022, to focus on insolvency prevention procedures, creating a modern framework for extrajudicial negotiations of the debts with the creditors. Although a year has passed since the end of the state of alert in Romania, and the effects of the pandemic are still visible, the method of administering insolvency procedures that offers effective solutions implemented during Covid period has been preserved.

Keywords: *Law; Insolvency; Legal persons; Natural persons; Covid*

Introduction

Law no. 85/2015, also known as the Insolvency Code, contains provisions on insolvency prevention procedures, the insolvency proceedings applicable to professionals, as well as the insolvency legislation regarding the credit institutions, insurance and reinsurance companies, groups of companies, and cross-border insolvency. Although the notion "insolvency code" is widely used in Romania, the normative act does not represent a systematisation and a concertation of legislation in a certain field or branch of law subordinated to common principles, in the sense of Law no.24/2000[1]. Obviously, this code is incomplete, the insolvency of natural persons or the insolvency of territorial administrative units being currently regulated in other documents.

Romanian insolvency law is characterized in recent doctrine[2] as ephemeral, slippery and disseminated in too many normative acts.

The legislation on insolvency of legal entities is one with a tradition of over 25 years, the Romanian legislator modifying it to keep pace with the evolution of

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[1]Art. 18-19 of Law no.24/2000.

[2]Piperea (2020*)* at 501.

the society but also with the challenges of economic actors in the market, being appreciated as a modern one.

It was only in 2015 that the Romanian legislator prioritized the necessity of harmonizing the national legislation with the European one and of adopting the Law of insolvency of natural persons No. 151[3]. The law was adopted on the 25th of June 2015 and it should have entered into force within 6 months from the adoption, on the 25th of December 2015. The deadline for the application of the law was postponed many times and finally, Law No. 151/2015 on the natural person insolvency entered into force as late as the 1st of January 2018. The methodological norms[4] for the application of Law No. 151/2015 on the natural person insolvency entered into force on the 1st of August 2017. The insolvency commissions at the local and central level were established by the Government Decision No. 11/2016.

In the two years since the entry into force of Law no.151/2015 and until the appearance of the COVID-19 pandemic, the usage by the potential beneficiaries was extremely low, the law being characterized as unattractive to debtors, complicated, with may rules, with vague or interpretable notions, and for this law to become an instrument able to provide clear and concrete solutions to overcome the financial difficulties of individuals, is needed to be changed.

This was the legislative context on insolvency in January 2020 when the first cases of illness with the new Coronavirus were reported.

The Reaction of the Romanian State

The first reaction of the Romanian state appeared on 29.01.2020[5] when the lack of protective equipment necessary for the intervention and transport of suspected or confirmed patients with the new Coronavirus, but also of certain drugs was notified, it was decided to purchase them as a matter of urgency.

In 24.02.2020[6] related to the explosion of Coronavirus cases in Italy, in Lombardy Region and Veneto, the home isolation of the persons entering to Romania, from the affected areas, was instituted.

On 09.03.2020[7] the first decision with a massive impact on the Romanian population was adopted, being suspended for 2 weeks the educational process, it was requested that public institution and economic operators to carry out their jobs

[3]Law no. 151/2015.

[4]The methodological norms for the application of Law No. 151/2015 on the natural person insolvency procedure, which were approved by the Government Decision No. 419 of the 9th of June 2017, published in the Official Journal of Romania No. 436 of the 13th of June 2017, entered into force on the 1st of August 2017.

[5]Decision no.1 of 29.01.2020 of the Technical Scientific Support Group on the management of highly contagious diseases in Romania within the Department of Emergency Situations of the Ministry of Internal Affairs.

[6]Decision no.2 of 24 February 2020 of the National Committee for Special Emergencies on the approval of measures necessary to increase the capacity to intervene in the prevention and control of infections with the new Coronavirus.

[7]Decision no.6 of 09.03.2020 on the approval of additional measures to combat the new Coronavirus issued by the National Committee for Special Emergency Situation.

from home, some restrictions on transport.

Following a global assessment, the World Health Organisation stated on 09.03.2020, through the General Director Tedros Adhanom Ghebreyesus, that the situation generated by COVID-19 is characterized as a pandemic.

Given the evolution of the international epidemiological situation caused by the spread of the virus in more than 150 countries and taking into account the experience of countries severely affected by the evolution of the virus and the measures that had a positive impact in limiting its spread, the President of Romania declared, on 16.03.2020[8], the state of emergency for a period of 30 days.

The state of emergency is regulated by art. 93 of the Romanian Constitution and allows exceptional measures to be instituted in cases determined by the occurrence of serious dangers to the defence of the country and national security or constitutional democracy or to prevent, limit and eliminate disasters.

The state of emergency declared to prevent the spread of the virus has meant restricting the exercise of fundamental rights and freedoms on the basis of criteria relating to the intensity of community transmission of the virus, the frequency of outbreaks in a geographical area, the capacity of healthcare system. The fundamental rights and freedoms affected by the state of emergency were: the free movement, the right to privacy, family and private life, the inviolability of home, the right to education, the freedom of assembly, the right to strike and economic freedom.

Despite the measures instituted by the Romanian state during 16.03.2020-14.04.2020, the number of illnesses has increased exponentially, requiring the extension of the state of emergency by another 30 days[9]. From 14.05.2020 the state of alert was declared at national level, being extended every 30 days. The state of alert was declared according to the Emergency Ordinance no.21/2004[10] and represents the response to an emergency situation of special magnitude and intensity, determined by one or more types of risk, consisting in a set of temporary measures, proportional to the level of severity manifested or predicted. It refers to the immediate implementation of action plans and measures to prevent, warn the population, limit and eliminate the consequences of state of emergency. The major difference between the state of emergency and the state of alert is that the latter does not allow the restriction of the exercise of fundamental rights or freedoms[11]. The state of alert was maintained in Romania for a long time, for the management of the pandemic situation, and ended on March 9, 2022, the date from which all restrictions were lifted.

[8]Decree no.195 of March 16, 2020 regarding the establishment of the state of emergency on the Romanian territory issued by the President of Romania.

[9]Decree no.240 of April 14,2020 on the extension of the state of emergency on the territory of Romania issued by the President of Romania.

[10]Government Emergency Ordinance no. 21 on April 15, 2004 on the National Emergency Management System amended by Emergency Ordinance no.68 of May 14, 2020 published in the Official Gazette of Romania no.391 of 14 Mai 2020.

[11]By the Decision of the Constitutional Court of Romania no.157 of 13 May 2020, the exception of unconstitutionality regarding art.4 of the Government Emergency Ordinance no.21/2004 stating that the provision of this article is constitutional insofar as the actions and measures ordered during the state of alert do not aim at restricting the exercise of certain fundamental rights or freedoms.

Throughout the alert period, there were multiple limitations and restrictions that deeply affected the citizens, but the Romanian state took these measures in order to intervene quickly in the main sectors to combat the effects of the pandemic and to create the framework premises for a quick return to the normality.

In the economic field, measures have been taken to increase responsiveness such as the immediate purchase of goods and services of immediate necessity, the immediate secondment of staff with crisis management skills, the banning of any gathering of people in closed or open spaces, the suspension of the activity of operators offering meals in common areas or consuming food or drinks.

In the field of health, vacancies could be filled directly without competition, it was established the obligation to wear protective mask in open and closed spaces, means of public transport, at work. Public institutions and economic operators were also required to perform epidemiological triage and ensure hand disinfection.

In the field of labour and social protection, work at home has been established, individualised work programs, granting days off for parents to supervise children in the event of temporary closure of schools, the suspension of notice period throughout the alert period, prohibition of collective labour disputes in the key areas such as energy, heat, water, gas, continuous fire units, health and social units, telecommunications, sanitation.

In the field of transport and infrastructure, hygiene and disinfection measures were imposed on the common areas, procedures and protocols specific to each type of transport were applied, the occupancy of transport was restricted and the obligation to inform the population in order to prevent contamination. Also, a lot of traffic restrictions were set and some border points were closed.

In the field of education and research, in order to ensure equal access to education, school inspectorates were required to provide educational resources for students who did not have access to technology in order to continue their education, but online.

In the field of culture, the activity of museums, libraries, bookstores, cinemas, entertainment institution was also restricted for a long time and places worship had strict rules of social distance with which they could work.

The Romanian state has taken a serious economic, legal and fiscal measures to help Romanian companies but also the individuals to overcome the difficult period such as:

- Bonus for the advance payment of the profit tax/income tax of micro enterprises;
- Postponement of VAT payment for importers of Corvid test kits, medicines and protective equipment for COVID-19;
- Postponement from March 30 to June 30, 2020, of the payment term for the building tax, for the land tax, respectively the tax on means of transport, as well as the term for granting the bonus for the advance payment;
- No interest and late payment penalties will be calculated for the fiscal obligations due after the date of entry into force of GEO 29/21 March

2020[12], unpaid until the expiration of a 30-day term from the date of cessation of the state of emergency, respectively 16 May 2020;
- Modification of the value of the partial advance payments for the taxpayers who declare the annual profits tax, article 8 of the Government Emergency Ordinance 29/2020. Taxpayers can make partial payment due in 2020 at the amount of profit calculated for the first quarter of this year;
- Technical unemployment benefits will be able to be reimbursed from the unemployment insurance budget, within the limit of 75% of the average gross earnings, for employees who reduced or temporarily interrupted the activity totally or partially during the state of emergency;
- Days off granted to parents for the supervision of children, in case of temporary closure of school, for all working days during the state of emergency with an allowance of 75% of the monthly gross salary, but not more than 75% of the average gross salary monthly at national level;
- Aid for SMEs in the form of postponed payments for utility services: electricity, gas, water, telephone and Internet services and the rent payment as well as state guarantees for loans and other grants;
- Suspension of enforcement measures in civil matter and commercial claims which has been extended from the state of emergency till the end of the state of alert.

The state of emergency continued with the state of alert led to shutdowns of productive units, closures or suspensions of activity of service units. The most affected sector in Romania was tourism, which includes hotels, restaurants, cafés, but there was also a lot of pressure on the other sectors. Very quickly the world realised that the pandemic situation would last sometime and the consumption of non-essential goods for living have dropped dramatically. The significant decrease of the turnover, the decrease of the sales, the sudden degrees of the consumption of goods and service, the accentuated financial blockage are some of the reasons that led many companies to major financial difficulties.

The effect of these restrictions was quickly seen in the larger number of people who lost their jobs overnight. Moreover, the closure of preschool and school units forced parents to stay home to supervise their children so the number of unemployed has increased rapidly in the pandemic. Romanian government has supported keeping jobs through technical unemployment or subsidizing some of the wages of employees.

At the same time, the pandemic revealed major deficiencies, derived mainly from the lack of investments both in the medical system in Romania, but also in the educational system, which encountered great difficulties in ensuring all students access to the online education. In such a context of economic, educational

[12]Government Emergency Ordinance no. 29/2021 on some economic and fiscal- budgetary measures published in the Official Gazette of Romania, Part I no. 230 of March 21, 2020.

and medical crisis, unprecedented in the last 100 years[13], the reaction of the Romanian government may seem slow and slightly inefficient.

Insolvency Measures during the Pandemic

By Law no.55/2020[14] on some measures to prevent and combat the effects of the COVID pandemic some changes were operated in the field of insolvency, but strictly on the insolvency of legal entities. It should be noted that the adaptation of the insolvency matter to the new situation generated by the pandemic was of maximum interest to the legislator, these legislative changes coming into force 3 days after the declaration of the state of alert. Thus, the legislator, in addition to essential areas in a pandemic context such as health, labour, transport, economy, dedicated section 8 of Law no.55/2020 to the insolvency, as if anticipating the disaster that would hit companies but also major difficulties that will affect individuals.

The debtor, a legal entity, in a state of insolvency, was able during the state of alert to address a request to the court in order to be subject to the provisions of Law no.85/2014 on insolvency prevention and insolvency proceedings, without having the obligation to introduce this request. If prior to the pandemic, according to art. 66 para (1) of Law no.85/2014, the debtor in a state of insolvency was obliged to formulate the insolvency request within a maximum of 30 days from the occurrence of the state of insolvency, this obligation was removed throughout the state of alert.

Also, for the period of establishing the alert state, the applicability of the final thesis of art. 5 point.72 and the final thesis of art. 143 para. (1) of the Law no.85/2014 were suspended. Art.5 point 72 defines the threshold value, the minimum amount of the claim in order to be able to introduce the request to open the insolvency procedure. The threshold value before the pandemic was 40.000 lei (approximately 8000 euros) for both the debtor and the creditor who intended to formulate the request to open the insolvency procedure.

In the idea of supporting the business affected by the pandemic, the legislator at art. 47 Law no.55/2020 raised for both the debtor and creditor the minimum value for which it could be requested to open the insolvency procedure from 40,000 RON two 50,000 RON (approximately 10.000 euro). Additional conditions have also been imposed on creditors requesting the opening of insolvency proceedings. If before the pandemic the proof of a certain, liquid and due claim was sufficient, the legislator requires now the creditor to prove steps to conclude a payment agreement with the debtor who has interrupted its activity totally or partially as a result of the measures adopted in the state of emergency. It should be noted that this obligation imposed on the creditor only concerns debtors who have

[13]Spanish flu pandemic during 1918-1920 has killed somewhere between 20 - 50 million people https://en.wikipedia.org/wiki/Spanish_flu

[14]Law no.55 of 15 May 2020 on measures to prevent and combat the effects of the COVID 19 pandemic, issued by the Romanian Parliament, published in the Official Gazette of Romania no.396 of May 15, 2020 and entered into force on May 18, 2020.

ceased their activity in whole or impart as a result of measures taken during the emergency period. The practical application of these legal provisions becomes difficult as it would mean that the creditor must notify the debtor to find out if in during the state of emergency it has partially or totally interrupted activity. Depending on the debtor's response, the creditor will find out whether he can make the request to open insolvency proceedings or is obliged to try to conclude a payment agreement with the debtor prior to the formulation of the request to open the solvency proceedings. Clearly, the reasonable attempt to conclude a payment agreement must be proved by documents communicated by parties by any means, including electronic means.

Also, by Law no.55/2020, the legislator also took into account the situation in which the debtor had a preventive concordat procedure in progress. Thus, if on May 18, 2020, the date of entry into force of the law, the debtor was conducting negotiations with his creditors on the draft of the concordat agreement, this period was extended by 60 days. Depending on the procedural stage of the preventive composition agreement, the period of elaboration of the agreement, the negotiation period of the agreement, respectively the period of the execution of the agreement was extended accordingly by 60 days.

The debtors who were in the judicial reorganisation procedure also benefited from protection, for which the duration of the execution of the reorganisation plan was extended by 3 months. Correspondingly, the period within the categories of entitled persons may propose a reorganisation plan is extended by 3 months, including if the deadline for submission of the plan has begun to run. If at the time of the entry into force of the law, a reorganisation plan was submitted to the case file, but as a result of the effects of the COVID-19 pandemic, or if the recovery prospects were modified, in relation to the possibilities and specifics of the market, the persons entitled to submit a reorganisation plan could, within 3 months from the date of entry into force of the law, to submit a modified plan, notifying the creditors within 15 days, through the care of the judicial administrator.

For the debtor against whom a reorganisation plan has already been approved and confirmed by the syndic judge, the duration of the execution of the plan is extended by 2 months. In case the debtor in reorganisation has completely interrupted his activity as a result of the measures adopted by the authorities, he could request the syndic judge, within 30 days from the date of entry into force of Law no. 55/2020, the suspension of the execution of the plan for a maximum period of two months. Also the debtors who are in judicial reorganisation at the date of entry into force of the law and who have totally or partially interrupted thei activity as a result of the measures adopted by the competent public authorities to prevent the spread of the COVID-19 pandemic, the implementation period may be extended without exceeding a total duration of 5 years and may be modified accordingly.

The special attention of the legislator on the debtors, legal entities in reorganisation is obvious, his intention being to offer legal solutions during the state of alert in order to avoid the opening of the bankruptcy procedure. And although these legal provisions are favourable to the debtor, they have proven to be difficult to implement. Changing or modifying a reorganisation plan, in

unprecedented pandemic conditions thay have profoundly affected the business environment, without being able to predict the restrictions that will apply or if your business area will work on the market has proven to be difficult.

On July 8, 2020[15], the Insolvency Law was amended, but the legislator did not consider the implementation of new measures related to the pandemic situation. If the threshold value for opening the insolvency proceedings for both the debtor and the creditors during the state of alert was raised to 50.000 lei, the modification imposed this threshold regardless of the existence of the state of alert. Also, since by Law no.55/2020, the creditors were required to prove a liquid and due debt above the threshold value, but also a proof of taking steps to conclude a payment agreement with the debtor, it was necessary to define the notion of „payment agreement". Thus, in article 5 para. (1) of Law no.85/2014, point 12^1 was introduced, which defines the „payment agreement" as the agreement between the debtor and the creditor regarding the settlement in one or more instalments of the obligations at other terms than the due ones according to the contractual or legal provisions.

By Law no. 216/2022[16], the Romanian legislator continued the modernisation of the insolvency law for the legal persons, the ad-hoc mandate procedure within the insolvency preventive procedures being eliminated and the restructuring agreement procedure introduced.

The restructuring agreement procedure is an insolvency prevention procedure whereby the debtor submits to the syndic judge for confirmation a restructuring agreement negotiated in advance with the creditors whose claims are affected, based on which he restructures his activity and pays all or part of his affected claims within the stablished period, through the restructuring agreement. Obviously, this procedure applies to professionals in a state of difficulty, but not yet in a state of insolvency. The specificity of this procedure is that not all the company's claims must be affected, the restructuring agreement can expressly provide that certain claims will not be affected by the restructuring agreement.

Also, as an absolute novelty in the field of insolvency, the notion of "early warning" was introduced, which involves alerting professionals by the fiscal body regarding the non-execution of certain obligations to the state budget, the state social insurance and unemployment budget, providing information free of charge regarding the recovery solutions provided by the law.

All the legislative changes on insolvency described above concerned economic operators, professionals who carry out a commercial activity. However, in Romania, the Insolvency Law on Natural Persons was adopted in 2015, which entered into force only in 2018. The legal regulation established on the overindebted individuals has not changed during the pandemic 2020-2022, in fact the legislator has not made any changes to the legal text since the adoption of the law in 2015.

Indeed, with the establishment of the pandemic, a series of social measures were taken to help citizens, but many were already in financial difficulty before

[15]Law no. 113 of July 8, 2020 on the approval of the Government Emergency Ordinance no.88/ 2018 for the amendment and completion of same normative acts in the field of insolvency.
[16]Law no.216/2022 for the amendment and completion of Law no.85/2014.

the pandemic, according to a study[17] published in June 2020 which finds that in Romania there are about 7 million people are at risk of poverty or social exclusion, and it is anticipated that the COVID pandemic will raise this figure to 8 million citizens.

In the context of the deep economic and financial damage of the Romanian citizen due to the pandemic, without being able to really anticipate the quantitative or temporal dimension of the disaster, the insolvency procedure of natural person had to appear as a solution.

Some of the reasons why this procedure did not reach the potential beneficiaries, even in the conditions of the pandemic that has certainly initiated or deepened the financial difficulties of many citizens, are provided by the relevant literature. The doctrine on the natural person insolvency in Romania is scarce, yet the authors do agree that the first shape drafted by the legislator - Law No. 151/2015 is not an attractive one for debtors, inasmuch as it is complicated, by many rules, imprecise and interpretable notions and that its modification is required so as to transform it into a tool that would be able to provide clear and concrete solutions in order to exceed the state of financial difficulty of the natural person.

Analysing the devastating economic effects caused by the CODID 19 pandemic and materialised into a global recession, the World Bank draws attention to the national legislators on the importance of the crediting activity. The specialists stress the transparency of the crediting process, the reduction of the credit costs, waiving confidentiality clauses and urgent legislative reforms that would allow an efficient management of the debts of natural persons and legal entities. Furthermore, the adoption of urgent measures to improve and consolidate the legal framework in the matter of insolvency are considered "critical".[18]

If in the matter of the insolvency of the economic operators, the legislator intervened in order to protect the debtors in financial difficulty, the same did not happened in the matter of the insolvency of natural person, although a legal instrument capable of coming to the aid of the citizens in financial difficulty was needed.

The insolvency procedure of legal entities is a judicial one and the insolvency procedure of the individuals can be characterised as a semi-judicial, meaning that they take place with the help of the court, a context in which the organisation of courts in the pandemic period becomes relevant.

Regarding the organisation of the courts, the Superior Council of Magistracy of Romania, the Section for Judges, as result of the declaration of the state of emergency, adopted the Decision no. 191/10.03.2020 which contained recommendations for avoiding crowds such as: for the cases pending hours were set for each case, when only the litigants involved will have access to the courtrooms, breaks for the ventilation of the courtrooms, the submission of documents to be made electronically, changing de procedural terms set in March 2022.

Naturally, the legislator also took a series of measures regarding the judicial system to ensure its functionality during the pandemic period. Thus, by Decree no.

[17]Chivu & Georgescu (2020) at 26-27.
[18]World Bank,(2021) at 18.

195/16 March 2020, at chapter V, at art. 42 (1) provided that „during the state of emergency, the trial activity continues in cases of special emergency". In art.42 (6) „the trial of civil cases other than those mentioned in paragraph 1, is suspended by right during the state of emergency, without the need to perform any procedural act for this purpose". Also, prescriptions and procedural deadline terms did not start, and if they had already started, they were suspended throughout the state of emergency.

The use of videoconferencing was also encouraged, including through rogatory commissions, as well as hearings where public participation was prohibited. All documents have been transmitted by the parties by electronic means, except cases where the persons concerned do not have such electronic means. It was established that the transfer of files from one court to another should be done by electronic means, as well as the notification of court documents to the parties.

Very quickly, the Superior Council of Magistracy, finding the non-unitary practice at the level of courts, by Decision no. 417/24 March 2020 included among the urgent cases that will be judged the request based on article 66 para (11) of Law no. 85/ 2014. Article 66 para (11) of Law no.85/2014 allows the syndic judge to order the temporary suspension of the procedures of force execution of the debtor's assets until the solution of the request for opening the insolvency procedure is pronounced.

The provisions related to the full suspension of the civil trails initially cause confusion, given the complexity of insolvency cases in which the debtors business is administrated. The clarification was brought by the practice, so that only the insolvency proceedings trials were suspended by law for the entire period of the state of emergency from March 15 till May 15, 2020. Although the suspension of the trails leads to the ban on to perform any procedural act in that case, in reality it was not possible to freeze the administration of the insolvency proceedings. The insolvency procedure is a complex one, that involves a permanent activity of the insolvency practitioner, being impossible to stop the debtor's activity from a managerial, operational, accounting, economic point of view.

The diversity and complexity of the problems in the insolvency cases, preventive settlement, judiciary reorganisation, bankruptcy, observed by the insolvency practitioners, led the National Union of Insolvency Practitioners in Romania (UNPIR) to the decision[19] to intervene, in order to clarify some issues. Thus, the judicial administrators and liquidators, appointed in the cases have the obligation and the responsibility to continue exercising their mandate in good faith, with the adoption in the current activity of all the measures to prevent the spread of the coronavirus.

Thus, even if the files for the administration of the insolvency procedure were suspended by law, the managerial side of the procedure consisting in the activity of the insolvency petitioner was not stopped. Mention should also be made of the efforts made by the courts and practitioners, in the sense of streamlining the circuit of documents only in electronic format, strictly respecting the deadline imposed for their submission to the case files.

[19]Decision of National Union Council of the Insolvency Practitioners from Romania at its meeting on 20 March 2020..

After 15 May 2020, with the cessation of the state of emergency and the transition to the state of alert, all civil cases were resumed ex officio. On 12 May 2020, the Superior Council of Magistracy[20] of Romania, in connection with the administrative-judicial activity, established: the possibility of adapting the court program, separate schedules for access to the archive of lawyers, insolvency practitioners, experts, the obligation to wear the mask for all the persons on the premises of the court, the organisation of court proceedings by hour, the use of videoconferencing in non-criminal cases, the transmission of documents by electronic means or by post.

Practically, the insolvency practitioners never interrupted the activity and the management of the insolvency files during the state of alert cannot be qualified as difficult because even before the pandemic the communication with the debtors and the creditors was done by electronic means.

Conclusions

Romanian state has taken a series of measures to protect both individuals and legal entities in order to "survive" these difficult pandemic times. Could more be done? Of course, all the time looking back, we find that more and better could have been done, but the authorities focus on the medical aspects of the pandemic must also be put in the balance.

Strictly on the issue of insolvency, we believe that the legislator could have considered at the beginning of the pandemic a profound reform of the legal regime of the insolvency of the individuals containing procedures capable of removing the financial pressure on over-indebted citizens. If companies have been irreparably affected by the pandemic, they end up being removed from the market, but we cannot have the same attitude towards the citizens affected by the pandemic who must continue to live decently.

As the state of alert ended only on March 8, 2022, Romania is today in a period of transition to normality. The impact of the pandemic on companies but also on individuals has been severe and long-lasting, but the negative effects cannot yet be fully quantified.

Certainly, many companies have felt the pandemic hard, but the closure of some companies even with unpaid debts is not an insurmountable problem in business environment in the context in which other companies are being set up at the same time. Moreover, the insolvency law of legal entities no. 85/2014 is a modern one, able to offer solutions for the reorganisation of the business, if it is not irreparably compromised.

Certainly, the living standard of the Romanian citizens has decreased, many of them became over-indebted during the pandemic, and the insolvency procedure of individuals must become a viable solution for the ones who encounter financial difficulties. Law no.151/2015 on the insolvency of natural persons is unattractive to debtors being imperative that it needs the attention of the legislator to become

[20]Decision no.734 on 12 May 2020 Romanian Superior Council of Magistracy.

an attractive legal instrument and able to provide solutions for individuals with financial difficulties.

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Legal Developments as to "Cyber Grooming" Actions from the Lanzarote Convention to Now

By Merve Duysak[*]

According to statistics, internet users have been increasing rapidly, especially since the COVID 19 pandemic. Nowadays, gaming platforms, chat platforms, and video conferencing applications are not only for grownups but for children as well. Minor users, encouraged for educational purposes, are particularly often the target of cybercrimes. One such offense is approaching a child through information and communication technology for sexual purposes, known as cyber-grooming. The act is a solicitation of minors using various techniques. Commonly, the first stage of criminal behaviour is an online conversation between the perpetrator (groomer) and the victim (child). In the second stage of the crime, the perpetrator aims to contact the target physically in person. Even though this is a new type of criminal behaviour, there are already international and national criminalization norms in place to penalize it. The Lanzarote Convention is the first international legal document to refer to these actions as crimes. Aiming to protect children from sexual exploitation and sexual abuse, the Convention sets out some responsibilities to signatory States. Despite being one of the signatories of the Lanzarote Convention, the aforementioned acts are not considered a separate crime in Türkiye. For that reason, this study will first bring examples of criminalization, and then evaluate the situation in Turkish law. This study seeks to make the issue visible and suggests providing measures to prevent the sexual exploitation of minors by taking the necessary legislative steps.

Keywords: *Cybercrimes; Cyber grooming; Lanzarote Convention; Solicitation of children for sexual purposes; Sexual violence against children.*

Introduction

The Convention on the Rights of the Child (CRC), adopted by the United Nations in 1990, is the most comprehensive document outlining the rights of children. It serves as the Magna Carta for safeguarding children's rights, encompassing a wide range of substantive rights and providing guidance on implementation measures. The CRC, along with its Optional Protocols, particularly the Protocol on child slavery, child prostitution, and child pornography[1], offer crucial guidance in promoting and protecting children's rights regarding online sexual exploitation and abuse. These instruments emphasise the need for comprehensive measures, encompassing legislation, policies, and

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[1]OPSC 2022.

educational initiatives, all driven by the best interests of the child. They also advocate for the recognition and support of children's evolving autonomy and agency, while ensuring their protection from violence and discrimination.[2] However, this is not sufficient in terms of determining the measures that can be taken in the face of the transition of the types of abuse children are exposed to from the physical world to the cyber world, due to the advancement of technology.

Cyber grooming is a sexual offense against children as well as a cybercrime. Concerning cybercrime, there are two classifications based on the purpose for which a computer is used and against whom/what it is used. The computer can be the target (e.g., hacking) or the weapon used to commit material or financial crimes (e.g., credit card fraud). As to the second category (against whom/what), it is stated that there are three options regarding property, government, and individuals. While examples of cyber-crimes committed against property are stealing and robbing, crimes against the government are defined as cyber terrorism. Examples of cyber-crimes against individuals are cyberstalking, distributing pornography, trafficking, and online sexual grooming of minors.[3] In terms of these classifications, we can put cyber grooming, which is a cybercrime, into the category of crimes against individuals for whom the computer is used as a tool. In terms of Turkish Law, it should be noted that crimes against property are the sub-title for crimes against individuals.[4]

When we consider cyber grooming actions as sexual offenses against children, it is necessary to determine the legal nature of the matter. Observing how governments regulate the offense in question, and under which heading, can provide some ideas. In some countries, this offense has been treated as a crime against the family stability and public morality (e.g., Belgium), while in others, it falls under crimes against individuals (e.g., Italy). Additionally, in some countries, it is considered as a part of sexual offenses committed against children (e.g. France). The protection of the child's physical and psychological integrity should indeed be the primary focus when it comes to preventing the perpetration of such crimes and developing mechanisms. Therefore, categorising these offenses solely as crimes against the family and public morality may have its drawbacks. It is crucial to prioritise the well-being and safeguarding of children in any approach taken to prevent and address these offenses[5].

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[2]Netkova & Mustafa (2021) at 112, 115.

[3]Nandan (2021) at 2414-2415.

[4]The Turkish Penal Code No. 5237 consists of two books: Volume I including "General Provisions" and Volume II "Special Provisions". Special provisions in which crimes are regulated are again divided into subcategories within themselves. In the Special Provisions book, *Chapter II is titled "Offences Against the Person"* and is divided into ten subcategories. These; Part 1 Offences against Life, Part 2 Offences Against Physical Integrity, Part 3 Torture and Torment, Part 4 Breach of the Duties of Protection, Observation, Assistance, and Notification, Part 5 Illegal Abortion, Miscarriage, and Sterilization, Part 6 Offences against Sexual Integrity, Part 7 Offences Against Liberty, Part 8 Offences against Dignity, Part 9 Offences Against Privacy and Confidentiality, *Part 10 Offences Against Property.* For more regarding crime category of sexual offences in Türkiye see Hafızoğulları & Özen (2021) at 155.

[5]In research studies where victimology examines sexually abused children, incidents occurring within the family are also included as examples. Such as Finkelhor (2008) at 74: "*Another example is the observation from the literature on sexual abuse that sexually abused young children manifest*

The fact that the crime deals with the adult perpetrator's communication with the minor using the information and communication technologies (ICT) with the intention of physically meeting is likened to the punishment of sexual abuse at the preparatory stage.[6]

In this study, firstly, cyber grooming offenses will be examined as the preparatory stage for the sexual exploitation of children, followed by an assessment of regulations and the impact of the Lanzarote Convention on the subject matter. Finally, the situation in Turkish law will be evaluated.

Criminalising Cyber Grooming Actions

Grooming Actions as a Preparatory Stage of Sexual Abuse

While "The term "grooming" refers to the preparation of a child for sexual abuse, motivated by the desire to use the child for sexual gratification,"[7] this kind of sexual abuse could be a material or online solicitation of children. Cyber grooming refers to online solicitation.

The traditional presumption that sexual predators target victims in playgrounds, schools[8], or local neighbourhoods, a phenomenon traditionally defined as "grooming," is being challenged. With the advent of the Information Age, children can now be emotionally seduced, pursued, and manipulated virtually from the safety of their own homes.[9]

The titling of the chapter in favour of the view that grooming offenses are preparatory acts reflects the prevailing and well-intentioned perspective. However, it is necessary to clarify that some grooming offenders do not have the ultimate objective of physical contact. Hence, it is important to regulate grooming offenses as an independent crime. Moreover, there is evidence indicating that grooming is inherently harmful. Therefore, another aspect undermining the general argument is the assumption that preparatory offenses are often innocuous or devoid of victims.[10]

Research demonstrates that the occurrence of online grooming does not follow a linear progression, but rather unfolds through a dynamic process propelled by the offender's motivations and capabilities, as well as their proficiency in

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*sexualised behaviour. *Victimization: A father repeatedly puts his 6-year-old girl on his lap and bounces her against his naked penis until he ejaculates. * Appraisal: ''I make Daddy happy and he treats me like I'm special when I touch his penis.'' *Task application: Getting affectional needs met from adults. *Coping strategy: ''I offer to touch Daddy's penis and the sexual parts of others when I want them to be nice to me.'' *Environmental context: Variable; others may either reinforce or be alarmed by this behaviour*."

[6]Rutai (2020) at 26; Ost (2009) at 32; Coetzee (2023) at 4. The author suggests that defining grooming as a preparatory of sexual abuse causes a dilemma, namely that sexual grooming is seen as only "preparatory" to an offense or a sexual act and not as an offense or a sexual act in itself.

[7]Explanatory Report – CETS 201 – Protection of Children against Sexual Exploitation and Sexual Abuse, 23.-156, p. 23. https://rm.coe.int/16800d3832 Retrieved June 10, 2023, from

[8]"Educator sexual predators" as an offender of grooming, see Coetzee (2023) at 18 *ff*.

[9]Hui, Xin & Khader (2015) at 40.

[10]See also Sorell (2017) at 706.

manipulating and exerting emotional-psychological control over the victim. The ultimate objective of online grooming is to engage in abusive sexual exploitation of the victim, which may manifest in various forms such as manipulating or coercing the victim into producing and transmitting sexually explicit images or videos to the perpetrator or arranging offline encounters with the victim for the purpose of committing sexual abuse against them.[11] For certain individuals, the dominant and exclusive fixation in their minds is the ultimate objective of exerting control over a child to the extent of coercing a meeting and subjecting the child to acts of perverted sexual abuse, while some perpetrators possess no interest other than engaging in 'chat'[12] conversations with children while assuming the persona of a child or adolescent. The exhilaration derived from interacting with a child regarding matters and interests relevant to childhood adequately satiates the perpetrators' desires and fuels their fantasies.[13]

According to Finkelhor's 'Precondition Model' of child sexual abuse, the perpetrator goes through four stages prior to committing acts of sexual abuse. These four preconditions of sex abuse are 1. "Motivation to sexually abuse a child", 2. "Overcoming the individual's inhibitions", 3. "Surmounting any external obstacles to committing the abuse", 4. "Overcoming the child's resistance." Finkelhor's second, third, and fourth prerequisites are the successful grooming actions that may be facilitated.[14]

Lanzarote Convention and EU Strategy for the Fight against Online Exploitation

Considering the longstanding priority of the international community in combating the sexual abuse of children, it is expected that some punitive measures would be taken in this regard. At the European level, this has recently led to the development of the Lanzarote Convention[15] by the Council of Europe and the Directive[16] submitted by the European Parliament and of the Council.

[11]Selladurai (2022) at 759.

[12]See McMahon & Kirley (2019) at 60 ff.: The author sets forth that perpetrators of sexual offenses have attempted to evade accountability by employing coded emoji as slang or digital vernacular, which conceals the true intention of their online interactions with potential victims. Such cases pose novel challenges for criminal justice systems.

[13]Powell (2007) at 117.

[14]Ost (2009) at 32 ff.; Ward, Beech & Polazchek (2008) at 294 ff.

[15]Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No.201), hereinafter the "Lanzarote Convention", was adopted and opened for signature on 25 October 2007 in Lanzarote, Spain. The State Parties to the Lanzarote Convention are therefore: Albania, Andorra, Austria, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxemburg, Malta, Republic of Moldova, Monaco, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Tunisia, Türkiye and Ukraine. Retrieved June 10, 2023, from "https://www.coe.int/en/web/children/lanzarote-convention"

[16]DIRECTIVE 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68/JHA.

The Lanzarote Convention is the first international instrument to criminalise the solicitation of children for sexual purposes by ICT.[17] Grooming acts are "new"[18] in that the crime is mainly committed through ICT, and "old"[19] in that it is a type of sexual exploitation of children. For this reason, the approach of the Lanzarote Convention has been chosen as a reference point to distinguish it from similar acts of abuse.

According to article 23 "*Solicitation of children for sexual purposes*"

> *"Each Party shall take the necessary legislative or other measures to criminalise the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18[20], paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20[21], paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting."*

[17]Council of Europe – *Opinion on Article 23 of the Lanzarote Convention and its explanatory note Solicitation of children for sexual purposes through information and communication technologies (Grooming)* - Adopted by the Lanzarote Committee on 17 June 2015, p. 9; De Felice (2017); Netkova & Mustafa (2021) at 117.

[18]Kool (2011) at 48.

[19]Ost (2009) at 25.

[20]Article 18 – Sexual abuse -

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised: *a. engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities*; b. engaging in sexual activities with a child where: – use is made of coercion, force or threats; or – abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or – abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

2. ***For the purpose of paragraph 1 above, each Party shall decide the age below which it is prohibited to engage in sexual activities with a child.***

3. The provisions of paragraph 1.a are not intended to govern consensual sexual activities between minors.

[21]Article 20 – Offences concerning child pornography

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct, when committed without right, is criminalized: *a. producing child pornography*; b. offering or making available child pornography; c. distributing or transmitting child pornography; d. procuring child pornography for oneself or for another person; e. possessing child pornography; f. knowingly obtaining access, through information and communication technologies, to child pornography.

2. For the purpose of the present article, the term "child pornography" shall mean any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child's sexual organs for primarily sexual purposes.

3. Each Party may reserve the right not to apply, in whole or in part, paragraph 1.a and e to the production and possession of pornographic material: – consisting exclusively of simulated representations or realistic images of a non-existent child; Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse – involving children who have reached the age set in application of Article 18, paragraph 2, where these images are produced and possessed by them with their consent and solely for their own private use.

4. Each Party may reserve the right not to apply, in whole or in part, paragraph 1.f

It could be briefly stated that Art. 23 covers the unlawful acts leading to the sexual abuse of a child who has not reached the legal age for consensual sexual activities (Article 18§1.a) as well as the production of child pornography (Article 20§1.a). With the opinion report prepared in 2015, an important issue came to the fore in terms of the article's interpretation. According to the report, the solicitation of children by information and communication technologies does not necessarily lead to a face-to-face encounter.[22]

Under the Lanzarote Convention, the signatory states were specifically obligated to create a criminal offense that would allow the legal pursuit of the concerning behaviour commonly referred to as "child grooming." This pertains to the act of enticing minors, predominantly using the internet, with the purpose of committing sexual abuse or producing child pornography.[23]

Considering the regulations of the signatory states, it should be noted that the group of crimes where grooming crimes are regulated, and the legal age for sexual activities vary.

The act of grooming is regulated in some states among crimes against persons (e.g., Italian Penal Code 609-undecies), in some states, among crimes against family well-being and public morality (e.g., Belgian Penal Code 377-quater), and in some states in the section of sexual crimes against children (e.g., French Penal Code 227-22-1). This is due to the fact that crime regulations seek to balance freedom with protecting children. According to our belief, the regulation of the offense in question among crimes against individuals is appropriate. What matters is the protection of the child as an individual. The psychosexual development of the minor should also be taken into consideration. In this context, the following is argued in the doctrine regarding the Italian regulation: According to some scholars, Italian Penal Code Article 609-undecies safeguards the "freedom of self-determination of the individual, particularly in terms of sexual freedom and the unrestricted expression of one's will." Conversely, other scholars argue that the protected legal interest of the offense is the "freedom and balanced psychosexual development of the minor." As stated in the Italian doctrine, the latter perspective more accurately captures the essence, as it values the essential core of disvaluing present in the crimes encompassed by the specific intent of the offense. Although these crimes differ, they all aim to foster forms of abuse and exploitation that seriously endanger the delicate development of the minor's personality, which inevitably includes experiences of a sexual nature. Moreover, the Preamble to the Lanzarote Convention explicitly refers to the fact that the exploitation of minors and the commission of sexual abuse against them are "destructive to children's health and psycho-social development.[24]

As mentioned before regarding criminalisation of grooming offenses, legal age of sexual activity varies from 13 (e.g., Romanian Penal Code art. 222[25]) to 16 (e.g., Italian Penal Code 609-undecies). Sexual actions between peers should be evaluated. In Italy, there is a view related to the issue. It should be stated that in

[22]Council of Europe.
[23]Vizzardi (2015) at 2.
[24]Vizzardi (2015) at 5.
[25]*For more related Romanian regulation*; Moise (2015) at 150 ff.

Italy there is an article related to the perpetrator who cannot plead, as an excuse, ignorance of the age of the offended person (Article 609-sexies). According to the Italian view, the offense encompasses actions committed against minors under the age of fourteen, despite the Lanzarote Convention referring to minors who have not reached the age to provide valid consent in sexual matters, which, in the Italian legal system, applies to minors under the age of fourteen. There is an exception for acts carried out between peers or nearly same-aged individuals, as stated in Article 609 quarter, paragraph 3. The extension of liability to minors between the ages of pre-fourteen and pre-sixteen is likely to give rise to misleading interpretations, especially in cases where the groomer, though employing deception or enticement, aims to engage in consensual sexual acts with a fifteen-year-old minor. In such cases, the groomer ultimately pursues lawful intentions that are unrelated to the specific intent described in the offense under Article 609-undecies. The perceived risk is that, concerning minors in this age group, the crime of "grooming" may, in practice, become a means to punish forms of "seduction through deception" targeted at minors, even when the eventual consummated sexual relationship does not satisfy any of the elements that should support the specific intent described in the criminal provision. The judge must always establish that the offender acted with will to commit one of the expressly referenced sexual offenses in the criminal provision and that the grooming conduct of the perpetrator constitutes an actual preparatory action for such offenses.[26]

In addition to the criminalisation of grooming offenses by the signatory states, the provisions introduced by the Directive should also be examined. In this context, Article 6 of the Directive, titled "*solicitation of children for sexual purposes*," carries a similar intent and states: "*Member States shall take the necessary measures to ensure that the following intentional conduct is punishable*." The Directive 2011/92/EU being more recent, concretises additional criteria related to the offense with a punishment of at least 1-year imprisonment (art. 6). After that biggest step relating to the issue is a proposal (*European Commission, Proposal for Regulation, 2022,*[27]) at the EU level. There is an explanation set forward in the reasons for and objectives of the proposal title titled of the document that "*it is clear that the EU is currently still failing to protect children from falling victim to child sexual abuse, and that the online dimension represents a particular challenge. Therefore, on 24 July 2020, the European Commission adopted the EU Strategy for a More Effective Fight against Child Sexual Abuse*"

As it is stated in the text the proposal aims to ensure that relevant online service providers established in the EU and in third countries effectively detect, remove, and report both previously-known and new instances of child sexual abuse material and grooming. The scope of the proposal encompasses the material itself, specifically child sexual abuse material and grooming, while the personal scope focuses on the online service providers responsible for addressing this issue.

[26]Vizzardi (2015) at 3.

[27]Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse (hereinafter "proposal") Retrieved June 10, 2023, from - https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2022:209:FIN; *see more at* Tolbaru (2022).

Technology not only increases the dangers but also enhances the solutions.[28] Detection technologies have reached a significant level of accuracy, as indicated by various sources, although human supervision and assessment are still essential. Over time, indicators of 'grooming' have become increasingly reliable as algorithms continue to be studied and improve.

Outside the EU Orbit

A new offense category was introduced in the Sexual Offences Act of 2003 (SOA) in England and Wales, which also applies to Northern Ireland. Section 15 of the Act criminalises the act of 'meeting a child following sexual grooming'. This offense encompasses interactions that occur online, through technologies such as mobile phones, as well as in the physical world. Several countries are adopting the UK's approach and enacting legislation against grooming behaviour. For instance, New Zealand recently included sexual grooming as an offense in the Crimes Amendment Act of 2005. In the USA, it is considered an offense to electronically transmit information about a child aged 16 or under for the purpose of committing a sexual offense. Similar restrictions exist in the Australian Criminal Code and the Canadian Criminal Code. However, the legislation in the UK differs in that the offense of sexual grooming applies to both new technologies, including the Internet and mobile phones, as well as interactions in the physical world. In contrast, legislation in other countries only addresses electronic grooming conducted via the Internet and mobile phones.[29]

The publication of Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse ("Voluntary Principles") was announced on March 5, 2020, by Australia, Canada, New Zealand, the United Kingdom, and the United States. These countries introduced 11 voluntary principles as online measures that companies in the technology industry can choose to adopt. The aim is to safeguard children who utilise their platforms against online sexual abuse and to enhance the difficulty for child sex offenders to exploit these platforms.

By setting new standards within the private sector, the Voluntary Principles ensure that child safety is integrated throughout a company's operations, giving proper consideration to the needs of victims and survivors. According to Principle 3: "Companies seeking to identify and combat preparatory child sexual exploitation and abuse activity, such as online grooming for child sexual abuse, take appropriate action under their terms of service, and report to appropriate authorities."[30]

[28](*news*)"How Artificial intelligence Stop Cyber Grooming Before the Damage Is Done" Retrieved June 10, 2023, from https://www.reuters.com/brandfeature/tbd-media-group/50-leaders-of-change/how-artificial-intelligence-stop-cyber-grooming-before-the-damage-is-done

[29]Davidson & Gottschalk (2011) at 26.

[30]Zagaris (2020).

Solicitation of Children for Sexual Purposes through Information and Communication Technologies in Turkish Law

Türkiye signed the Convention on 25/10/2007, ratified it on 07/12/2011, and it entered into force on 01/04/2012. However, grooming offenses have not yet been explicitly regulated as a crime in Turkish law[31].

In Turkish Law, it is observed that the acts of grooming actions are often considered as sexual harassment in judicial decisions[32], since not being regulated as a separate offense. This is because when there is no physical contact involved, the offense that comes into play within the category of sexual offenses[33] is the offense of sexual harassment[34] and the victims of the offense can be both adults and children.

Sexual harassment is regulated under Article 105 of the Turkish Penal Code (TPC) as "*a person who sexually harasses another person, upon the complaint of the victim, shall be sentenced to imprisonment for a period of three months to two years, or a judicial fine. If the act is committed against a child, the sentence shall be imprisonment for a period of six months to three years*". TPC Article 105's preamble also defines sexual harassment as "sexual behaviours that do not constitute a violation of a person's bodily integrity."[35]

If we compare acts of sexual harassment with similar acts that do not involve physical contact, in this case, we need to consider two possibilities. Firstly, in terms of acts that disturb individuals through communication devices, a comparison can be made between Articles 105 and 123 of the TPC. According to Article 123 of the TPC: "If someone persistently disturbs another person's peace and tranquillity by making phone calls, creating noise, or engaging in any other unlawful behaviour with the same intention, upon the complaint of the victim, the perpetrator shall be sentenced to imprisonment for a period of three months to one year." While the acts mentioned in Article 105 of the TPC also disturb the peace of individuals, they are distinct from the other offense due to their involvement of sexuality. Another similar offense is regulated under Article 225 of the TPC, titled

[31]Similarly, Bosnia and Herzegovina do not have a comprehensive criminal regulation applicable across all its territories. However, it should be noted that a specific provision has been enacted in Republika Srpska for the prosecution of online grooming offenses, see Kazic-Cakar (2021) at 177.

[32]Decision no. 2013/3391-2014/14781 dated December 23, 2014, the 14th Criminal Chamber of the Court of Cassation: *"In the case where the defendant contacted the 8-year-old victim through the internet, deceived the victim by presenting themselves as an 11-year-old girl, engaged in sexually explicit conversations, and convinced the victim to undress in front of the camera, the defendant should have been punished under Article 105/1 of the Turkish Penal Code (TPC) due to the non-physical nature of the act."*

[33]For more regarding the category of sexual offenses in Turkish Criminal Law see Taner & Gökçen (2023).

[34]Koca & Üzülmez (2022) at 432.; Bayraktar, Keskin Kiziroğlu, Yıldız, Memiş Kartal, Altunç, Bostancı Bozbayındır, Erman, Eroğlu Erman Kurt & Sınar (2020) at 561; Artuk, Gökçen, Alşahin & Çakır (2022) at 408.

[35]See Baş (2016) at 1159 ff.; It is problematic that these statements are included in the preamble without being present in the article itself. The article does not contain a provision stating that there should be no violation of bodily integrity, nor does it focus on the perpetrator's behavior but rather on their intention.

"Indecent Acts." According to this article, a person who engages in public sexual intercourse or exhibitionism shall be sentenced to imprisonment for a period of six months to one year. This article specifically intersects with acts involving the exhibition of the perpetrator's sexual organ. In determining the elements of these two offenses, it is taken into consideration whether the act was committed privately or publicly.[36]

The commission of sexual harassment "by taking advantage of the convenience provided by postal or electronic communication tools" is regulated as an aggravated circumstance under Article 105/2-d of the TPC, which entails a higher penalty. However, this aggravated circumstance does not provide a suitable regulation for cases of virtual sexual exploitation of children. In legal doctrine, it has been argued that this circumstance cannot be applicable in situations where the victim does not have the option to resist or reject a sexual message and that it cannot apply to consensual communication. However, the grooming act of children often involves situations where the child is initially involved with consent but later manipulated and sexually abused, making Article 105/2-d inapplicable.[37]

Conclusion

It is possible for grooming acts, which fall under the category of cybercrimes and sexual offenses against children, to be mistaken for harmless communication behaviours. Therefore, it is important to establish specific criteria in their acts to define the elements of the offense.

At the European Union level, the process initiated by the Lanzarote Convention aims to firstly define grooming acts as an independent offense. Subsequently, efforts have been made to ensure that such offenses are not punished with penalties below a certain threshold, and ultimately, to establish effective monitoring of technological developments in communication tools used in the commission of these crimes. Outside the EU there are joint cooperations such as the publication of Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse ("Voluntary Principles").

The signatory countries of the Lanzarote are working on incorporating the offense into their domestic laws. Although Türkiye is a party to the Convention, grooming acts are not recognised as an independent offense in Turkish law. Indeed, since these acts lack physical contact, they are evaluated under the offense of sexual harassment, as there is no separate provision for grooming in cases where there is no physical contact involved. The Turkish Penal Code (TPC) considers the presence or absence of physical contact as a fundamental criterion in crimes related to sexual integrity. However, this criterion alone may not always be enough to determine the gravity of the injustice, especially considering the advancements in technology today. Given that virtual behaviours lack physical contact, it is essential to specifically address the actions conducted in virtual

[36]Bayraktar, Keskin Kiziroğlu, Yıldız, Memiş Kartal, Altunç, Bostancı Bozbayındır, Erman, Eroğlu Erman, Kurt & Sınar (2020) at 562-563.
[37]Can (2022) at 130; Aksoy Retornaz (2022) at 227.

environments that target children. The existing provision of sexual harassment (Article 105) in the TPC is insufficient to adequately address the severity of the injustice in such cases. In terms of sexual offenses, actions involving physical contact are subject to more severe penalties. However, it should be considered that even in environments such as the child's safest spaces like home, school, etc., online grooming behaviours can occur, and the harm caused by such crimes must be considered. In Türkiye, this crime has not yet been regulated. This deficiency should be seen as an opportunity to follow previous developments. When making regulations, the laws of states that explicitly define grooming as a crime, international advisory reports, and judicial decisions should be considered. Therefore, it is essential that the state, as a party to the convention, encourages the use of artificial intelligence software capable of detecting grooming actions, which would be significant in preventing crime. Determinedly, it would also be appropriate to clearly define the approach to actions among children of similar ages and the measures to be taken in cases of mistaken age.

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Enforcing the Legal Principle of Duty of Care in Corporate Human Rights Violations and Environmental Damage Cases in Developing Countries

By Emmanuel K Nartey[*]

Corporate accountability for human rights violations in international legal systems has proven to be a watershed. This is because there are inadequacies in the existing accountability mechanisms as well as several other legal problems and factual obstacles that hinder the enforcement of human rights law and international criminal law. This is also attributed to the problematic issues that persist, particularly with respect to the following: corporate criminal liability, the extraterritorial application of law, the attribution of criminal actions to specific agents, the requirements of accountability, the difficulties of extraterritorial investigations, and obtaining sufficient evidence for human rights violations. This article examines corporate accountability in the concept of the principle of duty of care. It is argued that the duty of care principle will help breach the gap in corporate liability for human rights abuses and environmental damages. Furthermore, the article analyses the definition of accountability, the mechanism of accountability, and the components of accountability are extensively discussed. It is also observed that the legal concept of corporate accountability should include responsibility, answerability, blameworthiness, liability and sanctions. Therefore, this article examines the key elements that are required for establishing accountability for non-state actors. A diagram is used to explain the components of the various forms of accountability and how accountability creates a legal duty of care for non-state actors, such as corporations.

Keywords: *Accountability, Corporate, Human Rights, International Law, Duty of Care, Environmental Damages, Courts, Government, Judiciary and Society*

Introduction

Koppell perceives five different dimensions of accountability: transparency, liability, controllability, responsibility and responsiveness. Each of these factors forms the practical concepts of accountability.[1] What is clear from the explanation by Koppell is that accountability is indeed an inclusive concept and includes different branches. In order to establish accountability and effective remedy, all the branches must be addressed. As explained above, the concept of accountability

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[1]Koppell (2006).

has provided some indication of this notion. However, such an explanation makes it difficult to establish empirically whether a corporation or corporate officials can be subject to accountability for a corporation's misconduct in relation to business operations under international law. This is because the different elements of accountability need widespread operationalisation to establish liability for the corporation's misconduct. After all, the different fundamentals of accountability cannot be measured along the same scale. For example, transparency may not carry the same effect as liability for human rights violations. Likewise, the difference between a corporation and its officials makes it difficult to pinpoint the level of liability of either the corporation's or the official's misconduct in the course of the business operation.

Some dimensions, such as transparency[2], are mechanisms for accountability but not indicative of it; others, such as responsiveness, are evaluative instead of representing the analytical dimension of accountability. Arguably, international criminal law accountability possesses elements of transparency, but this does not constitute accountability. One cannot incorporate transparency into the core aspect of accountability, such as liability and remedy, because liability and remedy arise as a result of one's misconduct, i.e. a corporation's or a corporation official's or a corporation's subsidiary and supply chain. Hence, accountability is an evaluation of corporate operations and their implications but not an analytical concept view of corporate accountability under international law. This also means that accountability should be based on the outcome of the evaluation of corporate business operations, which has a significant impact on human rights and the environment, and not on an analytical view of corporate activities. Viewing accountability in this conceptual premise will help to positively qualify the state of affairs of the corporation[3], such as regulating the conduct of a corporation's activities based on its economic output, control, relationship with its subsidiaries, and impact it has on human rights and the environment. This could be the basis for establishing effective accountability and remedy for victims of human rights abuses.

These conceptual premises are closely connected to responsiveness, in the sense of the responsibility of the corporation and its officials in directing business operations, as well as the willingness of the corporation to act in a fair, honest, just, transparent and equitable way. Following this explanation of accountability, the notion of responsibility in this dimension will enable corporations to respect human rights and the environment because it will be assumed that the corporation owes a duty of care, which gives rise to liability and remedy. This is because the liability and remedy arise through corporate conduct, such as the exercise of its control over business operations and working procedures. However, there needs to be a general agreement about the acceptable standard for corporately accountable behaviour and the difference from role to role, time to time, and place to place.[4]

It is vital to stress that in a legal definition of accountability, the main components are liability, remedy, and enforcement. These elements are crucial aspects of accountability and should not be exchanged for a less regulatory

[2]Transparency, in a business or liability context, is honesty and openness.
[3]*Duck v Peacock* [1949] 1 All ER 318.
[4]Fisher (2016).

approach to accountability for human rights violations and environmental damages. The exemplification of corporate accountability in a legal and conceptual definition of accountability should be closely linked with corporate business operations. Still, it should be wider when it comes to imposing accountability on corporations, as this will enable courts to find liability and the control that the corporation exercises in its business operations.[5] Corporate accountability should have a relationship with the impact of the corporation's business operations on society. The responsibility derived from this relationship gives rise to a duty of care not to cause harm. Hence, if the components of corporate accountability include liability, remedy, and enforcement, then the question is what is the scope of accountability? How does the definition of accountability aid corporate responsibility and sanctions in practice?

To answer these questions, it is vital to first look back at the definitions of accountability in duty of care, which help explain and justify conduct and sanctions. This implies a relationship between the state, corporate entities, and a forum, such as a tribunal, court, or society.[6] Also, the answer could be found in the roots of the etymological and historical definition of accountability that is related to specific social relations.[7] In this ideological concept, accountability will be seen as the relationship between actors, such as governments and corporations, and a forum, i.e. a judicial system, society, or the international community. Viewing accountability as a relationship gives rise to obligations to explain and justify one's conduct. Moreover, the forum will have the mandate to pose questions and pass judgment on corporate human rights abuse cases. Indeed, the corporation may face criminal or civil sanctions, specifically where it is found that a duty of care is owed.

This theoretical definition incorporates different actors, such as individuals, and situations in which corporate officials are involved in human rights violations. The forum in this rationale refers to the relationship between the domestic and international judicial systems. The actor is the corporation, and this can have the nature of a principal-agent relation, with the judicial system acting as the principal. Observing accountability in this ideology permits defining whether the implication of a sanction is a constructive element of accountability.[8] It also allows identifying different levels of accountability for all the actors involved. This is crucial because effective accountability, sanctions, and remedies should in theory be based on the type and nature of accountability imposed on a particular actor through the actor's duty of care. This is purely due to the fact that accountability could fail on theoretical and practical interpretations if the essential elements are not taken into consideration when deciding whether an actor could be held accountable for its conduct or not.

Furthermore, transparency is about being understandable as well as being open and honest in all communications, transactions and operations. Accountability and transparency go hand-in-hand and involve being aware of who one is

[5]Nartey (2021).
[6]Pollitt (2003).
[7]Shafritz (2018).
[8]Schillemans & Busuioc (2015).

accountable to,[9] the important pieces of information, and how information can be communicated most effectively.[10] Transparency is about shedding light on rules, plans, processes and actions. It ensures that public officials, civil servants, managers, board members and businessmen act visibly and understandably and report on their activities. Additionally, it allows the general public to hold them accountable. It is the surest way of guarding against corruption and helps increase accountability in corporate business activities.[11] Transparency and accountability are considered critical not only to the workings of business and government, but also to the success of commercial enterprises, including in the agriculture sector. Through the practice of internationally established standards of corporate governance, private and state-owned enterprises can support robust foreign investment in agribusiness, along with economic growth.[12] The present article raises the possibility that transparency in the concept of accountability refers specifically to the substantive and administrative procedures through which institutions perform their functions, and whether they are documented and accessible, and where the government and publicly held companies are concerned, open to public scrutiny. Therefore, this article examines the key elements that are required for establishing accountability for non-state actors. A diagram is used to explain the components of the various forms of accountability and how accountability creates a legal duty of care for non-state actors, such as corporations. The article is split into four sections, the first section examines the theoretical definition of accountability, the second part observes the legal components of accountability, the third analysis of international law accountability for multinational corporations' human rights violations across different jurisdictions and the fourth concludes on the intersection of corporate accountability and society.

Theoretical Definition of Corporate Accountability and Duty of Care

Accountability pertains to the relationship between citizens and government officials or, in the commercial context, shareholders and boards of directors along with a sense of obligation and a public service ethos among officials and the power of citizens or shareholders to sanction, impose costs, or remove officials for unsatisfactory performance or actions.[13] This idea is associated with transparency. In this understanding, the concept of transparency in this view might involve two distinct stages: answerability and enforcement. Answerability refers to the obligation of the government, its agencies and public officials to provide information about their decisions and actions and to justify them to the public and those institutions of accountability tasked with providing oversight. Enforcement suggests that the public or the institution responsible for accountability can sanction the offending party or remedy the contravening behaviour. This means that, for one to achieve

[9]Armstrong (2005).
[10]Vaccaro & Madsen (2009).
[11]USAID (2013).
[12]Marrewijk (2003).
[13]Crane, Matten, Glozer & Spence (2019).

accountability, transparency should exist as a facilitated procedure for corporate responsibility.

Florini, for example, expresses that 'put simply, transparency is the opposite of secrecy. Secrecy means deliberately hiding your actions; transparency means deliberately revealing them.'[14] This is a pretty effective definition, except for the suggestion that transparency is always intentionally offered. Types of involuntary or imposed transparency undoubtedly exist. In addition, 'some definitions go further than merely contrasting transparency with secrecy and refer to it as the opposite of privacy. A crudely administered regime of transparency can damage privacy, but this is not usually the ostensible intent behind its introduction. The overwhelming weight of the use of the word transparency is not to indicate that it throws light into legitimate privacy, but that it exposes the kind of secrecy that is 'detrimental to society'.[15] 'In fact, the particular value of transparency is its ability to reveal corrupt practices and show citizens how they can limit the damaging effects of corruption in their own lives.'[16] Florini sums up the relationship between transparency and privacy by saying, 'transparency is not about eliminating privacy. It is about giving us the power to hold accountable those who would violate it.'[17] Bosshard contributed to the debate by stating that the phrase 'sunshine is the best disinfectant' elegantly captures the cleansing potential of a regime of transparency, without yet explaining quite how that might work.[18]

These definitions suggest that transparency is used in a context where conduct requires clear, honest, obvious, explicit, unambiguous, unequivocal and responsible action. However, what is not clear in this definition is where transparency could give rise to legal responsibility and liability. In this definition, what is possible is that transparency as an element of business accountability does give rise to a legal duty. The legal duty of transparency as an element of business accountability can be noted in the UK government passing the Modern Slavery Act of 2015, the first piece of UK legislation focusing on the prevention and prosecution of modern slavery and the protection of victims.

After much debate, the government included a provision on transparency in the supply chain.[19] The new transparency in supply chains provision in the Modern Slavery Act aims to stop slavery lurking in many supply chains. Increased transparency in the supply chains will push forced labour up the corporate agenda, but there are concerns it does not go far enough. Nonetheless, what is seen in this approach is that the UK recognised transparency as a legal tool to force corporations to respect human rights standards and adhere to international law. This suggests that the concept of transparency as an element of business accountability can be enforced in a court of law only where a statute explicitly demands transparency.[20] The Bribery Act of 2010 is legislation of great significance for companies incorporated in or carrying on business in the UK. It presents heightened liability

[14]Florin (2000).
[15]*Ibid.*
[16]Kolstad & Wiig (2009).
[17]Sturges (2007).
[18]Bosshard (2005).
[19]Modern Slavery Act 2015.
[20]Nartey (2022).

risks for companies, directors and individuals. To avoid corporate liability for bribery, companies must make sure that they have strong, up-to-date and effective anti-bribery policies and systems as transparency mechanisms.

The Bribery Act 2010, unlike previous legislation, places strict liability upon companies for failure to prevent active bribery. The only defence is that the company had adequate procedures designed to prevent persons associated with it from undertaking bribery.[21] The Foreign Corrupt Practices Act (FCPA) 1977[22] prohibits US citizens, permanent residents, public and private US companies and certain non-US individuals and entities from bribing foreign government officials in order to obtain a business advantage (*15 USC. §§ 78dd-1, et seq.*). Under some circumstances, the FCPA's jurisdiction extends to non-US individuals and companies, such as those who use the US capital markets or those who use the US communications or banking networks in furtherance of improper payment schemes. Taken together, these acts suggest that greater emphasis is placed on the corporation to act in a transparent manner in its business operations. Therefore, the theory that transparency as an element of business accountability gives rise to a legal duty of care.

Transparency is a concept that is applied to 'international organisations, states, private corporations, civil society organisations,'[23] and individuals. Regulations for transparency abound at all these levels, and the technology by which transparency can be enforced is hard to avoid. Businesses can no longer easily conceal their misconduct or offer misleading estimates of their business output when records and data can reveal corporation business activities. The components of transparency are as follows:[24]

1. 'Adoption of openness in public and private sector governance. This encompasses a broad view of what transparency means, including both a mentality and a system or set of systems.'[25] A state's own disclosure structures are sometimes referred to as domestic transparency.[26] 'They are essentially directed towards permitting broad public knowledge of the actions of those who hold power, but also for purposes of crime detection and law enforcement.'[27]
2. 'A more limited procedural transparency can be identified in some usage of the word. In this sense, the simple existence of a set of provisions for making public, or allowing access to, details of the functioning of some or all of the activities of an organisation, is referred to as transparency.'[28]
3. 'Radical transparency, which is a management method by which almost all the decision making in an organisation is carried out publicly. The exceptions to transparency in such a system are matters such as personal

[21]Bribery Act 2010.
[22]The Foreign Corrupt Practices Act of 1977.
[23]Sturges (2007).
[24]*Ibid.*
[25]Bushman & Smith (2003).
[26]Relly & Sabharwal (2009).
[27]*Ibid.*
[28]*Ibid.*

privacy or the security of systems. It is regarded as more appropriate in working environments based on the internet or intranets that do not suffer from the potential for the transmission of errors inherent in oral communication. It connects directly with the open source movement, which embodies the spirit of radical transparency.'[29]

4. The potential for systemic or total transparency in which the actions of absolutely everyone is exposed to the eye of interested parties. This idea is based on the existing capacity for deep surveillance that can provide detail about the life of anyone, in the interests of effective administration and policing, and to the private sector, for purposes of more accurately targeted business activity, to the state itself so that its policy can be monitored internationally. It is sometimes referred to as imposed transparency.[30] Although the meanings of transparency 'set out above undoubtedly have some negative connotations, it is chiefly used in a strongly positive way'[31] to find liability for government and business misconduct.

Accountability arises when the essential elements derived from the notion of accountability are met, such as liability, remedy and enforcement. A tribunal and court can hold an actor accountable for its conduct. Therefore, the consequences that flow from these elements are also determined by transparency, international standards and international norms. Hence, under wider moral and legal obligations, the tribunal or court must exercise extensive discretion to impose accountability on an actor, with an enforcement procedure either at the domestic or international level. This could include freezing company assets through consensus with the home state government or the state in which the corporation's headquarters is located but only if it is established that a duty of care is owed, and was breached.

The sanction of fines or seizure of property should be imposed by an execution order issued by the court either at the domestic or international level. The fact that the sanction provided for the violation of international and human rights law is a fine or imprisonment of a corporate official at the discretion of the court, does not render it is inapplicable to a corporate human rights violation. Corporate officials may also be subject to liability for any violation of human rights law and standards under the theory that they failed to prevent the violation by neglecting to control the misconduct of those subject to their control. Under this concept of liability, a corporate official is liable based on his/her responsible relation to the human rights violation regardless of whether he/she has any knowledge of the misconduct.[32] Similarly, the duty of care should provide that the penalty for a violation of human rights may be read in conjunction with a general legal rule of remedy under tort law that allows the imposition of a fine, and the fine may be imposed on the corporation in civil and tort law.

Lastly, even an exercise of voluntary instruction such as stages of corporate report writing constitute a practical element of accountability. Also, this article

[29]Sturges (2007).
[30]Bertot, Jaeger & Grimes (2010).
[31]Sturges (2007).
[32]Owen (1985).

concurs with Mulgan[33] and Strom[34] that sanctions form the main part of a practical element of accountability and on a broader spectrum are part of the conceptual component of accountability. Therefore, effective sanction and effective remedy should be the core element of accountability in a legal proceeding involving a state and a non-state actor. It is argued here that a tribunal or court has a moral and legal obligation to apply the conceptualisation of the practical element of accountability. The present study raises the possibility that the practical element of accountability should be a legal theory that is used to extend accountability to situations where a corporation has no hands-on supervision of the subsidiary's conduct, but, have direct or indirect control over the business operations.

Legal Components of Accountability

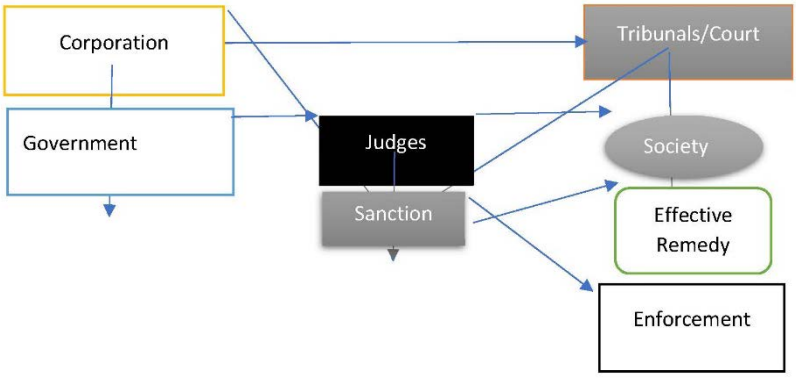
It is now important to look at what is meant by the component of accountability and how this is linked with the corporate obligations that give rise to a duty of care. ***Diagram 1*** illustrates this concept by demonstrating how the various elements contained in the notion of practical corporate accountability ought to work in a broader concept to impose a legal duty of care on the corporation. The rationale behind this is that the components of accountability describe a relationship between a duty holder and a person or corporation to whom a duty is owed. It describes the capacity to demand that a person or corporation give reasons to justify their behaviour and the capacity to impose a sanction if they fail to give reasons, or if their performance falls below the reasonable man standard. The components of accountability involve three key elements. The first is 'delimitation of responsibility', defining over what, whom and how duty holders are responsible for their actions. The second is 'answerability', the obligation for duty holders to inform about and explain their actions. Accountability as answerability aims at creating transparency. It relies on information dissemination and the establishment of adequate monitoring and oversight mechanisms. The third is 'enforcement', or the capacity to subject power to the threat of sanctions or disciplinary actions. Legal and regulatory sanctions are at the core of enforcing accountability in the components described in this article. Following this explanation, ***Diagram 1*** lays out the obligations derived from the concept of accountability as:

1. Accountability by mandating;
2. Clear standards and legal duties that must be met by duty holders;
3. Requirements for effective accountability relationships;
4. Legal requirements for transparency and information disclosure;
5. Legal and formal institutions and mechanisms to hold duty holders to account; and

[33]*Ibid.*
[34]Strøm (2000).

6. Legally established and effective sanctions for those who are not accountable

Diagram 1. *Components of Accountability*



The Link between Government and Corporations

The link between government and corporations shows the law and regulation aspect of the corporation's duty of care; the company law, the government trade policy, as well as the business influence on the government by personal conduct and lobbying, forming trade unions, political action committees and large investments of the corporation. Breaking this down, the link between government and business is required for the welfare of the economy and the State. This link, which is established through government laws and regulations, establishes accountability. The corporation must be accountable to the government for its business operations through regulations and the state's corporate law. Likewise, the link also means that the government is responsible for shaping business practices through both the implementation of rules and regulations directly. This indicates that the link between government and corporations creates two dimensions of accountability: the government regulatory mechanism for human rights conducts and the corporation's duty not to violate human rights.

Therefore, the government must establish laws and rules that dictate what the business can and cannot do, such as implementing or enacting legislation that will either control or monitor some aspects of corporate business activities or enable courts to hold the corporation accountable for misconduct under some form of binding regulation. This could be either through environmental protection law, a labour commission, the implementation of conventions[35] and treaties[36] into domestic law or a governmental department for corporate human rights violations.

[35]UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966.; United Nations, Treaty Series, vol. 999, p. 171; UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965; United Nations, Treaty Series, vol. 660, p. 195; UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966; United Nations, Treaty Series, vol. 993, p. 3; UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966; United Nations, Treaty Series, vol. 993, p. 3.

[36]UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

However, it should be noted that this is just an illustrative view of binding regulations that are required to enforce human rights standards at the domestic level. This will allow governmental bodies to implement the law and monitor its application to businesses. The link between the government and businesses is legal regulations, enforcement, and the ability of the State to hold corporations accountable for human rights violations within its jurisdiction. The link establishes a corporate duty of care to the government, with the corporation's duty arising under this link to respect human rights standards both at the international and national levels. It, therefore, follows that the corporation's international business operation gives rise to a duty of the corporation to respect international human rights law.

The corporation should be liable, where it is at fault, for causing the claimant's injury or damaging the environment during the course of its business operations, unless there is a compelling human rights reason not to hold it liable. This doctrine is a core aspect of the duty of care principle, which Lord Wilberforce set out in *Anns v Merton London Borough Council*[37] as a two-stage test for the existence of a duty of care. The reasoning behind the recommendation of the common law approach of duty of care is that the test created the standard of duty of care, which undoubtedly can be applied in the international arena through the concepts of the General Principle of Law and Positive Law.[38] Thus, the question should be, is there a sufficient relationship of proximity and foreseeability? If so, a *prima facie* duty of care should exist. Are there any considerations which could reduce or limit the scope of corporate liability?

The Link between Corporations and Society

This type of link establishes the responsibility of the corporation in the society in which it carries out its business activities. A corporation is part of a system that is affected by and affects other elements in society.[39] Corporate business operations are connected to or form part of society so that where the corporation violates human rights and the environment, a duty of care is owed in law to that society. Therefore, corporations need to work within the rules and regulations of society, as well as within international law and norms, in pursuit of economic goals to benefit both the corporation and society. This link demonstrates the practical accountability for corporate business activities on society, and so there exists a reputable presumption of a duty of care for the corporation not to cause harm to society and the environment. This also means that corporations should be accountable to their stakeholders[40] in order to achieve improved economic, environmental, and human rights standards.[41] Thus, the corporation can be liable for a corporate act that may either harm society or destroy the environment,

[37]*Anns v Merton London Borough Council* [1978] A.C. 728.
[38]Campbell (2005).
[39]Balachandran (2011).
[40]Bandsuch et al (2008).
[41]Mcbarnet (2009).

regardless of whether it is caused by a corporate official, supply chain or subsidiary if a duty of care is established.

The Link between the Judicial System, Government, and Corporations

Society influences law and so the law is a reflection of society. Therefore, the government is accountable to society through the judicial system and the law of the state, known as the doctrine of separation of power,[42] while a corporation is accountable to society either through the government or its judicial system. Of course, it is adequate that the doctrine of separation of powers is based on the acceptance of the constitutional doctrine of the separation of powers which is typically found in Western societies. Under the General Principle of Law (The appropriate answer depends on the nature or subject of the principle in question. However, whether a fundamental principle of justice rises to the level of a 'General Principle of International Law' can best, though not exclusively, be determined by its existence in the national laws of 'civilised nations')[43] and international law the separation of power is recognised by most judicial systems and can be applied in the concept of corporate liability here. This concept establishes an absolute duty of care for all the actors expressed in ***Diagram 1*** above. Hence, the link between corporations, the judicial system and society can be explained as a system of accountability for the corporation from the stakeholders' point of view, the government, and the judicial system in cases of corporate misconduct.

The Practical Extent of Accountability

Diagram 1 illustrates the practical link between the components in the concept of corporate accountability that give rise to a duty of care. This chapter has broadened the concept of accountability from a restrictive concept of liability to a wider one. Also, as shown in ***Diagram 1***, this study argues that the principle of corporate accountability extends to the various components in the chain of liability, such as the government, the judiciary and society, and not only to the corporation's business stakeholders. Therefore, the assumption is that where the court can establish a relationship and control, it can be inferred that corporate accountability exists through the duty of care it owes to the government, the judicial system, and society. The government and society in the chain can seek to hold the corporation accountable for its misconduct, specifically, where there is a substantial violation of human rights and environmental damage.

This further supports the fact that the corporation and corporate officials will have some relationship with and a degree of control over the corporation's business operations. Therefore, the degree of the relationship and control constitutes the guiding mind of the corporation.[44] As a result, there is a presumption that a corporation should be held accountable to the government and society that

[42]Vile (2012).
[43]Arend & Beck (2014).
[44]*Tesco Supermarkets Ltd v Nattrass* [1971] UKHL.

suffered from its business misconduct, including human rights violations[45] and environmental damages.[46] This is because it can be inferred that the corporation has an unwritten obligation to act in a manner that benefits society as a whole and not the contrary. Likewise, the corporation has an obligation to be accountable to its stakeholders. In other words, one's government and society arguably fall under the stakeholder definition. Thus, where it can be assumed that a corporation owes a duty of care to the government and society, there must be effective sanction and remedy.

As a practical observation, the link also shows how corporations have a duty of care. ***Diagram 1*** shows the interaction between the concept of accountability, the procedure of accountability and the mechanism which society could rely on to hold a corporation accountable for its actions. The theoretical concept deriving from this diagram is that corporate accountability is a step-by-step process. The corporation can be called to account for its misconduct at each stage. The concept of practical corporate accountability is an inclusive concept, which requires the corporation to be accountable to various actors with legal and moral obligations.

The first theoretical question regarding ***Diagram 1*** is: what is the relationship between the actors and to whom is one made accountable to? This question is addressed by ***Diagram 1*** with the connection between each actor. This question regarding the diagram also yields a procedural query about the type of tribunal or court to which the actor is obliged to render account. The second theoretical question asks: who should the corporation be made accountable to? Is the corporation obliged to appear before the tribunal or court of either the host or home state? In this rationale, the corporation's relationships to society make it clear who the corporation is to be made accountable to the government, judiciary, judicial bodies, and any appropriate tribunal or court. In practice, however, this has proven to be a more complex question to answer. Therefore, the correct way to do this is to follow the argument in a systematic approach to accountability that ensures corporations and other actors know to whom they are accountable. This systematic approach will also allow victims of corporate misconduct to address their problems to a specific body on the link of corporate accountability, such as a tribunal or court. Therefore, knowing whom to account to is part of the concept behind ***Diagram 1***. Likewise, ***Diagram 1*** perfectly suggests the systematic approach to accountability in terms of knowing your role as an actor. ***Diagram 1*** can be used to develop a cohesive accountability system which will ensure corporate conduct is checked and accounted for.

By applying this concept to corporate accountability, it can be argued that, in light of the above-mentioned, the primary aims pursued in corporate accountability should closely conform to the notion of legal accountability, which meets the changing sociological circumstances on the domestic and international scenes. Therefore, a rebuttable presumption arises already on the basis of the *de facto* influential position the corporation has in a domestic legal system and society. The actor, such as a corporation, is subject to the applicable legal obligations with regard to the promotion of community interests, such as the protection of human

[45]Clapham & Jerbi (2000).
[46]Werther & Chandler (2010).

rights, the environment, and the core labour and social standards. This, furthermore, is part of its business relationship with the government and society. The position this article shall adopt in conjunction with ***Diagram 1*** above is that there is a presumption that a corporation is legally accountable to the government and society in the way it carries out its business operations due to corporations owing a duty of care to society. This approach will ensure that the imposition of accountability by the state through the domestic civil legal system, which has the capacity to enforce treaty or customary international law, is a result of the interaction between the State, society, and corporations. Therefore, there is a *prima facie* case that the corporation is subject to domestic law, international law and human rights law, as well as other human rights treaties, and is obliged to be held accountable for its misconduct.

The final question related to ***Diagram 1*** concerns itself with the type and level of liability required, and the type of transparency and cooperation required to establish a corporate duty of care. This particular question relates to corporate business operations, corporate conduct in society, and corporate dealings with the government. This accountability should be in the form of providing information about corporate financial relations, the procedure of corporate operations, programmes, risk assessment, environmental risk assessment, the economic impact on the livelihood of the people and trades, and steps taken to ensure the company adheres to human rights law: this is termed 'pragmatic accountability.'[47] In business operations, the corporation should be obligated to provide information about its conduct when it is asked or required to do so, either by the authorising domestic or international bodies. However, it should be noted that corporations may have a' right to silence' under domestic law, international law, and human rights law.[48]

The last question regarding ***Diagram 1*** is why is the corporation obliged to render account to the appropriate authority (i.e. the domestic court, tribunal or international court)?[49] This particular question is linked to the nature of the relationship between the corporation, the government, society, and the tribunal or court. This obligation arises from the relationship between the corporation and the country it operates in.[50] This also means that where the corporation is engaged in business misconduct, it is obliged to be accountable to that host state court or any judicial body created for the purposes of regulating corporate conduct (through referral). If this is not possible, then there must be an international mechanism to hold the corporation accountable for its misconduct.

The connection between the corporation, the government, the judicial system, and society gives rise to accountability. There are several possible explanations for this. Corporations are part of society. This establishes a special relationship between the corporation and society through the business operation. Therefore, the corporation can be held accountable where its actions have violated domestic or international law and human rights law in the country in which it operates.

[47]Sinclair (1995).
[48]O'Reilly (1994).
[49]Blowfield & Murray (2008).
[50]Moran (1996).

Similarly, the relationship between the corporation, the government, the judicial system and society gives rise to an effective, appropriate remedy, and sanction for the victims whose rights have been violated.

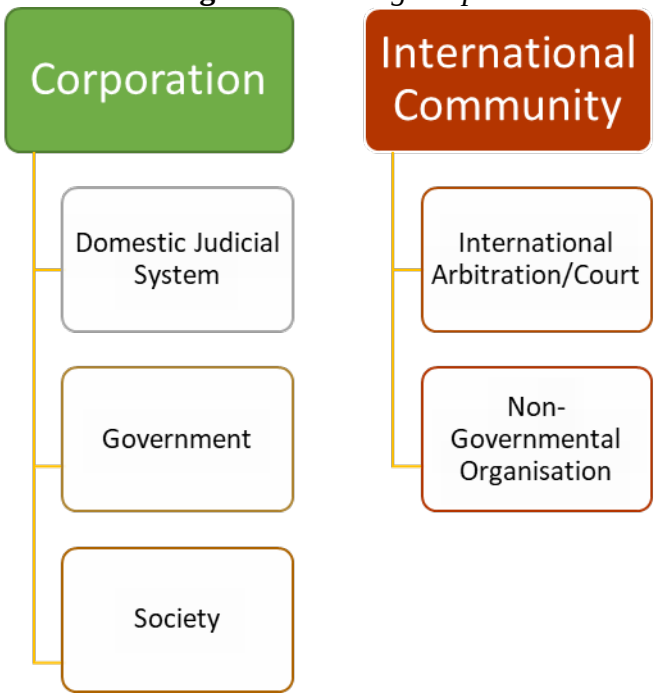
Therefore, the links establish that corporate accountability includes liability, which constitutes legal accountability because legal accountability is a formalisation of social relations.[51] Corporate social relations is a blanket term for interactions between businesses, governments, people, groups, or organisations. Corporate social relationships are composed of an immense number of business operations and environmental interactions that create a climate for the exchange of goods and services in the global economy. ***Diagram 1*** has an element of social relations to prove this. Thus, the suggestion in this particular section of accountability is clear on the established relationship between the corporation and the other actors such as the government and society. This relationship has created the legal concept of accountability. However, the question is how ***Diagram 1*** can plot accountability so that corporations can be held accountable for their actions in a host state's judicial system or an international tribunal or court.

Plotting Accountability

Understanding ***Diagram 1*** requires a mapping exercise. This is done by plotting accountability that closely matches ***Diagram 1***. This procedure is the relationship between the corporation, the government, the judicial system, and society. This is a dichotomous exercise that must follow a rationale of either/or.[52] Therefore, in following ***Diagram 1***, the main question that needs to be asked when plotting accountability is whether the corporation in question qualifies for legal corporate accountability (i.e. duty of care) or whether there is something else, such as the participation of other entities (supply chain/subsidiaries) or the responsibility of another entity. The next question concerns itself with the type of accountability. ***Diagram 2*** below illustrates this view in a hierarchical order.

[51]Friedman (1985).
[52]Sartori (1970).

Diagram 2. *Plotting Corporate Accountability*



This is important in establishing liability for corporate human rights violations because having a strong accountability structure is paramount to the success of finding responsibility for any corporate human rights abuse. Accountability needs a structured hierarchy to establish internal and external control of the business operation. A hierarchical accountability allows lawyers and the court to identify the chain of human rights abuses and serves as a reference point for decision-making. Thus, without a hierarchy, corporate liability for human rights abuses cannot effectively hold its business and subsidiary accountable. Lastly, in the most basic sense, a well-run business functions like the human body. The head instructs the various body parts on how to move and react in unison to perform the simplest of tasks. The notion of establishing corporate liability follows this idea, with the hierarchical decision-making flowing from the top (the head of the corporation) down to the employees who perform various tasks. Accountability is responsible for making the decisions that allow the corporation to function efficiently to achieve company objectives liable for human rights abuses.

The theoretical conception behind ***Diagram 2*** is that accountability takes the form of social relations and business operations. ***Diagram 1*** and ***Diagram 2*** show that corporate accountability may have both horizontal and vertical interactions. Therefore, the concept of accountability is derived from the corporate relationship. This relationship forms the foundation of legal accountability and the basis for analysing the nexus between corporate conduct, government, and society. Hence, as explained above, the concept confirms that accountability exists when corporations, government and society operate within social relations. It is argued in this article that where social relations exist, it does not matter whether there are other elements that aid or give rise to misconduct of the corporation or 'human

rights violations'.[53] The corporation should be accountable to society through the government and judicial system.[54] This is based on the principle of separation of power.[55] However, corporations can also be held accountable through both the government and the judicial system. Therefore, the social relationship is an approach which allows society or the State to build accountability mechanisms which establish a duty of care to hold corporations liable for their misconduct.

Analysis of International Law Accountability for Multinational Corporations' Human Rights Violations across Different Jurisdictions

The International Criminal Court (ICC) demonstrates the international community's attempt to create an architecture of international criminal accountability through an international mechanism that presents an opportunity to enforce human rights by imposing a legal duty on those who violate human rights. However, many actors continue to violate human rights in spite of the fact that their actions will not be met with impunity. These actors include governments, governmental institutions, and non-state actors like MNCs.[56] However, the ICC's jurisdiction must be submitted to; it is not automatic. So, a country can essentially 'opt out'. However, as a matter of history, the evidence does not easily support such a legal concept. What may be clear from this development is that the duties of states, the international community, and non-governmental organisations (NGOs) are indeterminate.[57]

Corporate liability has been introduced in most jurisdictions enabling courts to 'sanction corporate entities for their criminal acts, but there is also a general trend in most countries towards bringing corporate entities to justice for their human rights violations or the criminal acts of their business officers.'[58] In those countries where there is no corporate liability per se, there is either quasi-criminal liability or the introduction of corporate criminal liability being considered. A notable exception is Germany, where the strong feeling is that imposing corporate criminal liability would go against the basic principles of the German Criminal Code.[59] Nevertheless, Germany's regulators have taken robust regulatory action against various German companies as a result of their criminal conduct, imposing large fines which have caused significant reputational damage. Arguably, this has been as effective as any criminal sanction.[60]

In all jurisdictions where the concept of corporate or quasi-corporate criminal liability exists, with the exception of the UK and the Netherlands, is a relatively new concept.[61] 'France was the first European country to introduce the concept of

[53] *R v White* [1910] 2 KB 124.
[54] Peters (2016).
[55] Gwyn (1965).
[56] Kelly (2011).
[57] Hillemanns (2003).
[58] Clifford Chance (2016).
[59] The German Criminal Code (2008).
[60] *Ibid*.
[61] Gobert & Pascal (2011).

corporate criminal liability in 1994 followed by Belgium in 1999, Italy in 2001, Poland in 2003, Romania in 2006 and Luxembourg and Spain in 2010. In the Czech Republic, an act creating corporate criminal liability became law as of 1 January 2012.'[62] 'Even in the UK, 'where criminal liability for corporate entities has existed for decades, many offences focusing on corporate criminal liability have been created in recent years. In the Netherlands, only fiscal offences could be brought against corporate entities until 1976.'[63]

In Belgium, except for offences of strict liability, a corporate entity can avoid criminal liability altogether by proving that it exercised proper due diligence in the hiring or supervising of the person that committed the offence and that the offence was not the consequence of defective internal systems and controls. In Germany, a corporate entity's owned or representative can be held liable within the regulatory context if they fail to take adequate supervisory measures to prevent a breach of duty by an employee. However, this is a defence for the owner and the representatives to show that they had taken adequate preventative measures.[64] In Italy, the corporate entity has an affirmative defence if it can show that it had in place and effectively implemented adequate management systems and controls. Likewise, in Spain, corporate entities will not be criminally liable if they enforce appropriate supervision policies over their employees.[65] In Poland, the corporate entity is only liable if it failed to exercise due diligence in hiring or supervising the offender or if the corporate entity's representatives failed to exercise due diligence in preventing the commission of an offence. In Romania, the corporation is only liable if the commission of the offence is due to the corporation's lack of supervision or control.[66]

In some jurisdictions, measures taken by a corporate entity to prevent the commission of offences may be mitigating factors upon sentence. For example, in Italy, a fine imposed on a corporate entity will be reduced by 50% if, prior to trial, a corporation adopted necessary and preventative internal systems and controls.[67] Even where it is not an express defence, or it is not taken into account expressly as a mitigating factor, the adequacy of a corporate entity's processes and procedures is likely to be relevant both to regulators, prosecutors and courts in determining whether to prosecute and, if prosecuted, in deciding what penalty to apply. In France, the existence of adequate compliance procedures and control systems may be taken into account by the courts in considering the context of the offending, even though compliance procedures do not constitute an affirmative defence.[68] The importance placed on adequate legal systems and controls by applicable legislation, and more broadly by prosecuting authorities and courts, demonstrates the importance of an effective corporate accountability system at the corporate, domestic and international levels.

[62]https://www.britishchamber.cz/data/1364207437484European_Technical_Bulletin.pdf
[63]Simpson (2002).
[64]*Ibid.*
[65]*Ibid.*
[66]*Ibid.*
[67]*Ibid.*
[68]*Ibid.*

On the other hand, the work of other states, international institutions and NGOs since the 1980s has yielded an impressive body of treaties, conventions, self-regulatory mechanisms, judicial opinions and doctrines on corporate accountability.[69] Even though there is a need for coherent codification of international accountability for corporate human rights violations, domestic courts, international courts and hybrid tribunals for international crime have created significant case law that elaborates the substantive norms of human rights accountability.[70] However, these findings cannot be extrapolated to all corporate human rights violations due to the fact that the mechanism, while of great variety and now quite active, only works with full vigour and regularity.

Examples of this include the Alien Tort Statute,[71] *Kiobel v. Royal Dutch Petroleum*,[72] and *Sosa v. Alvarez-Machain*.[73] This approach, while similar to the European states' criminal liability mechanism, has the potential to leave corporate accountability inconsistent and, in many ways, exceptional. In order to accelerate the prospects for corporate human rights accountability needs, national and international community decision-makers ought to take action based on developments that date back to Nuremberg[74] and the European states' concept of corporate criminal liability. The burden of enforcing international and human rights laws and promoting corporate human rights accountability should remain partly on governments and the international community, including international courts and tribunals, but not necessarily on treaties. The international community, international courts, and domestic courts should also seek to codify human rights violations and develop strategies, enforcement and remedies through the tort and civil law mechanism.

However, there are other possible explanations for the argument of corporate accountability dating back to Nuremberg in 1945 and 1946.[75] Two possible reasons that can be observed in this study in addition to the international corporate accountability doctrine are explained here. The first is that a domestic court, through a judicial panel implementing international norms, must include corporate obligations, the duty of care, and definitions of remedies from treaties as well as a universal jurisdiction[76] that will allow international human rights violations to be heard in both the domestic judicial system and an international court. It must also be made clear that this will require states' willingness in addition to a meaningful sanctions process against the corporations involved. The second is that international law, through treaties on human rights and crimes against humanity, must permit the application of universal jurisdiction in tort law and should require states to extradite corporate officials or bring proceedings against corporations for human rights abuses committed abroad. Nonetheless, this article acknowledges that the

[69]Ruggie (2013).
[70]Ahmed & De Jesús Butler (2006).
[71]The Alien Tort Statute (28 USC. § 1350; ATS).
[72]*Kiobel v. Royal Dutch Petroleum*, No. 10–1491 (US Apr. 17, 2013) and *Morrison v. National Australia Bank*, 561 US (2010).
[73]*Sosa v. Alvarez-Machain*, 542 US 692.
[74]Taylor & Chase (1993).
[75]Skinner (2008).
[76]Schachter (1991).

application of universal jurisdiction[77] can be problematic in domestic courts. This study reinforces the notion that international human rights law should have universal application.[78] This will pave the way to a greater emphasis on activating the international mechanism in those situations where domestic courts cannot or will not function effectively.

In addition, regarding MNCs' human rights accountability, this article advocates for corporate liability based purely on the current principle of tort and civil law accountability that has its liability and enforcement through negligence and the eggshell skull rule. The present study raises the possibility that tort and civil law will provide a better mechanism for corporation human rights violations than criminal law, because the tort and civil law may shift the burden of proof to the corporation. However, there is not much distinction between liability under tort law and criminal law, as their liability in legal principle coexists.[79] Nevertheless, this article favours the tort and civil law system, because the requirement of intention and burden of proof is less substantial than criminal law. Therefore, in principle, the concept of MNCs' accountability for human rights abuses should be a discrete subject that must consist of the four interrelated bodies of law: tort and civil law, international criminal law,[80] humanitarian law,[81] and human rights law.[82] Paying too much attention to only one or two of these bodies of law, to clarify a legal concept, will miss the full picture of accountability and remedy for victims under international law and human rights abuses committed in either the host or home state.

In relation to corporate liability, no uniform regulation exists at the international level. Some countries, such as Germany, do not provide for corporate liability at all, while other countries do have this provision, such as Switzerland. However, in the case of Switzerland, existing regulations have yet to be put into practice.[83] Although some countries have successfully provided civil remedies for human rights violations caused by corporations, including the UK, the US and the Netherlands,[84] this list remains limited. Consequently, in a broad analysis of corporate accountability, it is contested that corporate accountability does not exist and, even where it is present, is ineffective and lacks coherence.[85] The current concept of corporate accountability is outdated, unrealistic and does not conform to the current expansion of the global economy. Therefore, there is a need for a concept of corporate accountability which implements a notion of social relations. This means moving the legal notion of corporate personality and impunity to a duty of care not to harm one's neighbour.

It is possible, therefore, that the examinations of liability for human rights violations by MNCs can be looked for in international human rights law,

[77]Bassiouni (2001).
[78]Jayawickrama (2002).
[79] Kadish, Schulhofer & Barkow (2016).
[80]Estevez Sanchez De Rojas (2003).
[81]Newalsing (2008).
[82]Sieghart (1983).
[83]Art. 102 Schweizerisches Strafgesetzbuch, BBl. 2002 (Schweizerisches Gesetzesblatt).
[84]Maduna (2003).
[85]Ratner (2001).

international humanitarian law, and international criminal law. This article will suggest future research in this area as this will help measure MNCs' accountability in the obligations arising from these bodies of law. Having said that, this book will limit this part of the study to only international human rights law accountability as this notion is to develop corporate accountability and remedy through tort and civil law by applying the tort of negligence as the foundation to establish corporate liability for human rights abuses.

Conclusion

Emerging findings from this article thus far state that corporations should be held accountable to the different players in the environments in which they operate, such as governments, judicial systems and society. It is also clear that the government, the corporation, society, and the court are key actors in what has been termed 'the concept of accountability'. However, it has also been found that for the corporation to be held accountable, it must meet the legal relationship laid down in ***Diagram 1*** and ***Diagram 2***; there must be a social relationship between the government, the corporation and society.[86] Thus, if these relationships are established, there is accountability and there must be a legal implication resulting from this accountability. Lastly, it was also observed that where accountability exists, there must be sanctions and effective remedies for victims who have suffered through the duty of care principle. This is because of the particular act arising from corporate business practice or corporate officials' conduct connected to the business purpose.

Furthermore, corporate accountability for human rights violations in international legal systems has proven to be a watershed. This is because there are inadequacies in the existing accountability mechanisms as well as several other legal problems and factual obstacles that hinder the enforcement of human rights law and international criminal law.[87] This is also attributed to the problematic issues that persist, particularly with respect to the following: corporate criminal liability, the extraterritorial application of the law, the attribution of criminal actions to specific agents, the requirements of accountability, the difficulties of extraterritorial investigations, and obtaining sufficient evidence for human rights violations.[88] Hence, looking at corporate accountability in this concept of the duty of care will help to breach the gap that has existed in corporate liability for human rights abuses and environmental damages.

[86]Farkas (2014).
[87]Kaleck & Saage-Maaß (2010).
[88]Simons & Macklin (2014).

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The Philippines Readiness in Addressing Food Security by Minimising the impact of Climate Change

By Jennel R. Cheng[*]

The United Nations has declared that Climate Change is a long-term shift in weather pattern, that could be natural such as variations in the solar cycles. The 1987 Philippine Constitution states that The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature." In 2020, the Paris Agreement , which is the pinnacle of international law on climate change, orchestrated global climate action over the coming decades. Countries agreed to limit global warming to well below 2ºC above preindustrial times, closer to 1.5ºC. In 2023, at the World Economic Forum, Climate Change has been one of the biggest economic factors playing a vital role globally. This means that aside from the global terrorist threat, Climate Change is now a global threat that raises a global concern that needs an urgent attention. In the Metaphysics perspective, this year will bring out more issues on climate change affecting the productivity of farmers specially in Q3 and Q4. Climate change affects the productivity of the people, as well as the food production which is a matter of concern for every world leader.

Keywords: *Climate Change; Food Security; Metaphysics; Paris Agreement; Protection.*

Introduction

Food, Clothing, and Shelter are said to be the basic needs of mankind. This basic principle will make someone understand how mankind is motivated to achieve their goals. The bottom line of everything and anything in this planet is all about achieving the basic needs of man. Of all these basic needs of man, the greatest of them is food. Food is defined as a substance that provides nourishment to our body. Food can either be in solid or in liquid form. Given this definition, we can consider that water or potable water to be specific is an essential need when the term food is being talked about. Food is not limited only to the solid ones like meat, vegetables, bread, dessert or a like. It also includes potable water as nourishment. According to health experts, man can live without solid food for days but not without water. But it takes no expert to tell we cannot live without this planet.

A regular Papal general audience held at the St. Peter's square in Vatican City

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was transferred to a covered venue during winter or other seasons aside from summer time.

From this scenario, it is obvious that Climate or Weather impact the activity of man and other living things on earth. In Metaphysics, climate is governed by the Heaven Luck. Something that only the universe has the call or say as regards to what will be the outcome or happening. Weather describes short term natural events - such as fog, rain, snow, blizzards, wind and thunder storms, tropical cyclones - in a specific place and time.[1] Weather affects people's decision making, it affects political relationships, political decisions, and even daily life decisions. Weather impacts or affects likewise food production, as it is true that weather impacts the activity and life of every living creature on earth, then it follows that during harsh weather conditions even animals and plants in their capacity to produce is affected by weather.

Climate characterises the average weather conditions for a particular location over a long period of time.[2] For instance, there could be rainy, sunny, foggy, snowy weather and thunderstorms in Finland, but in general the Climate there is cold. When Climate Change gets into the picture or takes place; the rainy, sunny, foggy, snowy weather and thunderstorms in Finland will still happen but it will now alter the climate there in which from cold it will be warm. One of the harsh effects of climate change in the Artic like Finland, Sweden and Norway is the Aurora Borealis.

If your children watched the movie Rio[3], it was about a little blue Macaw. The real one was declared extinct back in 2018[94]. Nobody knew that bird will be gone when the movie came out in 2011. This extinction was caused by natural habitat destruction and illegal trapping. If you look now in the present, we're not birds but this planet we're living in being ruined by climate change caused by a plethora of aspects that humans contribute to.

Even if assuming that continuously the supply of these food is sufficient, the scarcity of workers who processed them is another story. People due sudden and harsh weather conditions gets sick and sickness impacts productivity. Climate Change refers to long-term shifts in temperatures and weather patterns.[5]

The World Trade Organization estimates that if total calories from all the food produced were divided among all the people on earth, there would be 2,750 calories per person per day. Since the recommended daily minimum per person is 2,100 calories a day, there are enough calories to feed everyone in the world. But not everyone is getting the fully needed calories and food because it is "not evenly

[1]Douris (2021). WMO Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970–2019) - 14th meeting of the Executive Committee of the Warsaw International Mechanism for Loss and Damage (WIM) https://unfccc.int/sites/default/files/resource/2021.09.20%20-%20WMO%20Atlas%201970 2019.pdf

[2]Global-trends-in-climate-change-legislation-and-litigation-WEB

[3]Rio – Movie Review https://raisingchildren.net.au/guides/movie-reviews/rio

[4]https://edition.cnn.com/2018/09/09/americas/rio-spix-blue-macaw-extinct-brazil/index.html

[5]Impact of climate change on agriculture https://www.futurelearn.com/info/courses/climate-smart-agriculture/0/steps/26565

distributed across the landscape of the world"[6]. Factors that has affected these include climate change and poverty. In the not so advanced countries where poverty is very high, people do not have the means to buy food or have an access to clean and potable water which is the basic necessity of man. They dwell on the streets that make them vulnerable to all kind of common bacterial and viral infections that brings their immune system down and will result to a dreaded disease or even death. In Metaphysics this is called Bazi or the Earth Luck.

Given all these premises what is the real cause of climate change? Then the answer is *human activity*. Primarily on activity like burning fossil fuels like coals, oil, and gas.[7]

Where does each of these natural resources are primary used, why are they needed to be regulated and why will the continuous use of these resources will eventually lead to food security issues in the future. It is therefore the premise of this study as to assess *the Philippines Readiness in Addressing Food Security by Minimizing the impact of Climate Change*.

The use of Coals, Oil, and Gas

Coals

Coals are natural resources that are primarily used by different industries. For instance, coals are used to power up turbines that generate and distribute electricity. Powerplants uses coals to generate electricity and serve its consumers. No doubt that electricity is much needed. According to a study conducted by Schneider Electric conducted in 2010, the demand for electricity would increase triple by the year 2020. In today's advancement of technology, electricity is a partner to achieve these advancements. Computers will not power up without electricity and likewise the internet which is a part of human existence today, will not work without power or electricity. Today, computers without internet are considered useless. Mobile phones which are now mostly smartphones acts and works like computers, and with this principle they likewise need an internet connection for them to be appreciated, thus the role of electricity will be in picture of this to be appreciated. In 2020 when COVID-19 pandemic hitted the world, most industries shifted to online solutions that obviously increased the demand for electricity and energy. During the pandemic a stable internet connection and electricity became the requirement in order for someone to thrive.

In the metal industry, coal is used to produce heat. Coal is coked to produce steel that is used to build bridges, buildings, and use in cars.[8] Every country has infrastructure projects as these infrastructure-like roads, bridges and buildings are signs of progress. They also help to alleviate poverty since in a highly develop city or country many investors would strategically build their business.

[6]Tan, J. Global Food Scarcity: Definition, Distribution, Roadblocks, University of Nebraska Lincoln. https://sdn.unl.edu/global-food-scarcity
[7]Idem.
[8]United Nations Climate Action. https://www.un.org/en/climatechange/what-is-climate-change

Oils

Petroleum Products are results of other liquids and crude oil from burned fossil fuels.[9] These products are used for gasoline and diesel production. Through the years the production of vehicles and demand for petroleum products increased. This includes the aviation industry which primarily use and take advantage of this product. As infrastructures develop, it gives way and access to modes of transportation like trucks, buses, and trains. As years go by man's desire to own their vehicle became a part of custom and even signs of being wealthy, this is why countries like Singapore impose too much tax on vehicles so that its citizens will shift to rely on public transportation instead of using private owned cars.

As exportation is also a means for a country to increase their GDP, its effect will translate into more cargos and shipments that will be shipped by couriers and of course cargo planes, thus it will increase the use of Jet A1 fuel used by airplanes. In some countries like Canada, living in the Northern provinces such as Norman Wells those who resides there need to have their own vehicles even for going to nearby grocery shop.

Gas

Among the three (3) fossil fuels, gas is the most and widely used natural resource. Various sectors benefit from using it. The basic households use gas to cook their food, dry clothes, and to heat up buildings.[10] For the commercial sector, it is use for cooking food, heat up the buildings, alternative power source (generator), and to provide lighting. For the industrial sector it is used to process fertiliser and the transportation sector use natural gas as fuel to create liquified petroleum gas (LPG) that enabled some vehicles to move. Perhaps gas is the most used and most in demand fossil fuel among the 3.

Now that each fossil fuel has been carefully identified on how human activity caused Climate Change, then awareness gets in as to how daily human activity slowly or aggressively aggravates Climate Change, however even this is the case, human still desires to have more and improve. When scenario becomes like this, then regulation or law needs to be in place in order for proper consumption and future generations still take part in the natural resources that this planet has and that the infrastructures that the government has prepared will be beneficial to next generation.

The Libertarians, Progressives, and Efficiency Theory states that if a certain resource is scarce then there should be a rule that should regulate the scarce resource. In the absence of the law or rule that will regulate then this will result in a chaotic society. This chaos will and may potentially lead to Food Security issues and this why regulation (law) and the enforcing body (law enforcement) must be

[9]United Nations, 1267_Atlas_of_Mortality_en https://etrp.wmo.int/mod/resource/view.php?id=16635&lang=ru1267 Atlas of Mortality en-final - 26.07.2021.

[10]United Nations, UNU-EHS_Interconnected_Disaster_Risks_Report_2022_LowREs_FINAL https://s3.eu-central-1.amazonaws.com/interconnectedrisks/reports/2022/UNU-EHS_Interconnected_Disaster_Risks_Report_2022_LowREs_FINAL.pdf

prepared in order to minimise the impact of Food Shortage in the future, thus creating Food Security for the nation.

Global Climate Change Impact

Weather Related Disasters

Climate Change resulted to numerous disasters happening globally. Some countries are severely damaged, while others were spared or at least sustained a minimal impact. It is like your immune system. If the immune system is strong or well-nourished then it is easier for the body to cope from diseases or the body will not be prone to sickness. This is the same situation in terms of climate change impact caused by weather related disasters. Countries that are prepared and have a healthy ecosystem sustained lesser impacts of these climate change weather related disasters.

A comprehensive report of mortality and economic losses from weather and dangerous climate conditions was prepared by World Meteorological Organization.

Global Impact

Table 1a. *Deaths caused by Weather Related Disaster*

(a)	Disaster type	Year	Country	Deaths
1	Drought	1983	Ethiopia	300 000
2	Storm (*Bhola*)	1970	Bangladesh	300 000
3	Drought	1983	Sudan	150 000
4	Storm (*Gorky*)	1991	Bangladesh	138 866
5	Storm (*Nargis*)	2008	Myanmar	138 366
6	Drought	1973	Ethiopia	100 000
7	Drought	1981	Mozambique	100 000
8	Extreme temperature	2010	Russian Federation	55 736
9	Flood	1999	Bolivarian Republic of Venezuela	30 000
10	Flood	1974	Bangladesh	28 700

Source: WMO Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970–2019)

Table 1a shows that deaths increase from the 1974 to 2010. From just 28,000 to 300,000 deaths in 1983. This data proves that while weather is a short-term natural event, the intensity or the impact of weather disturbance is also getting worst. Thus, the flood that took place in 1974 in Bangladesh that claimed 28,700 casualties, intensified further in 1999 in Venezuela causing it to claim 30,000 casualties. It can be factored as well the readiness of Venezuela in terms of flood that resulted in more lives claimed in Venezuela than in Bangladesh.

Africa

Table 2a. *Deaths caused by Weather Related Disaster in Africa*

(a)	Disaster type	Year	Country	Deaths
1	Drought	1983	Ethiopia	300 000
2	Drought	1983	Sudan	150 000
3	Drought	1973	Ethiopia	100 000
4	Drought	1981	Mozambique	100 000
5	Drought	2010	Somalia	20 000
6	Drought	1973	Somalia	19 000
7	Drought	1980	Chad	3 000
8	Flood	1997	Somalia	2 311
9	Landslide	2017	Sierra Leone	1 102
10	Flood	2001	Algeria	921

Source: WMO Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970–2019)

Table 2a data shows which regions in Africa still need intervention in order to prevent drought. Take the case of Somalia, in 1973 there were only 19,000 deaths from drought and in 2010 - instead of decreasing, there were thousand more cases, leaving them a total of 20,000 cases of deaths in 2010. A similar case we find in Ethiopia - in 1973 there were 100,000 deaths from drought, but 10 years later, in 1983 the number of death cases rose to 200%, which was a total of 300,000. This means that despite the drought was worsened, no intervention was done by the government to reduce the number of possible deaths.

Asia

Table 3a. *Deaths caused by Weather Related Disaster in Asia*

(a)	Disaster type	Year	Country	Deaths
1	Storm (*Bhola*)	1970	Bangladesh	300 000
2	Storm (*Gorky*)	1991	Bangladesh	138 866
3	Storm (*Nargis*)	2008	Myanmar	138 366
4	Flood	1974	Bangladesh	28 700
5	Flood	1975	China	20 000
6	Storm (TC)	1985	Bangladesh	15 000
7	Storm (TC)	1977	India	14 204
8	Storm (05B)	1999	India	9 843
9	Storm (TC)	1971	India	9 658
10	Flood	1980	China	6 200

Source: WMO Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970–2019).

Table 3a shows that in Asia, there were intervention done by countries here in order to reduce the number of deaths or casualties. Bangladesh, for instance, had 300,000 deaths in 1970, but in 1991 the death cases was reduced to 138,866. As the projection for climate change, its worsening up to the present, following this theory the data will speak that in Asia, countries are doing counter measures that aims to reduce death and the impact of climate change.

South America

Table 4a. *Deaths caused by Weather Related Disaster in South America*

(a)	Disaster type	Year	Country	Deaths
1	Flood	1999	Bolivarian Republic of Venezuela	30 000
2	Flood	2011	Brazil	900
3	Landslide	1987	Colombia	640
4	Landslide	1971	Peru	600
5	Storm	1997	Peru	518
6	Extreme temperature	2014	Peru	505
7	Landslide	1973	Peru	500
8	Flood	2010	Colombia	418
9	Extreme temperature	2010	Peru	409
10	Landslide	1983	Peru	364

Source: WMO Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970–2019)

Table 4a shows that climate change impact has worsen on some parts of South America. Take the case of Peru under Extreme Temperature. The death rate from 2010 of 409 casualties went up to 505 in 2014. From this data, we can conclude that there are some interventions done by Peru to reduce the impact of climate change. Data shows they have relocated those who stay in landslide prone areas, and this is why their death rate from landslide in 1971 which has 600 casualties significantly went down to 364 in 1983 showing that the government of Peru is working to relocate those who reside in the landslide prone areas to a safer location.

North America and The Caribbean

Table 5a. *Deaths caused by Weather Related Disaster in North America and The Caribbean*

(a)	Disaster type	Year	Country	Deaths
1	Storm (*Mitch*)	1998	Honduras	14 600
2	Storm (*Fifi*)	1974	Honduras	8 000
3	Storm (*Mitch*)	1998	Nicaragua	3 332
4	Landslide	1973	Honduras	2 800
5	Storm (*Jeanne*)	2004	Haiti	2 754
6	Flood	2004	Haiti	2 665
7	Storm (*Katrina*)	2005	United States	1 833
8	Storm (*Stan*)	2005	Guatemala	1 513
9	Storm	1979	Dominican Republic	1 400
10	Extreme temperature	1980	United States	1 260

Source: WMO Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970–2019).

Table 5a shows that in North America and the Caribbean there were many weather-related disasters that claimed lives of many. Take the case of Honduras, from 8,000 deaths in storm in 1974 to 14,000 deaths in 1998. The data shows that a stronger storm has landed or devasted Honduras that resulted to that number or figures.

West Pacific

Table 6a. *Deaths caused by Weather Related Disaster in the West Pacific Region*

(a)	Disaster type	Year	Country	Deaths
1	Storm (*Haiyan*)	2013	Philippines	7 354
2	Storm (*Thelma*)	1991	Philippines	5 956
3	Storm (*Bopha*)	2012	Philippines	1 901
4	Storm	1973	Indonesia	1 650
5	Storm (*Winnie*)	2004	Philippines	1 619
6	Storm (*Joan & Kate*)	1970	Philippines	1 551
7	Storm (*Washi*)	2011	Philippines	1 439
8	Storm (*Ike*)	1984	Philippines	1 399
9	Storm (*Durian*)	2006	Philippines	1 399
10	Landslide	2006	Philippines	1 126

Source: WMO Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970–2019).

Table 6a data shows that the Philippines is a typhoon capital often visited by strong typhoons and storms. In 2011 there were 1,439 casualties, and in 2012 it

went up to 1,901 and in 2013 with Typhoon Yolanda or Hainan a total of 5,956 casualties. The Philippine government has not much disaster preparation in place except for the upgrade in the Weather radar in its National Weather Bureau (PAG ASA). Data shows that Philippines has a lot to improve in its disaster preparation especially in terms of Food Security in combating the effects of Climate Change. Between 1970-2019, Philippines had an economic loss of $10.4.

Europe

Table 7a. *Disaster and Deaths caused by Weather Related Disaster in Europe*

(a)	Disaster type	Year	Country	Deaths
1	Extreme temperature	2010	Russian Federation	55 736
2	Extreme temperature	2003	Italy	20 089
3	Extreme temperature	2003	France	19 490
4	Extreme temperature	2003	Spain	15 090
5	Extreme temperature	2003	Germany	9 355
6	Extreme temperature	2015	France	3 275
7	Extreme temperature	2003	Portugal	2 696
8	Extreme temperature	2006	France	1 388
9	Extreme temperature	2003	Belgium	1 175
10	Extreme temperature	2003	Switzerland	1 039

Source: WMO Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970–2019)

Table 7a data shows that in 2003 a number of countries in Europe were affected by Extreme Temperatures. This extreme temperature is experiencing a colder temperature than usual. At this point the other parts of the world are experiencing rising temperature causing the Artic to melt glaciers.

Table 8. *Number of Disasters reported per Country/territory by WMO Region for the Period of 1970–2019*

Region V (South-West Pacific)			
State/territory	No. of disasters	State/territory	No. of disasters
American Samoa (United States)	4	Niue	2
Australia	226	Northern Mariana Islands	4
Brunei Darussalam	1	Palau	2
Cook Islands	7	Papua New Guinea	38
Fiji	49	Philippines	514
French Polynesia (France)	7	Samoa	11
Guam (United States)	8	Solomon Islands	22
Indonesia	292	Timor-Leste	8
Kiribati	5	Tokelau (New Zealand)	3
Malaysia	65	Tonga	17
Marshall Islands	6	Tuvalu	7
Micronesia, Federated States of	10	Hawaii (United States)	5
New Caledonia (France)	9	Vanuatu	28
New Zealand	55	Wallis and Futuna Islands (France)	2

Source: WMO Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970–2019)

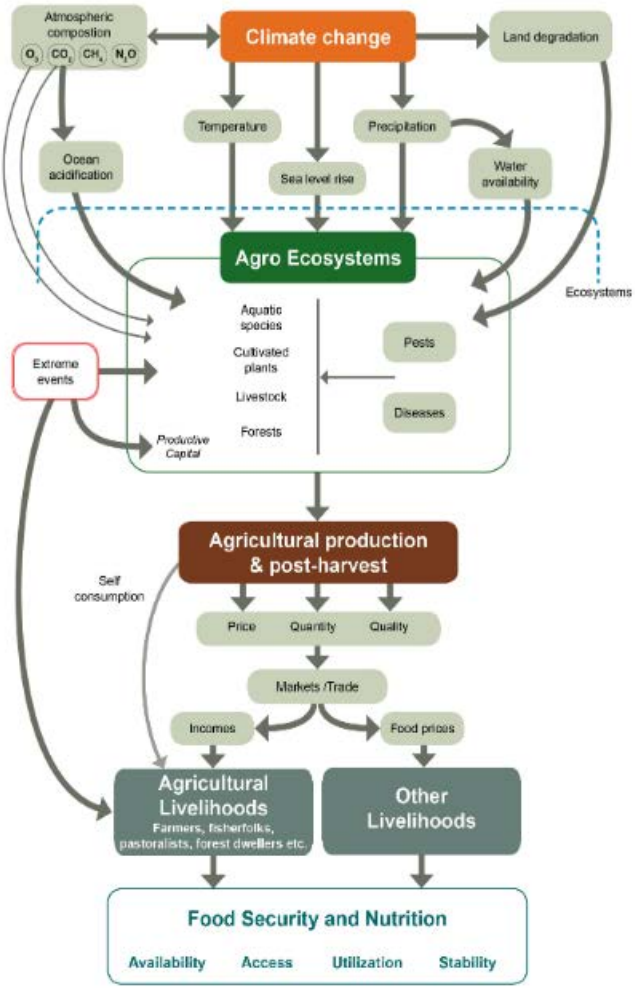
Table 8 shows that Philippines had 514 total disasters reported. With this number of disasters, it is in this premise of this study to assess The Philippines Readiness in Addressing Food Security by Minimizing the impact of Climate Change.

Climate Change Impact on Food Security

"Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life" (World Food Summit, 1996). The second aspect that this research aims to present is the aspect of Climate Change Impact on Food Security. There are many factors that affects the Food Security and one of which is the aspect of imbalance food distribution. If the food produced cannot reached its target consumer the tendency for the food commodity is to rot or excessive lowering of prices just to sell it. During the peak of COVID-19 pandemic in 2020-2021, lockdown is a common scenario all over the world. Just in the Philippines alone vegetables produced from the provinces cannot reached the city resulting to rotting of goods and eventually the farmers who harvested the goods also starve as they don't have an income from the vegetables. Agriculture covers both plants and animals therefore when we say impact of Climate Change in Agriculture, it covers both plants and animals. Some animals may die due to change in climate either too much heat or cold. Fishes in the ocean tends to surface out of the ocean as if there is an abundant harvest but in reality, under the sea, there is too much heat that disturbed their habitat.

Figure 1. The illustration shows the impact of the ecosystem and agro-ecosystem on agriculture production. The relationship of pricing, quality and quantity in its impact to income of each household that defines their buying capability. More than we can ever imagine, climate change has social impact as well. If we look at the example of unsold vegetables from the farm, that will eventually make the farmer sell their carabaos or cattle to shoulder the impact of loss brought by the incident of unsold vegetables. This will eventually affect the morale and the confidence of the farmer including his family as they don't now own anything. Most farmers treasure are their cattle or carabaos.

Figure 1. *Illustration Effects of Climate Change*



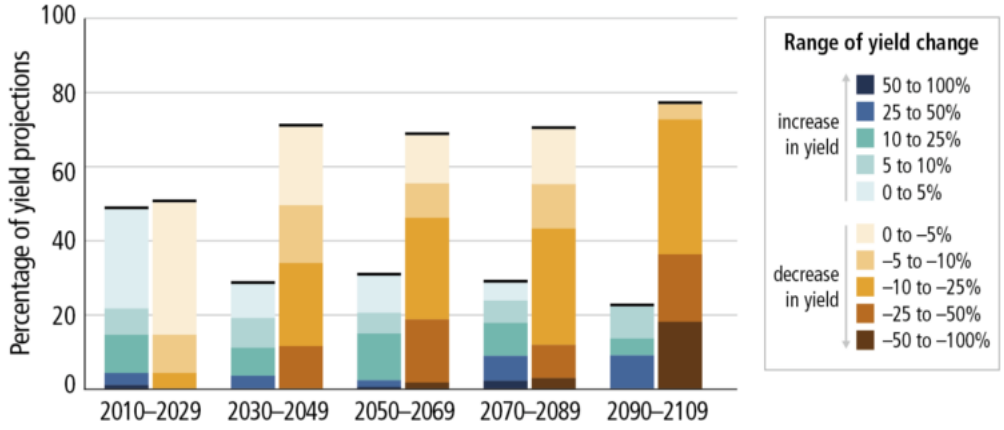
Source: Food and Agriculture Organization of the United Nations

Food scarcity may exist at an individual level, a city level, state level, nation level, continent level, or even a global level,

A shortage of food may happen when not enough food is produced, such as when crops fail due to drought, pests, or too much moisture. But the problem can also result from the uneven distribution of natural resource endowment for a country, and by human institutions, such as government and public policy. [4]

Climate change is among the greatest threats of our generation—and of generations to come—to public health, ecosystems, and the economy. The projected impacts of climate change, many of which are already occurring, like more frequent and intense hurricanes, floods, heat waves, and other extreme weather events Increased heat-related deaths.

Figure 2. *Summary of projected changes in crop yields, due to climate change over the 21st century. The figure includes projections for different emission scenarios, for tropical and temperate regions, and for adaptation and no-adaptation cases combined. Relatively few studies have considered impacts on cropping systems for scenarios where global mean temperatures increase by 4°C or more. For five timeframes in the near term and long term, data (n=1090) are plotted in the 20-year period on the horizontal axis that includes the midpoint of each future projection period. Changes in crop yields are relative to late-20th-century levels. Data for each timeframe sum to 100%*



Source: Impact of Climate Change on Agriculture by Future Learn
https://www.futurelearn.com/info/courses/climate-smart-agriculture/0/steps/26565

Global Responses, Readiness and Intervention

European Union's Response to Climate Change

In 2021, European Law Makers approved the first EU Climate Law 2021. This law contains the so-called "Fit for 55 packages" as regards to its commitment and objective to reduce emission by 55% compared with 1990 levels by the year 2030. This package includes revisions and variety of potential solutions that may potentially be an answer to address the existing issues in Climate Change in the European Union. Among the new regulations are European Union Emissions Trading Systems (EU ETS) and the Effort Sharing Regulation. These covers the topic on renewable energy, transport and land use. The package also aims to address other reforms in legislative rules including climate risk that Climate Change may bring in the European Union.

Middle East and North Africa Regions' Response to Climate Change

In a study prepared by University of Gothenburg School of Business, Economics and Law, the research has emphasised on the Climate Change Policy of Middle East and North Africa (MENA). The region is being concerned with the future impact of Climate Change being located on coastal that could potentially be hit by rising sea levels. On the other hand, since North Africa and the Palestinian Region are mostly desert, they are vulnerable to potential future potable water scarcity. These threats have significant impact on their food production and economic growth. It has been a well-known principle that climate affects poverty. The forecast that MENA had was seen to have a higher temperature in MENA than in any part of the world which means that the potential and threats to drought is very high. In the region it has been noticed the rise of consequential effects of climate change due to air, water and soil pollution. This has resulted to other diseases that lead to unemployment, health insurance cost. With the scarcity of resources, it is no doubt that there is a high tendency for tension between countries will rise because of conflicts and notwithstanding political unrest.

ASEAN's Response to Climate Change

In ASEAN's Final Joint Statement on Climate Change in 2021, ASEAN members recognised that climate change has potential negative impact to basic needs for human life such as food, water, energy, clean and green environment, and health including the supporting ecosystem, and that vulnerable groups, including women, children, older people, people with disabilities and low-income people are disproportionately affected by the adverse impacts of climate change. ASEAN leaders has also called upon the Parties to the UNFCCC to consider how to better understand the impact of climate change on oceans, including through the best available science, while respecting the mandate and competencies of other international legal frameworks and processes such as the United Nations Convention for the Law of the Sea (UNCLOS).

Philippines's Response to Climate Change

In the Philippines, RA 9729 was enacted in 2009 to address the issues of the country's vulnerability to Climate Change. This act has adopted the United Nations Framework Convention on Climate Change (UNFCC) which its ultimate objective is the stabilisation of greenhouse gas concentrations in the atmosphere at a level. The greenhouse effect will prevent dangerous anthropogenic interference with the climate system which should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change. This approach will ensure that food production is not threatened and will enable economic development to proceed in a sustainable manner. The Philippine archipelago and its local communities, particularly those living in poverty will be impacted the most. These effects will create social issues from diseases, food supply, crime and vulnerability of children's future. These children's lives have not reached its peak yet but they

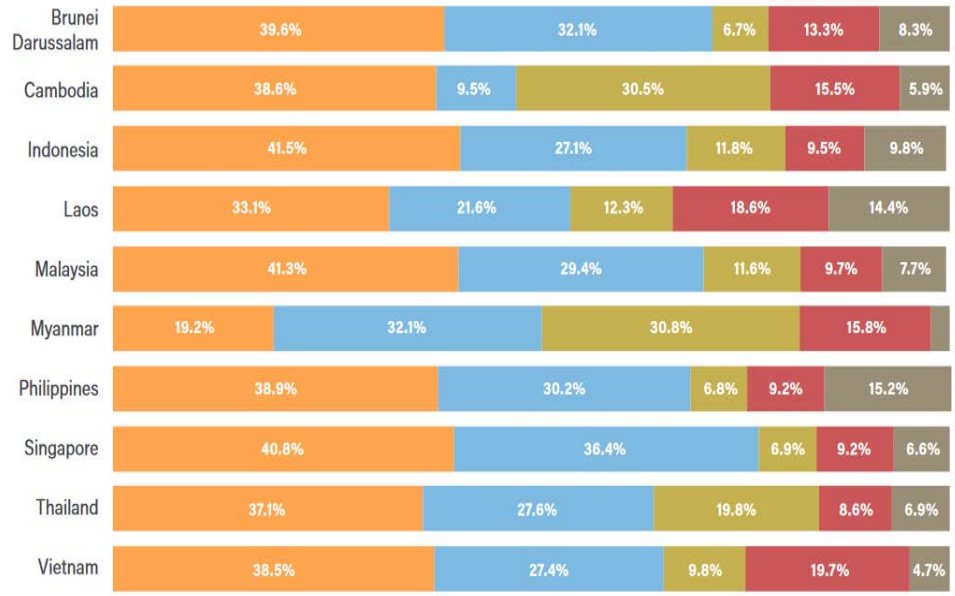
are already forced to live the life WE have given them. A life that will lead to falter if we do not change. Climate Change effects such as rising seas, changing landscapes, increasing frequency and/or severity of droughts, fires, floods and storms, climate-related illnesses and diseases, damage to ecosystems, biodiversity loss that affect the country's environment, culture, and economy. The law provides that the State shall cooperate with the global community in the resolution of climate change. These laws will not patch up the ozone layers. They will not undo the damage that's already done to the environment. But it will drive all of us to have a collective effort in saving this planet for out next generations to come.

The impact of climate change will indeed be felt in the Philippines being a country that produces crops and agriculture. To give an example on this, Palay (rice) and corn are the top produce of the Philippines, however in the data released by the Philippine Statistics Authority (PSA), In Q4 of 2021 and Q4 of 2022 a significance decrease in production has been noticed. For the Palay (rice) from 7,407.58 metric tons to 7,223.12 metric tons, while the corn from 2,125.85 metric tons to 1, 980.05.

Notably in the Climate Change Knowledge Portal prepared by the World Bank Group, it discusses and profile the countries in the world. They have created a Climate Risk Country Profile for policy makers to consider what needs to be done in their legislation that will help to ease out and reduce the risk that Climate Change has. It has been noted that an increase in temperature or heat index is common to all countries especially in the Tropic countries or in the East Asia and the Pacific. The forecast for severe drought is to be experienced from 2080 to 2099. In Section 18, RA 9729 or the Climate Change Law, it empowers the local government units to create initiatives about climate change impact. These initiatives are public awareness campaigns on the effects of climate change and energy-saving solutions to mitigate these effects, and initiatives, through educational and training programs and micro-credit schemes, especially for women in rural areas. As such, metaphysics forecasting using Qi Men Dun Jia will play a vital role as it will not only cover the educational side but including the effectiveness of the strategy to be deployed.

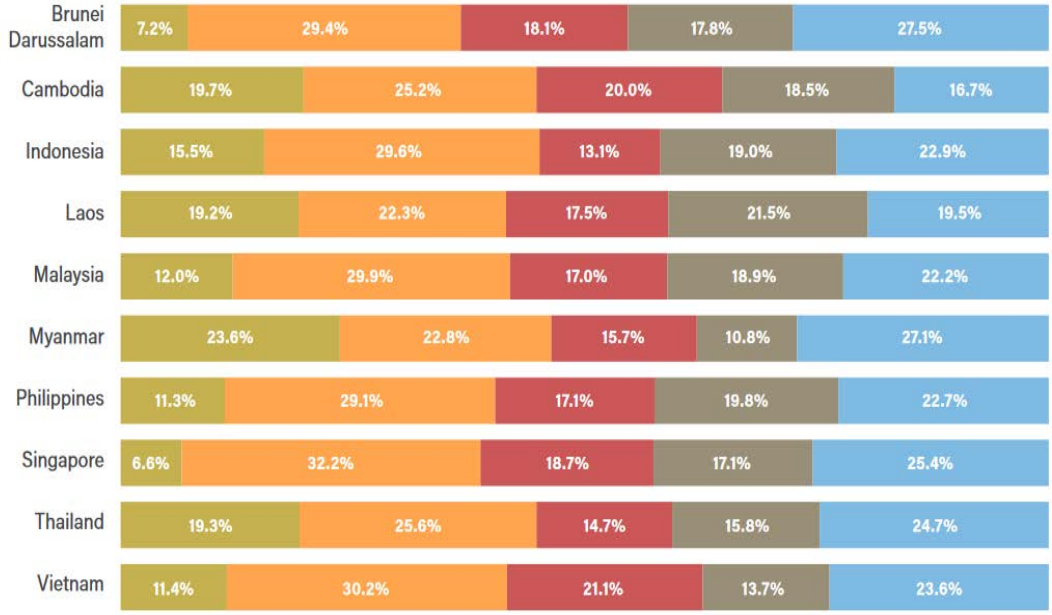
A.M. No. 09-6-8-SC (known as The Rules of Procedure for Environmental Cases) has been approved by the Supreme Court of the Philippines to upheld the Constitutional right of the people to a balance and healthy ecology or ecosystem. This law instructs the courts to ensure that the judgement that they imposed were being followed and implemented.

Figure 3. *ASEAN Survey showing the Filipinos believes that the Government should Shoulder the Cost in Climate Change Measure in the Country*



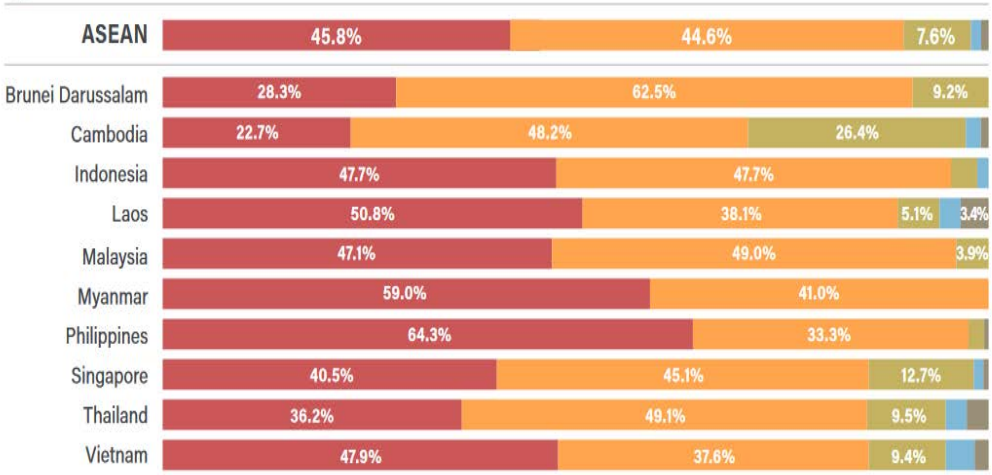
Source: Southeast Asia Climate Outlook 2022 Report by ISEAS Yusof Ishak Institute 2022-CCSEAP-Report-28-Oct, ASEAN Survey 2022 on Climate Change

Figure 4. *ASEAN Survey showing the Filipinos believes that the National Government should discuss to them about Climate Change*



Source: Southeast Asia Climate Outlook 2022 Report by ISEAS Yusof Ishak Institute 2022-CCSEAP-Report-28-Oct, ASEAN Survey 2022 on Climate Change

Figure 5. *ASEAN Survey showing the Filipinos has the Highest Sense of Urgency for Climate Change to be resolved and addressed the soonest*



Source: Southeast Asia Climate Outlook 2022 Report by ISEAS Yusof Ishak Institute 2022-CCSEAP-Report-28-Oct, ASEAN Survey 2022 on Climate Change

Findings

The based on this research the Philippines has a lot of room in making initiatives or projects as regards to its readiness in fighting food scarcity or addressing Food Security. In 2022, Singapore based ISEAS – Yusof Ishak Institute conducted a survey and the results shows that Filipinos are concerned about Climate Change and they want it to be addressed urgently. In their views, the Government should take the cost in making more measures in resolving the matter. Filipinos also believed based on the survey conducted that it is the National Government who should discuss the impact and effects of climate change. There are approximately more than 5 but less than 10 pending House Bills in the Philippine Congress that talks about Climate Change. The pending bills most aimed to either seek for funding to help farmers or to prepare the country further resiliency because of climate. There was no pending bill so far that encourages research and technology to be used as the quickest way to address the emerging threats caused by Climate Change.

Recommended Action

It is further recommended that the National Government of the Philippines through the Local Government Units (LGU) encourage and support researchers to present and fund their study about climate change. This action is aligned with Sec. 18, RA 9729 also known as Climate Change Act of 2009 which states, "*Funding Allocation for Climate Change. —All relevant government agencies and LGUs shall allocate from their annual appropriations' adequate funds for the formulation, development and implementation, including training, capacity*

building and direct intervention, of their respective climate change programs and plans. It shall also include public awareness campaigns on the effects of climate change and energy-saving solutions to mitigate these effects, and initiatives, through educational and training programs and micro-credit schemes, especially for women in rural areas. In subsequent budget proposals, the concerned offices and units shall appropriate funds for program/project development and implementation including continuing training and education in climate change." Funding research projects and presentation like this will encourage young minds to give an input based on the collaborative output together with other researchers across the globe. Research conferences like becomes a silent partner of the government in the implementation of laws. In section 272 of RA 9760 or The Local Government code, states that the additional 1% tax on real property tax may be used for research purposes through Special Education Funds or SEF. Under Sec. 17 (b)(4) of the same code RA 9760 known as the Basic Services provided by the local government units, a research and development must be available as one of the basic services. It is now the challenge of the researcher to the Local Government Unit in the City or Provinces to Support this Research Presentation by adopting the recommendations of this paper.

Conclusions

From all the facts laid out to everyone in the world, it does sound like to stop climate change it seems like you have to stop progress. You have to stop human activity, you have to stop a lot of things that are meant to be done in everyday life. But we can't do all that now can we? This is why the Philippine government will need to support young minds and research in security food supply and most importantly, discover clean and cost-effective energy. These activities of human life will never stop. Even if one country will stop using any carbon emitting device, it will not stop major contributing countries to stop using coal, fuel and other things that will harm the environment. At the very least, while that discovery for clean and cheap energy source is not yet made known to mankind, government laws should exercise regulating activities that will reduce industrial waste from causing harm to the environment and our food supply.

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Influence of Implicit and Visible Legal Cultures on Modernisation of Judicial Systems in European Countries

By Viktoriia Hamaiunova[*]

The functioning of the judicial system depends not only on the law in force, but also on its interpretation on a daily basis by both court officials and citizens, that is, the level of their legal culture. In some national law systems of European states the general direction of visible and implicit culture coincides. So the national deep level of legal values for the most part coincides with the adopted laws that are implicit and visible cultures are difficult to discern. However, if the national deep level, which corresponds to the deep context of the culture and mentality of a given society, comes into conflict with the visible culture expressed in officially adopted laws and the official state ideology, two cultures are formed: visible culture and implicit culture. Unable to influence the decision of the government, people try in every possible way to avoid direct conflict, but they follow their own rules developed by a narrower group of people, thereby strengthening the influence of implicit legal culture.

Keywords: *Legal culture; European legal culture; Judicial Systems in European Countries.*

Introduction

Judicial systems take longer to reform because of the principles and modes of organisation that have been created over several decades and even centuries. Another barrier to change is the professional bodies possessing greater legitimacy and power, confronting any modifications that might take place in their field.[1] On the one hand, this conservatism can be considered as a barrier to the democratisation and transparency of justice. On the other hand, in the context of when society is being eroded, the courts are also assigned the role of guarantor of effective human rights, meaning that they have to accept a weirdly progressive stance.[2]

Despite the wide interaction with representatives of different legal cultures and involvement in global world processes, European legal systems mostly remain conservative in the area of dispute resolution. They retain the restrictive framework that is associated with the Western perception of the dispute and the classical Western judicial system, which is especially expressed in its formalisation.

The majority of European judicial systems are not able to take into account the "mirrors of the distant view" and additional efforts are required to build

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[1]de Sousa Santos (1995).

[2]Dias (2016) at 38.

bridges with current societal agendas. In societies where the majority of citizens have the opportunity to express their opinions publicly and openly, such inconsistencies come to light more quickly. However, in societies where the courts are controlled by certain groups of the population or are too dependent on external political influence, the inconsistency of the judicial system with modern realities goes unnoticed. Instead of openly expressing their dissatisfaction with judicial procedures that do not correspond to society's ideas about the law, the population prefers to find roundabout ways to achieve their goals. As a result, the courts lose their authority.

The administration of justice cannot be reformed by altering only procedural law or substantive law. Internal system changes are important.[3] The level of legal culture of the bodies responsible for managing the judicatures determines the possibility of changes in behaviour necessary to open up justice to citizens in a less complex and more clear way.[4] This article analyses the legal culture that is formed by human resources. Complex issues of the judiciary cannot be identified without an analysis of these resources because the legal culture of the population makes significant modifications to the judicial structure.

What is a Legal Culture?

The concept of legal culture has received different interpretations in different national legal schools. This variability gives the prerogative of the flexibility of using this concept for various academic purposes. However, the ambiguity of this concept can also lead to a deformation of the meaning and judgments about legal culture, if the author and the reader understand this concept in different ways.

In European countries the term 'legal culture' became widely used in the 1960s, but the form of scholarship which the term articulated has a long history which can be traced to Montesquieu's idea of the numerous aspects which impact 'the spirit of law'.[5] Nowadays the term "legal culture" is used widely in European academic literature, but there is no stable definition of this term that would become universally recognised and convenient for use. There are several concepts of legal culture: a) anthropological (everything that is created by man in the legal sphere); b) sociological (the system of legal norms, goals, values, ideals adopted in a given society); c) philosophical (a way of being a person in legal reality). [6]According to some researchers, when the concept of legal culture is used with deficient concreteness the delineation between all of culture and legal culture is vague, and what is the legal seems indefinite.[7] Those who use culture as an analytic notion within a more evolved theory of social relationships and those who understand legal culture as a specific, measurable phenomenon have the most intense

[3]de Sousa Santos (1999).
[4]Dias (2016) at 39.
[5]Weifang (1994) at 37.
[6]Osipov (2012).
[7]Blankenburg (1994a).

discussions and continuous divide.[8] Presumably, the term "legal culture" does not stop evolving, and its modern concept cannot be exclusively legal and must be comprehended through an interdisciplinary approach. Legal culture is a very significant characteristic intrinsic in the life of society. In essence, it should be conceived as a capacious and high form of legal consciousness.[9]

The importation of the notion of legal culture into legal scholarship conceals unfortunate ambiguity. The meaning of the word "culture" is tenuous per se, theoretically and empirically; adding "legal" to "culture" only aggravates the conceptual embarrassment. Some puzzling stems from interweaving two notions of culture. One meaning names a certain world of beliefs and practices related to a particular group. The second meaning is more analytic than empirical, in regard to the output of social analysis an abstracted system of symbols and notions, both the context and product of social action.[10]

A holistic analysis of the legal system as a whole and legal practice is necessary to analyse the legal culture of society. The interaction of written laws and academic thought, traditions of law enforcement and structural features of the system gives a more convex and plausible picture of what is happening, while system and practice are complementary concepts, so one includes the other, although complex practices are neither homogeneous, nor logical, nor fixed, nor autonomous.[11]

Many lawyers and scholars refer to Friedman's definition of legal culture. Although Friedman never comprehensively theorised the conception of legal culture even as he modified it several times in different texts, he persisted in his understanding that the concept was suitable as a way of grouping a number of phenomena into a more wide and general category.[12] Friedman chose the term “legal culture” to name the subject of this social study of law, the "social forces constantly at work on the law," "those parts of general culture - customs, opinions, ways of doing and thinking that bend social forces toward or away from the law".[13] As the values, attitudes, ideas, and expectations regarding law per se and legal institutions, which some society or some part of the society holds, legal culture is supposed to contain phenomena that, in essence, are able to be measured. [14] As an analytic term, legal culture emphasised the role of taken-for-granted and tacit actions that operated on and within the interactions of the legal system and its environment. As a descriptive term, it identified a number of related phenomena such as public knowledge of and attitudes toward the legal system as well as patterns of citizen behaviour with respect to the legal system. These included judgments about the law's fairness, legitimacy, and utility. [15]

Since legal culture is a versatile and multifaceted phenomenon, there are different points of view on whether the law is part of the legal culture. In contrast

[8]Blankenburg (1994a).
[9]Byalt & Demirov (2018).
[10]Silbey (2010).
[11]Silbey (2010).
[12]Friedman (1997) at 33.
[13]Friedman (1975) at 15.
[14]Friedman (1997) at 34.
[15]Friedman (1975) at 194.

to Friedman's point of view, Byalt and Demidov claim that law itself is an element of legal culture which is an element of culture in general. Legal culture is reflected in law, legal practice, has become a basic element of civil society, including the legal culture of both the population and state authorities and their officials, and, accordingly, the legal culture of the entire state as a whole.[16]

Multilayereness of legal culture is underlined by Blankenburg. He proposes to understand legal culture neither in terms of codified law nor as the mentality of legal actors. This approach involves studying the interrelationship between such different levels (of analysis) as legal norms/law in the books; the characteristics and behaviour of legal institutions; legal consciousness amongst legal professionals and the public, and their behaviour in creating, using and not using law. On the one hand, he is critical of Lawrence Friedman's influential approach to legal culture which focuses on social attitudes and the way social interests are translated into law because it allegedly gives too much importance to the 'demand' side in shaping the behaviour of legal institutions. However, Blankenburg does not support the idea that law creates its environment by regenerating its own elements,[17] such as understanding law as an autopoietic system as put forward by Teuber and Luhmann. Blankenburg does not have intention to describe how the law ' thinks,[18] but rather is eager to show how the supply of legal institutions moulds the social environment of demand for their services and argues that this conception of legal culture is the most suitable for comparative study. On the other hand, Friedman's notion of legal culture might be more beneficial for researching the legal culture as a phenomenon within a particular society.

Hence, the debate over Friedman's definition continues. Cotterrell emphasises the complication of testing Friedman's concept systematically and proposes to study "legal ideology". He refers to ideas related to the doctrine of law and the use of doctrine by various groups of legal professionals. However, Cotterrell's approach is not more structured or clearer than Friedman's. One of the benefits of Friedman's conception is that it is not confined to 'insiders' or 'outsiders', because both attitudes towards law are valuable.

One of the areas of comprehensive personal development is the presence of a developed legal culture with an appropriate level of legal awareness. Nowadays, the ability of a person not only to know and understand the legislation, but also to act according to its requirements is important. This behaviour of the subject is formed under the influence of special legal education and educational measures, which are the result of communication with other people, and participation in various spheres of activity. In this aspect, it is important that the legislation meets the modern requirements of society, is effective and efficient.[19]

In a number of countries of the post-Soviet space, the idea of legal culture as a sphere controlled by the state dominates. Aspects of its change are also considered from these positions and changes in legal culture are considered. According to Ukrainian researchers, legal culture is a system of legal values that

[16]Byalt & Demidov (2018) at 19.
[17]Blankenburg (1994b).
[18]Teubner (1989).
[19]Pilgun (2022).

conform the level of legal progress reached in society and demonstrate in a legal form the state of individual freedom, and other social values. It shows the level of evolution of the legal system of law, legislation, legal science as well as legal consciousness in society. Moreover, legal culture also encompasses the unity of all legal values which exist in the legal field. One of the important features of civil society and the rule of law is a high level of legal culture of society, which is based on the principles of legality, respect for fundamental human rights and freedoms. Therefore, legal culture and legal consciousness are closely interconnected.[20]

Legal culture reflects both legal practice and legal science. The level of evolution of legal culture ascertains conscious support of people. That is why for all states the issue of forming the legal culture of the individual and society through the implementation of the functions of law is considered a strategic task of a state.[21] The legal culture guarantees conscious support of the state from the population. Thus, states often look for ways to influence legal culture. However, the concept of "legal culture" has many planes and shades that include the culture of the operation of the law itself, compliance with the legal standards of humanism, the rule of law, internal traditions and customs.[22]

There is an issue of agreeing on a provisional definition that is as broad as possible that can unite social science specialists around research issues. Some authors prefer “legal cultures” in the plural and not in the singular to better reflect their relativity in time and space revealed by the plurality and extreme diversity of legal cultures in the world in general. Secondly, legal culture can be given a broader meaning of legal consciousness, which can be both widespread and academic, determining the place and role of law and the legal system in a given society. Understood in this way, legal culture is inseparable from the legal traditions that develop within the different legal families.[23]

Legal culture is a kind of language for conceiving both legal structures and processes as well as the behaviour of the subjects of the legal system. For giving a definition of "legal culture" it is necessary to understand the term "culture", which is also quite ambiguous and undergoes modifications due to globalisation. One of the most used meanings of “culture” is a concept of a compound system of assertions about how to understand the world and act on it. Variations regarding its meaning and use of these symbols and resources are likely and expected because of its core. Another complexity of studying culture lies in the fact that many cultural resources are discrete and intended for specific objectives, although human interactions and formal organisational features share cognitive as well as symbolic resources. However, it is possible to observe general models so that we are able to observe culture, or cultural systems, at specified scales and levels of social organisation.

Modifications in legal culture are one of the conditions for reforms in the law enforcement and judicial system, improvement of legislation, ensuring its effectiveness. Law and legal consciousness exert a regulatory influence on society.

[20]Tatsiy & Danilyan (2019) at 124.
[21]Pilgun (2022).
[22]Slavova (2020).
[23]Otis, Cissé & Deckker (2010).

The essence of the influence of legal consciousness is that it is a subjective phenomenon that functions on the basis of people's attitude to law, expressed in legal ideology and legal psychology, awareness of the value of law.[24] Blankenburg uses the concept of legal culture to mean where, why and when people use legal institutions, and how those institutions differ in societies. He considers using of legal institutions as a principal element of legal culture. Legrand focuses on the specific role of legal professionals and their mindset ("mentalité") to give definition for legal culture.[25]

Accordingly, there are two opposing points of view in the definition of legal culture: the notion of legal culture, indistinguishable from other forms of normative ordering or social control, and the too simplistic notion of state law. Recognition of the influence of culture on law and rights on culture, as well as limiting the recognition of the identity of legal forms and doctrines, is a kind of golden mean in the social and legal controversy that affects the very concept of culture. Some authors prefer to use the term "legal culture" in the plural to emphasise their relativity in time and space, the extreme diversity of legal cultures in the world as a whole. Therefore, legal culture is a kind of language for understanding both legal structures and processes, and the behaviour of the subjects of the legal system.

Implicit and Visible Legal Cultures as Types of Legal Culture

Some researchers argue that legal culture is that which is generated and studied most efficiently among legal professionals, while others claim that such a narrow term belies the theoretical usefulness of the approach to legal culture as a way of mapping the relationships between everyday life and law.[26] To the extent that models of behaviours and attitudes are detectable within a society and vary from one group or state to another, it is possible to speak of the legal culture(s) of groups as well as organisations or states. As an example of deviations within legal cultures, Friedman distinguishes the internal legal culture of professionals working in the system from the external legal culture of citizens interacting with the system.[27] Many authors have come to the conclusion that there are differences in legal culture between different social groups in society. The more authoritarian and patriarchal/ traditional people are, the more they are inclined towards rejecting the rule of law; the higher their wellbeing, the higher they value the rule of law. However, education and age demonstrated statistical importance in the model.[28]

In the field of legal study, it is common to place a strong focus on paying close attention to authoritative sources, such as court declarations in public forums and established legal theories. However, this commitment usually engenders a disconcerting disjuncture for graduates of legal university, as they grapple with a

[24]Pilgum (2022) at 50.
[25]Arold (2007) at 10.
[26]Friedman (2006).
[27]Friedman (1975) at 194.
[28]Vuković & Slobodan (2013) at 70.

discernible dissonance between the doctrinal exposition within academic confines and the nuanced application thereof within the diverse echelons of legal practice. A similar dilemma arises for the layperson who, armed with a limited understanding of the law obtained through formal channels, primarily consisting of publicly available legislative enactments, official allocutions, and documented decrees, finds themselves an uninvited observer within the court's or judicial precincts. Within this vantage, they are privy to an ostensible duality: a certain duality in the conception of the law, one that is officially proclaimed and the other that is put into action. Given this dynamic, attempts to understand legal culture solely through approved sources run the risk of distorting the true fabric of social legal consciousness. Consequently, it becomes incumbent to delineate and discriminate between the visible and implicit legal cultures, a dichotomy asserted by the author of the present discourse.

Visible legal culture encompasses generally accepted laws, court decisions, official interpretations of laws and these decisions by authorised state bodies, public interviews and public speeches by government officials and lawyers, sometimes academics and academic articles. This culture is announced publicly and one of its purposes is to present the official position of the state regarding the legal system. Its importance for the development of law cannot be underestimated. It is within the framework of this culture that state propaganda, training in universities and other state institutions and interaction with foreign states at the international level is carried out.

However, the influence of the legal culture of both an individual and society is significant, and in some cases the main influence is implicit legal culture. This culture is not open to the general public and rarely finds expression in official documents, it represents unwritten rules that correct the daily behaviour of both lawyers of different levels and other subjects of law. The expression of this culture can be traced in anonymous interviews and in documents related to the investigation of certain offences.

In some national law systems of European states the general direction of visible and implicit culture aligns. So the national deep level of legal values for the most part coincides with the adopted laws that are implicit and visible cultures are difficult to discern. However, if the national deep level, which corresponds to the deep context of the culture and mentality of a given society, comes into conflict with the visible culture expressed in officially adopted laws and the official state ideology, two cultures are formed: visible culture and implicit culture. It is not always possible to find common ground between these two cultures and ways for their merging. The proportions of visible and implicit cultures are not always the same. A particularly serious difference can be observed in the countries of Eastern and Southern Europe, where one can observe significant discrepancy between social groups in society and there are restrictions on freedom of speech.

Not being able to express their point of view publicly, some people cease to associate themselves with the visible legal culture, do not set themselves the task of changing it in any way, and the implicit legal culture develops more autonomously. It can also happen when introducing institutions and legal values at the state level, for which the population is not yet ready. Unable to influence the

decision of the government, people try in every possible way to avoid direct conflict, but they follow their own rules developed by a narrower group of people, thereby strengthening the influence of implicit legal culture.

The illustrations of judicial reform attempts are a good example of the importance of legal culture and understanding of its aspects. For example, one can observe changes at the legislative level that did not lead to significant changes in the work of the courts when trying to reform the Portuguese judicial system.[29] Changes at the legislative level are not capable of providing unilateral changes in the work of the judicial system. The functioning of the judicial system depends not only on the law in force, but also on its interpretation on a daily basis by both court officials and citizens, that is, the level of their legal culture. Hence, a radical break with the structures that were formed within the legal culture of a given society is not possible without equally radical changes in the legal culture of citizens and court staff. This demonstrates the multilayerness of legal culture and its deep interactions with other aspects of society. Thus, legal culture is a fairly complex independent system and is not amenable to unilateral control from the top.

The existence of such components of culture as visible and implicit culture explains the difference between the spirit of the law and the everyday practices of the judicial system and its professionals which remained considerable, and is still obvious today, apparently translating into a distinction between law in books and law in action. According to Boaventura de Sousa Santos, this situation simply represented something that was apparent on a much wider scope in Portuguese society. The state strengthened itself at the level of its judicial-institutional matrix and redoubled its ways of action, expanding the apparatus and respective bureaucratic services. The state officialised and formalised enormous realms of social life, although in relation to effective and factual state practice, the combination of its omissions and actions in flowing social regulation, official actions by the state are waning and it looks like have lost the power and stimulus to mobilise the remedies formally available to it.[30] However, this did not demonstrate a drastic rupture with the structures and, primarily, the legal cultures and court practices succeeded from the Estado Novo regime. As several studies have approved, passing new legislation is not enough to modify the court culture of its actors who are first and foremost liable for enhancing performance within the realm of justice.[31]

Therefore, legal culture consists of visible culture and implicit culture. And both of its components have an impact on the development of the legal system. At the same time, the legal culture of society, a group of persons, or a person is the elements of the legal system, representing a social phenomenon that reflects, generates, and models, respectively, the legal life of society, a group of persons, or a person in all its diversity.[32]

[29]Dias (2016) at 24.
[30]Dias (2016).
[31]Dias (2016) at 26.
[32]Osipov (2012).

Ways to Study Legal Culture

Modification of the right to a fair trial is certainly a matter of legal science. However, relying solely on black-letter law is not enough to study the context and modern challenges of this issue. As Hoebel noted, law which is taken out of its cultural matrix loses its meaning[33]. In order to understand what a legal concept actually means, legal cultural factors should be taken into account.[34] This concept of cultural pluralism is not compatible with natural law theory (especially the postulate of eternal and unchangeable legal principles) and emphasizes the differences of different societies in the regulation of legal relations.[35] In the legal cultural view, law is intrinsically related to its human environment and cannot be considered autonomously[36] Therefore, formally recognised legal sources such as legislative texts or judicial precedents make it impossible to understand the true meaning of a legal concept, unless the researcher has the same worldview as members of the society in whose legal system the concept exists. Therefore, this aspect is most evident in comparative legal studies[37]. However, even when studying the legal issues of one's own legal system, the researcher should be careful when using sources to interpret legal meanings, since most legal concepts undergo significant changes after being introduced into one legal system from another, but retain their original names or literal translations.

Legal culture can solely be efficiently considered through its numerous and diversified means of expression which recognizes around the legal order or the legal system.[38] Most researchers use a broad interpretation for the expressions of legal culture. This approach to legal culture requires that the law should inevitably be grasped from the multiple viewpoint of its nature, its sources, its function, its aims and its implementation. The legal culture can then be understood through both written and customary norms, the institutions, practices and values of a particular community. This, implies considering ways of seeing, thinking, feeling social phenomena as well as economic, political, cultural, social aspects and ways of secreting state responses, etc.[39]

He Weifang offers an even broader approach to the interpretation of law. He considers it necessary to consider law not just as an object of legal culture, but as an object of culture in general. Insisting on the difference in the study of legal culture and the history of the written law and of legal theory, he suggests that legal culture concerns not only the ideas of eminent jurists or philosophers, but also the study of the ideas of different classes of society regarding law. As a result, there is a need to study both "formal histories" and drama, novels, poetry, notes, diaries and popular verse, and hence recourse to methods of such disciplines as folklore, cultural anthropology and sociology. The need for such a broad interpretation is explained by the fact that the achievement of practical results in the field of law

[33]Hoebel (1954) at 357.
[34]Husa (2016).
[35]Husa, (20160 at 213.
[36]Baaij (2012) at 205-207.
[37]Husa (2016) at 213.
[38]Otis, Cissé & De Deckker (2010) at 294-295.
[39]Otis, Cissé & De Deckker (2010) at 295-295.

can only be achieved by understanding the mood of society and studying the administration of justice.[40] This approach makes it possible to see a very large and detailed picture of a particular legal issue, however, it is difficult to achieve from a practical point of view. The application of methods of several disciplines and the processing of a huge amount of information of different levels requires a large amount of time and human resources.

Another important factor to pay attention to when studying legal culture is paying attention to countercultures and subcultures, as well as their interaction with the dominant culture[41]. Although their impact on the legal system and society is less visible and more difficult to study, it is the understanding of these types of culture that can clarify some aspects that seem illogical from the point of view of the dominant culture.

There is also a narrower approach to studying legal issues through the prism of legal culture. Ćapeta proposes to distinguish of three components (legal culture, particularly valid legal sources, legal interpretation and court argumentation). [42] Another approach is the conception offered by Hoecke and Warrington. It includes six components as factors in developing a paradigm for legal culture: 1)a conception of law – its definition and its connection to other social norms; 2) a theory of valid sources of law; 3) a legal methodology, including a theory of interpretation; 4) a theory of argumentation; 5) a theory of legitimisation; 6) a common fundamental ideology (a common fundamental world view and common fundamental values). According to Ćapeta, this is suitable for comparing legal cultures of different levels of similarity (both those that differ from each other and those that are similar). At the same time, to identify differences, it is enough to analyse several elements from the list.

When studying legal culture, one should take into account that the ways in which legal languages are used are different. Features of legal culture can be observed by analysing the fundamental values, common beliefs, ways of thinking and interests of lawyers, legislators, judges, scientists, as well as individuals and enterprises.[43] Searching and analysing legal phenomena and legal terms that have no analogues in other legal systems and cannot be translated is one of approaches for researching legal culture. For example, we can note the "innere sicherheit" as a key concept of German understanding of law, comparison of ' trust' and fiducia in noting the similarity or dissimilarity between criminal justice in Italy and the United Kingdom. We can also refer to the Japanese concept of law and its role as articulated through particular ideas of dispute sincerity, right, obligation, contract, harmony, consensus and consultation.[44]

The study of legal culture also involves historical analysis. Historical continuity is an important characteristic of legal culture, because once formed, legal culture becomes utterly stable and persistent and it is not easily modified by

[40]Weifang (1994) at 42.
[41]Weifang (1994) at 42.
[42]Ćapeta (2008) at 23.
[43]Husa (2016) at 213.
[44]Husa (2016) at 213.

conscious action[45]. Thus, in order to study legal culture, it is necessary not only to understand the terms, concepts and views of the particular society themselves, but also their origins.

One of the key aspects of studying legal issues from the aspect of legal culture is the analysis of attitude to the rule of law. If the level of the rule of law is high, there is a strong correspondence between the written law and the real level of development of society[46]. Thus, the image of legal culture at the level of official rhetoric (written law, academic articles) expresses a real understanding of law by members of society). However, the low level of the rule of law signals a situation where there is a stratification into visible culture and implicit culture, and sometimes their confrontation, as discussed in the second paragraph.

Using not only academic sources and current law to study aspects of legal culture, but also the results of anonymous interviews with representatives of the judiciary and the institution of mediation[47] to identify the power of different legal cultures. For instance, to conduct an interview of representatives of the judiciary and the institution of mediation, drawn from different legal cultures, in order to reveal the hidden moods of a certain part of society (one of the aspects of implicit culture). Moreover, gaining insight into the practical application of traditional litigation and mediation to resolve disputes will reveal such an aspect of legal culture as law enforcement.

Empirical studies of legal culture often involve looking for links between support for certain values and legal instruments. For example, Gibson and Caldeira assume that people who appreciate liberty more are more likely to support applying of the rule of law universally and are less likely to see law as a tool of social control or repression.[48] Another useful approach in empirical studies of legal culture is to find a connection between legal values and the social position of the respondents, which makes it possible to see the presence of a dominant culture, subcultures and countercultures within society.[49]

Hence, the ways of researching legal culture vary depending on the goals and scope of research. Using very broad approaches requires significant resources and carries the risk of unprofessionalism, but narrow approaches reflect a very flat and limited view of the research questions posed. The application of several methods can avoid bias in the conclusions and helps to have a deeper and more open-minded understanding of legal cultural issues.

Concluding Remarks

Being a relatively new term with a rather old concept, the term ‘legal culture’ has received different interpretations (from social control to part of state law).

[45]Weifang (1994) at 40-41.
[46]Vuković & Slobodan (2013) at 56.
[47]Interviewees shall be judges (or former judges) who also have experience of mediation practice
[48]Vuković & Slobodan (2013) at 56.
[49]See, for example, Vuković & Slobodan (2013) at 56.

Sometimes it is also used in the plural in order to highlight the characteristics of a particular society in time and space. Legal culture has many expressions from academic thought to law enforcement and serves as a kind of language for interpreting the spirit of law.

There are several types of legal culture, depending on the sample of members of society on a geographical basis, social principle, and so on. The demarcation of a legal culture into external and internal factors has not been confirmed in empirical studies. Consequently, the culture of lawyers as a separate class of society is not, by definition, a pronounced legal subculture. Based on the discrepancy between the written law and academic thought with law enforcement and unwritten laws operating within some societies, one can assume the existence of a visible culture and implicit culture.

The functions of legal culture exist only in the doctrine of the post-Soviet countries and symbolise a positivist approach with an emphasis on the supremacy of the state over law. It can be assumed that their presence indicates the secondary nature of human rights, including the right to a fair trial in relation to the tasks of the state in those countries where the concept of the functions of legal culture has been developed.

Because it has a direct impact on how a state's legal system is reformulated, it is crucial to investigate both visible and implicit legal cultures. Reforms enacted within the judicial system must be in line with the society's legal tradition in order to reflect its unique concepts of justice and be effective. Failing this congruence, people may stick to their own ideas of justice and try to avoid taking responsibility for wrongdoing or wilful contempt for some statutory measures. Furthermore, the observance of human rights serves to mitigate a substantial disjunction between implicit and visible legal cultures.

There are broad and narrow approaches to the study of legal culture. If the former contains a challenge in the search for resources and professional skills, then the latter contain the risk of a biased and limited opinion about the object of study. Balance can be achieved by a combination of several methods.

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European Strategy for Regulating Online Video Games and New Digital Markets: A Comparison of Emerging Opportunities and the Current Italian Regulatory Framework

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Europe is targeting video games for economic growth, employment and increased sales volumes. This is a booming sector whose strong push toward innovation that contributes to the digital transformation within the European Union. In fact, the use of video games is not only limited to leisure activities but also has strong uses in the area of skill enhancement, especially digital, education as well as aiding advancement in technological areas. With regard to turnovers, one context greatly impacted by this sector is online sales of digital goods sold in online video games. Alongside the attractive sales volumes, however, are serious risks arising from noncompliance with existing regulations within such new sales contexts. This paper therefore aims to analyse these new contexts, assessing concrete risks and examining specific means of protection to create a safer environment for players and buyers of goods within video games.

Keywords: *Video games; Contractual obligation; Children; Compliance*

Introduction - The new European strategy for regulating video games

The European video game sector is the fastest growing cultural and creative sector in Europe, with an important potential for growth and job creation, and contributes to Europe's digital single market[1].

The European video game industry consists mainly of small and medium-sized enterprises (SMEs) and start-ups, which play an important role in the innovation and growth of this sector.

In addition, the video game industry has a comprehensive value chain based on innovation and creativity, including a wide range of skills and know-how.

It is also necessary to consider that technological developments in the online video game industry are becoming increasingly important and are also extending to other sectors and industries such as construction, design, retail, education, virtual/augmented reality, and online marketing and shopping.

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[1]European Commission (2022).

Video games are one of the most popular forms of entertainment in Europe, along with other entertainment activities, as a 2019 Eurobarometer study found that 27% of Europeans play online games at least once a month, compared to 48% who listen to streaming music and 47 % who watch movies or TV shows on online platforms.

In recent years, the video game industry has maintained steady and unstoppable growth, even during pandemic period, with interesting percentages in terms of both employment and turnover. According to data collected for 2021, turnover stood at 23.3 billion euros with constant growth rates that did not stop even during the pandemic[2].

One dynamic that has well accompanied the evolution of these volumes is certainly related to the important changes in the purchasing dynamics of digital goods and services related to the gaming context, which will be discussed in detail in the course of the paper. The phenomenon that we need to examine preliminarily is the incidence of online purchases in the specific context of gaming.

The world of shopping is constantly evolving. The strict division between the physical and digital contexts is no longer enough to represent the real dynamics of the sales of goods and services, not only in Italy but also on a global level. As far as Italy is concerned, sales volumes are constantly growing, demonstrating a general attitude of trust towards online services. According to the latest Istat report[3], the Italian National Institute of Statistics, in 2022 one person out of two used the internet to make an online purchase, with a certain homogeneity based on gender and geographical distribution, a predominance of young people, who account for 48.2%, slightly contracted in 2022 due to the end of the pandemic restrictions.

This general positive trend underlies the evolutionary mechanisms of purchasing contexts, such as the Metaverse and virtual worlds 4.0. [4]and the consolidation of areas that are already fully established. With regard to the latter, the video games industry – the analysis of which will be the subject of this contribution, deserves to be mentioned and treated separately.

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[2]EY (2021). For more data on gaming rates during the pandemic, see the reports at https://www.statista.com/statistics/1111761/gaming-behavior-during-the-coronavirus-covid-19-lockdown-in-italy.

[3]As indicated in REPORT_CITTADINIEICT_2022. In 2022, 48.2% of the population aged 14 and over used the Internet in the 12 months preceding the interview to shop online. About a third (32.3%) of these people ordered or bought goods or services in the three months preceding the interview, 10.6% during the year and 5.3% more than a year ago. Men (52.4%, 44.4% of women), residents of the North (52.8%, 40.3% of the South) and, above all, young people aged between 20 and 20 are more inclined to buy online and 24 years old (75.7%). Between 2020 and 2021 there was an increase of 6.5 percentage points in the use of e-commerce, thanks to the increase in users who made at least one online purchase in the last three months preceding the interview (from 27.3% in 2020 to 34.8% in 2021). In the last year, on the other hand, there has been a significant decrease both as regards the overall indicator (which goes from 50.3% in 2021 to 48.2% in 2022) and for that referring to purchases in the last three months (from 34 8% in 2021 to 32.3% in 2022). This change is justified by the end of the restrictions due to the pandemic.

[4]With regard to the content of the European Commission's new Virtual Worlds and Web 4.0 strategy, see the information in the link https://digital-strategy.ec.europa.eu/en/library/virtual-worlds-and-web-40 -factsheet

Video games represent a significantly widespread entertainment worldwide, a factor of cultural expression and aggregation in large communities. However, beyond the purely recreational aspect, it is a scenario that hides behind it a fascinating world full of opportunities.

One of the main distinguishing features is the very high prevalence of the phenomenon. In Europe, video games involve all ages, with half of the players being in the 6 to 64 age group, with the largest proportion/with a higher percentage between the ages of 45 and 64.

Regarding minors, on the other hand, about whom we will discuss in more detail later in this article, the percentages are certainly higher, since 73% of children between 6 and 10 years old belong to this category, 84% of those between 11 to 14 years old and 74 of young people 15 to 24 y.o.[5].

Currently, there are estimated to be more ninety thousand jobs in Europe and with an ever-increasing number of operators in the supply chain such as cultural creators, game developers, designers, writers, music producers and other artists. This sector therefore represents a crucial link, straddling the digital and cultural sectors and accounting for over 50% of the added value of the overall EU market for audio visual content.

Due to the steady growth and the substantial increase in turnover, a new focus on this sector has arisen, which led to the development of a project focusing on this area, 'Understanding the value of a European gaming company'[6].

The true distinctiveness of the video game industry lies in its intimate connection with the themes of the innovation topic, as well as in its bivalent nature, located between the high tech and the creative sector. The creation and development of such systems require the use of increasingly sophisticated and high-performing technologies and infrastructures, whose competencies cover increasingly broad areas such as design, retail, education, marketing, virtual/ augmented reality and online sales, a fundamental part of the sustainability of online business.

Thus is therefore a field that has the undoubted merit of promoting innovation in Europe, the development of new technologies, such as artificial intelligence and virtual and augmented reality, contributing to the growth of digital infrastructures and skills.

Its implications, therefore, do not remain constrained to a purely playful context, but instead find application in contexts with major implications such as teaching and training, where they help develop creativity, critical thinking and

[5]Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A digital decade for children and young people: the new European strategy for a better internet for children (BIK+). https: eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0212 .

[6]For project details see https://digital-strategy.ec.europa.eu/en/policies/value-gaming The project "Understanding the value of a European gaming society" provides insights into the numerous economic, cultural, financial and social issues that video games have on our society and how this industry affects a number of policy areas. The related activities were developed in 2022 and had two main objectives: 1) to deepen the understanding of the video game sector in order to identify future policy options; 2) to create and cultivate a network of actors and experts in the field of the EU video game industry, in order to facilitate future exchanges and support their growth.

technical knowledge. The positive effects examined, however, are also accompanied by negative aspects.

The flip side of the coin, in fact, is identified in the possible undesirable effects associated with overuse which can lead, for example, to negative consequences on social relationship, dropout rates, physical and mental health and lower academic performance. The conclusion is that becoming a habit for user is necessary for the survival of an app, and therefore/thus the goal of developers is to implement mechanisms that encourage its use.

By taking advantage of systems calibrated and studied on our brain structure, with the application of the most proven principles of neuroscience. In a nutshell, mechanisms are exploited that increase levels of dopamine, a neurotransmitter that generates the sense of pleasure linked to a certain experience. Added to this are mechanisms that associate more or less random reward systems which are accompanied by an increase in dopamine, generated precisely by the dopamine[7].

For this reason, the *gaming* industry can turn into a psychologically risky environment, also due to a disorder that WHO has labeled as a "gaming disorder", i.e. the pathological addiction characterised by altered control over gaming and on the normal management of one's life. In this hypothesis, more priority is given to continuous and intensified gaming over normal daily activities such as study and work[8].

The summarised framework examined indicates the presence of two essential factors underlying these dynamics: the attempt to keep the player within the virtual environment, in order to increasingly (retain the user and promote purchases within the game) build user loyalty and promote in-game purchases; and the opacity inherent in the design, which as we shall see, sometimes follows illegal logics to further the game related business model.

The negative implications have repercussions first and foremost on the contractual level, with respect to sales that are made within the online gaming stores, for a whole series of consequences in terms of the rights recognised by the law, which will be examined in this contribution.

Further concerns then arise from the perspective of the processing of personal data collected during interaction with gaming systems, regarding the economic monetisation of players' behaviours and preferences for marketing and profiling purposes. This information is of fundamental interest to developers, but it poses a risk to users' rights and freedoms. On the latter aspect, critical issues also increase in the face of the specific type of user of these systems, such as minors and vulnerable individuals.

In this regard, the provisions and means of protection derive from the current legislation on the processing of personal data[9], which contains, among other

[7]Koepp, Gunn & Lawrence (1998); Weinstein (2010).

[8]According to the World Health Organisation, the "gaming disorder" consists of a series of persistent or recurring behaviours that take precedence over other life interests and has included it in the International Classification of Diseases (ICD) or the official list of pathologies mental. https:// www.who.int/news-room/questions-and-answers/item/addictive-behaviours-gaming-disorder

[9]Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 concerning the protection of natural persons with regard to the processing of personal data, as well as the free movement of such data and which repeals directive 95/46/EC (Regulation general data

things, specific provisions for the protection of data subjects, including all those related to transparency, lawfulness and fairness, with specific provisions for the protection of minors and vulnerable individuals. However, this provision is not exhaustive of concrete protection needs and in some ways presents serious and complex problems like the other contractual perspective we will examine[10].

New Purchasing Dynamics in the Context of Video Games: The Value and Aspects of Particular Relevance

The video game industry never stops reinventing itself, evolving and progressing. To do so, especially in recent times, it has sped its growth path through new and evolved business solutions that are closer to the needs and expectations of its users.

In particular, in recent decades, there has been a shift from following a product logic, at the time arcade and boxed, to a service logic with so-called pay-to-win or freemium *functionality*. This strategy has also allowed it to absorb, through the sale of game extensions, the significant increase in development costs, thus enabling it to offer increasingly advanced and high – performance products at practically stationary prices.

The value of video game purchases is growing steadily worldwide. According to a US survey, total sales will reach $225.30 billion with an annual growth rate of 8.35% and a projected market volume of $352.10 billion dollars by 2027.

Specifically with regard to the revenues from in-app purchases, however, these are expected to reach $145.30 billion and a value of $1.25 billion compared to the revenue generated by paid apps[11].

The market is constantly growing and the video game industry continues to implement new and profitable features such as multiplayer modes, augmented and virtual reality, subscriptions and loot boxes. Particularly thriving is the sphere of purchases of gaming concessions such as: "skins" or aesthetic elements; in game advantage tools and to avoid advertising; elimination of cool-down timers or waiting times; elimination of "grinding"[12]. These features are then purchased by players through microtransactions, either in app or on the platform.

However, with respect to the latter area, the highest risk factors for consumers are recorded, as the dynamic inherent in such purchases are often riddled with

protection) (OJ 04/05/2016 n. L119). https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:32016R0679

and Legislative Decree 196/2003 as amended

[10]In USA, the Federal Trade Commission has recently sanctioned Epic Games, creator of the video game Fortnite, for behaviours that harm both the perspectives just examined, therefore both privacy and contractual aspects. https://www.ftc.gov/legal-library/browse/cases-proceedings/2223087-epic-games-inc-us-v

[11]Data collected and processed through reports and analyses of https://www.statista.com/

[12]see definition in https://it.wikipedia.org/wiki/Grind_(videogames) : term used in the field of video games, in particular in MMORPGs and J-RPGs, to indicate the repetitive execution, by the player, of primary or secondary quests with the sole purpose of making the character grow, increase its level or unlock new content faster, so as not to be led to spend real money, often even at the expense of entertainment.

problems. These defects concern both the pre-contractual phase and the management of contract itself, contrary to the provisions dictated by the Italian Legislative Decree 206/2005 as amended[13]. The consumer code, in fact, dictates stringent rules to protect the balance of contractual relationships, requiring, among other things, adequate information and proper advertising, through a more specific application of the principles of good faith, fairness and loyalty as well as of transparency and equity. This discipline is fully applicable to the area in question due to the explicit extension made by Directive (EU) 2019/2161, the so-called Omnibus Directive,[14] which amended the provisions of the sector directives[15], expanding the margins of protection within the scope of services and digital content.

Possible Contractual Risks related to the Digital Purchasing Environment: Manipulative Designs and the Opacity of Terms and Conditions

Safeguards in the context of online shopping are stringent since they must enable consumers to make informed and conscious choices. Indeed, the risk is that of purchasing goods whose contents have not been integral and understandable. In the hypotheses of subscriptions, on the other hand, the risks concern renewal mechanisms that are unclear or for which the consumer is unable to predetermine the effects and consequences, or the related method of cancellation is unclear or particularly difficult. It is clear that these risks are even more dangerous when one considers that, based on what has been observed, the users of these systems are often minors or vulnerable individuals, thus immature and inexperienced in interacting with certain mechanisms whose dangers are now going to be examined. To this scenario one must then add that the contractual dynamics that characterise the online purchasing environment, both of the video game itself and of individual

[13]Legislative Decree 6 September 2005, n. 206, the so-called Consumer Code, in accordance with article 7 of the law of 29 July 2003, n. 229. (GU n.235 of 8-10-2005 - Ordinary Supplement n. 162)

[14]Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Directive 93/13/EEC of the Council and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the Parliament and of the Council for better enforcement and modernisation of EU consumer protection rules https://eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:32019L2161&from=EL, defined as the Omnibus Directive, implemented in Italy with Legislative Decree no. 26 of 7 March 2023, which makes changes to the Consumer Code, integrating multiple provisions regarding unfair terms, unfair commercial practices, unfair competition, untruthful commercial communications, transparency towards consumers in addition to the applicable sanctions.

[15]See amendment to art. 2 of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 relating to unfair commercial practices between businesses and consumers in the internal market and amending Council directive 84/450/EEC and directives 97/7/ EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) no. 2006/2004 of the European Parliament and of the Council («directive on unfair commercial practices»), implemented in Italy by Legislative Decrees n. 145 and 146 of 2 August 2007, integrated into the Consumer Code and art. 2.11 of DIRECTIVE 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending directive 93/13/EEC of the Council and of the directive 1999/44/EC of the European Parliament and of the Council and repealing Directive 85/577/EEC of Council and Directive 97/7/EC of the European Parliament and of the Council;

purchases, often eludes the visibility and understanding of adults and supervisors, because of the objectively closed and inaccessible environment to the non-gamer.

Pursuant to current provisions, consumers must be provided all the information concerning the electronic product and any purchasable goods within the game with regard to their content. This information must be easily accessible and viewable in a clear and understandable way before purchasing the game and on the occasion of individual purchases, as well as transmitted to the consumer on a durable medium[16].

Unfortunately, the current purchasing context within video games is characterised by several business practices that present particular challenges to current regulatory requirements. The pre-contractual approach and the dynamics that characterise video games purchases are often characterised by a certain opacity, as they are not exhaustive or inaccessible for consultation. The most frequently encountered problems involve very little information on aspects related to, among other things, subscriptions and renewal or opt-out methods, withdrawal methods, and when and how to refund[17].

In addition, with respect to the requirements of transparency and fairness, an analysis carried out by the European Parliament[18] shows very frequently the use of *dark patterns*, manipulative and distorting designs [19]right from the planning stage, capable of compromising the consumer's freedom of choice making him/her make purchasing decisions that he/she would not otherwise have made. These conducts integrate real aggressive commercial practices, contrary to the provisions of the aforementioned Omnibus Directive and with the Digital Service Act[20], in relation to the invoked right to protection against minors and vulnerable individuals.

A further consequence of this opacity is the existence of extremely ambiguous practices which are in fact extremely widespread. Among these, the most significant and risky case is the one connected to the loot box, literally "booty", which corresponds to the purchase of game features, which can be paid with real currency, game currency or with player behaviour such as waiting or displaying advertisements. Loot *boxes* are found in various and common types of games such as card games, esports, role-playing games, also distributed by large channels such as video games for consoles, the app marketplaces for smartphones and tablets.

The peculiarity is that the player does not know the contents of the *loot box* until it is opened, thus at a time after the payment or the behaviour required to obtain it, with uncertainty about the reward or benefit derived from it. These characteristics integrate the violation of several provisions of the law, including the transparency of the purchased content and/or the predetermination criteria,

[16]In this sense, lastly, the recent introduction of art. 49- *bis* of the consumer code which integrates the specific additional information obligations for contracts concluded on online markets, especially relevant for the purchase of digital goods on platforms.

[17]Casabona (2016).

[18]See the report approved by the European Parliament in which, following a detailed survey of the problem, the invitation is formulated to adopt specific rules to protect users of online video games protecting-gamers-and-encouraging-growth-in-the-video-games-sector. https://www.europarl.Europa.eu/news/it/press-room/20230113IPR6664

[19]Perks (2020).

[20]Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC

including algorithmic criteria, underlying it, as well as the additional provisions of the aforementioned regulation of prices and transactions.

The often obscure mechanism of functioning of these loot boxes in the literature has often led critics to associate their content and purpose with gambling, with particularly risky effects especially towards minors and early childhood, which, as mentioned above, correspond to a large segment of active users. This category is particularly fragile and is therefore the recipient of greater attention and need for protection, as has always been recommended on an institutional as well as a regulatory level.

Another dynamic that occurs in this context is that of the phenomenon called *gold farming*, which consists of playing a massively multiplayer online game to acquire game currency, later reselling it for real money or exchanging it within the same platform. This practice configures a distorted use of the gaming environment which leads to illegal practices.

Possible hypotheses correspond to money laundering, carried out through the purchase and resale in the app.

A second and more serious situation corresponds to the labour exploitation of those, even minors, who perform this activity as a job but are underpaid for exhausting shifts of play[21]. *Gold farming* also confirms the ambiguity and inaccessibility of these contexts, highlighting the urgency of careful supervision by the competent authorities.

In the specific context of video games, another problematic aspect relates to the necessary adjustment of the information regarding prices also in any game currency, the characteristics of the virtual products, payment methods and withdrawal conditions. With specific reference to the price, if this cannot be calculated in advance, the calculation criterion must be clearly indicated and must still be presented visibly and in real currency (in any case be presented in a visible manner and in real currency) at the time of the transaction.

Another issue is related to the instances of purchases by minors in connection with purchases made outside the control of parents or guardians. Given the inability of minors to enter into contracts [22], there are frequent cases where they are found to purchase video games or related features through automatic payment mechanisms outside any control or verification [23]. Given the general framework of the responsibility of parents and guardians over the control of the activities of those under their respective supervision[24], it should be noted that, although control tools are available, to date there is a lack of integrated and truly effective solutions capable of implementing stringent monitoring.

Finally, a further problematic aspect related to the context of purchases in this area is that of the manipulative design techniques often adopted, so-called dark patterns or manipulative design, which in several cases incorporate assumptions of aggressive and therefore prohibited commercial practices. In some cases, for example, it may be the case that the designers leverage manipulative elements, as

[21]Parker (2022). .
[22]Gazzoni (2021).
[23]With regard to the issue of the annulment of online purchases, see Giarda, Liotta & Rindi (2022).
[24]Andreola, (2018) at 953.

in the case of microtransaction offers to overcome critical game stages, as well as in the pervasive proposition in the proposition of commercial offers, including through the use of visual or acoustic effects aimed at pressuring the player.

The pervasiveness of these contexts is often configured through video game designs aimed at detecting and exploiting any situations of vulnerability of the player, by implementing unfair commercial practices. In addition to the concerns for minors and adolescents, young adults may also be more susceptible to commercial communications and manipulation practices implemented in video games, especially in the commonly known long and immersive game sessions, frequent in those age groups.

Final Conclusion and Possible Courses of Action

The world of video games represents a fascinating, productive, and opportunity rich world, both from the standpoint of revenues generated and that of growth potential with reference to employment, the breaking down of barriers to disabled individuals, and gender equality.

From the reconstruction outlined above, a picture of enormous opportunity emerges, both in terms of business and turnover, which passes through the high potential in terms of technological evolution and skills. The very high level of risks that revolve around this category remains indisputable, above all due to the evident misalignments with respect to the regulations in force on consumer protection. In this sense, the concerns expressed by the European Parliament regarding the consequences of an incompletely supervised system appear to be fully shared.[25]

In fact, measures are urgently needed to support the requirements of transparency and fairness, capable of penetrating into the contractual practices that arise and develop within video games. Among these, a factor on which great attention must be paid is that of the automatic renewals of subscriptions and contracts for digital services, which can also be quite convenient for consumers, but must be framed under the lens of correctness due to mechanisms of pre-set or unauthorised opt-ins or made particularly difficult due to lack of information or complex procedures.

In conclusion, the lack of specific regulation for the video game industry does not mean that users in this sector are not protected with regard to the purchase aspect. The protection offered by current legislation on remote purchases is also fully applicable to digital goods and therefore to the context of gaming, but more in-depth actions are needed to probe the most hidden and risky dynamics. In this sense goes the encouragement by the Community institutions towards the creation of more integrated tools[26], not limited by sector to the systems of origin. Finally, the most important load is connected to the role of the family and guardians, small domestic legislators, invested with the fundamental role of guiding the most

[25]See https://www.europarl.europa.eu/news/it/press-room/20230113IPR6664

[26]For this purpose, the PEGI index https://pegi.info/en/controlparentale is recommended as a good practice and starting point for the development of new tools.

exposed and sensitive categories up to now, thus contributing to reprogramming the contents of future society.

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