

RESEARCH AND SCIENCE TODAY

~ Scientific Review ~

~Spring~

No. 1(15)/2018
March 2018

ISSN-p: 2247 – 4455
ISSN-e: 2285 – 9632
ISSN-L: 2247 – 4455

Târgu-Jiu 2018

Cover: Batcu Alexandru

Editing: Mărcău Flavius-Cristian

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INTERNATIONAL BODIES WITH DUTIES IN FIGHTING AGAINST MONEY LAUNDERING

Sorin Silviu FINTA¹

ABSTRACT

THIS ARTICLE AIMS TO ANALYZE THE ROLE OF THE MAIN BODIES HAVING DUTIES IN FIGHTING MONEY LAUNDERING INTERNATIONAL WIDE. THE SCANDALS INCURRED DURING THE LAST FEW YEARS, REGARDING MONEY LAUNDERING BY MEANS OF FISCAL PARADISES, INCREASED THE PUBLIC PRESSURE ON THE BANKING SYSTEM. JOURNALISTIC INVESTIGATIONS RAN FOR THE DISCOVERY OF THE FRONT COMPANIES USED TO DISSIMULATE SIGNIFICANT FUNDS, PROVED TO BE EXTREMELY EFFICIENT, ESPECIALLY DUE TO THE SPEED OF COMMUNICATION AND THE LACK OF BUREAUCRATIC BARRIERS. THE BANKING SECRET, ARGUED MOST OF THE TIMES WHEN SOLICITING OFFICIAL INFORMATION FROM OTHER JURISDICTIONS, GRADUALLY BECAME A CONTESTED CONCEPT. THE LEAK OF CONFIDENTIAL DATA WITHIN THE AREA OF INFORMATION SERVICES FACILITATED THE DIGGING OUT OF MONEY AMOUNTS GREEDILY HIDDEN BY BUSINESSMEN, FAMOUS SPORTSMEN, POLITICIANS OR MULTINATIONAL COMPANIES THAT BENEFITED FROM THE SUPPORT OF LAWYERS, FISCAL CONSULTANTS AND FINANCIAL INSTITUTIONS. ROMANIA IS TAKING PART IN THE INTERNATIONAL EFFORTS MADE TO FIGHT SUCH PHENOMENON, YET, THEY MUST ALLOCATE ADDITIONAL RESOURCES IN ORDER TO INCREASE THE INVESTIGATIVE CAPABILITY AND CONFISCATION OF THE CRIMINAL PRODUCT.

KEY WORDS: MONEY LAUNDERING, INTERNATIONAL COOPERATION, INVESTIGATIONS

INTRODUCTION

The Roman emperor Vespasian (69-96), responded by a famous line to his son Titus, when being criticized for taxing the ammonia collected from the sewerage system in Rome (Cloaca Maxima). The historian Suetonius describes how Titus reamed out on his father on the lack of qualms in the taxation policy, in order to reduce the budgetary deficit, but the response of Vespasian, "Pecunia non olet" ("money don't smell")² made history and describes perfectly one of the main characteristics of money. The coin is basically, an abstract and anonymous means of payment, destined to simplify economic transactions and facilitate trade exchange.³

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² <https://www.istorie-pe-scurt.ro/originea-expresiei-banii-nu-au-miros/>, accessed on 03.03.2018

³ Eric, Vernier, *Techniques de blanchiment et moyens de lutte*, (Paris:Ed. Dunod, 2005), 7

Information on money was always of interest, and in this respect, banks and information services played a very important role, as the funds were more important. The history of secret services knew numerous agents who “defected”. Nonetheless, for the past years, it is noticeable the surprising increase of the occurrences wherein the agents defect, supply to the press agents sensitive information on the funds incurred by corruption acts, fiscal evasion or organized crime, wherewith are involved public individuals, multinational companies or financial institutions. This is how cases such as the “Panama Papers⁴”, “Luxembourg Leaks⁵”, “Swiss Leaks⁶” or “Football Leaks⁷” were born. Secret services had to reconsider their data security policies, where after, in the international press, appeared information leaks such as those of the former secret American agent Edward Snowden⁸ or disclosure attributes to several opaque entities, such as those of the so called journalist Julian Assange⁹ by means of “WikiLeaks” portal. There were, of course, Romanian businessmen who ordered the famous Law Firm Mossack Fonseca from Panama, the start-up of some offshore companies such as Belize, British Virgin Islands, Gibraltar, Samoa or Isle of Man¹⁰. Although there have been a few years since the Panama Papers scandal burst, the response of the Romanian authorities to the questions the press or the society through its elected representatives addressed, are just as opaque as the banks within the offshore territories.¹¹ ANAF announced that they formed a work group that is still working, yet the status of the investigations seems to be either the same as when they started, or extremely confidential.¹² Unfortunately, the concrete research activity of such cases proved that the mass-media is by at least one step ahead of the fiscal control bodies or criminal investigation bodies. It is not less true that for documenting certain international money laundering schemes and confiscation of dirty money, is required the cooperation of authorities within several states, informational wise, as well as within the fiscal or judicial field.

MAIN TEXT

Globalization imposed on the political decision makers, the institution of international levers of financial-banking or economic nature that were built and developed diplomatically so as the principle “follow the money”¹³, established by Americans, to be able to be applied international wide.

The Convention of the United Nations against organized transnational criminality, from December 2000, ratified by Romania on October 16th 2002, by Law no.565/2002¹⁴ or the

⁴ Bastian Obermayer, Frederik Obermayer, *Panama Papers- How the rich and powerful hide their money*, (Bucharest:Publishing House Litera, 2016), 194

⁵ <https://www.icij.org/investigations/luxembourg-leaks/>, accessed on 04.03.2018

⁶ Gerard Davet, Fabrice Lhomme, *Swissleaks Operation*, Bucharest, RAO publishing house, 2016

⁷ <https://footballleaks2015.wordpress.com/>, accessed on 04.03.2018

⁸ Edward Snowden, former secret American agent of CIA and NSA now accused by the US authorities of treason, and who has provided to Glenn Greenwald, a journalist with the British magazine "The Guardian," information about mass interception of US citizens and not only under a program encoded "PRISM",

⁹ https://ro.wikipedia.org/wiki/Julian_Assange, accessed on 04.03.2018

¹⁰ <https://www.riseproject.ro/afaceristi-romani-implicati-in-scandalul-panamapapers/>, accessed on 04.03.2018

¹¹ <http://www.cdep.ro/interpel/2018/i1176B.pdf>, accessed on 04.03.2018

¹² <http://www.cdep.ro/interpel/2016/r2942B.pdf>, accessed on 04.03.2018

¹³ William F. Wechsler, *Follow the Money*, New York, in Foreign Affairs, July/august 2001, article available online at <https://www.foreignaffairs.com/articles/2001-07-01/follow-money>., accessed on 25.02.2017

¹⁴ Valerică Dabu, Sorin Căținean, *The new law for the prevention and sanction of money laundering*, Bucharest, Law magazine, no.6/2003, 24-27

International Convention concerning the matter of repressing terrorism funding, adopted in New York, on December 9th 1999, which was ratified by Romania by Law no.623/2002¹⁵, constitute regulation acts that reflect the preoccupation of the international community in the area of fighting the organized crime or terrorism.

Under the aspect of importance of fighting money laundering internationally, a moment which proved to be extremely important, was the year 1989, during the G7 Summit of the most powerful industrialized countries, organized in Paris, together with the constitution of G.A.F.I.(F.A.T.F.) –International Financial Action Group or *Financial Action Task Force*. This group operates as an intergovernmental body, which meets annually, under the presidency of one of the member states, managing to imprint a clear direction to the international efforts within the area of money laundering and funding terrorism.¹⁶ Experts of FATF-GAFI, based on the conclusions resulted from the monitoring activities of the member states, issue recommendations destined to fighting money laundering or confiscation of illicit funds that are discovered at the level of the financial system. Thus, among the consequences of the FATF activity, the most important are those concerning the harmonization of the regulations with respect to the banking secret, extension of incrimination of crimes coming from funds subject to laundry, or the adoption of actions destined to confiscate the criminal product on the territory of a different state.¹⁷ Romania is an FATF member, together with 35 other states, who, alongside international bodies such as the European Commission and the Cooperation Council for the Arab States in the Gulf- G.C.C., contributed to the definition of international principles and standards within the field, the most important being the 49 recommendations of FATF¹⁸, recognized and assimilated by the majority of financial centres worldwide. A regional body created according to the FATF model for the Asian/Pacific region, is APGML or *Asian Pacific Group on Money Laundering*, founded in 1997 in Bangkok-Thailand.¹⁹ The permanent secretarial office of this body is in Sydney- Australia, and outside the member states, among observers there is the World Bank, OECD, INTERPOL or Egmont group of the Financial Information Units.

Egmont Group was founded in June 9th 1995, occasioned by an informal meeting of CTIF-CFI (Financial Information Unit from Belgium) and FinCen (Financial Information Unit in the United States of America). The meeting took place in the Egmont- Arenberg Palace in Brussels²⁰, wherefrom, the denomination of the group. This international body became the operational arm of the international efforts to fighting money laundering and terrorism funding, managing to incorporate today, within a secured computerized platform, 155 financial information units worldwide. Through the computerized network named Egmont-ESW, it is possible to obtain, in timely manner, information from other jurisdictions, on the individuals or firms that direct funds raising suspicions regarding the legality of the origin²¹. Starting May 2000, Romania is also a member of the Egmont Group, being represented by ONPCSB- National Office for the Prevention

¹⁵ George, Mocuța, *Methodology of investigating the money laundering crime*, (Bucharest: Noul Orfeu Publishing House, 2004), 210

¹⁶ Costică, Voicu, *Money and organized crime*, (Bucharest: Publishing House Artprint, 1995), 41

¹⁷ Camelia, Bogdan, *Money laundering*, (Bucharest: Publishing House Universul Juridic, 2010), 423

¹⁸ <http://www.fatf-gafi.org/about/whoweare/#d.en.11232>, accessed on 05.02.2018

¹⁹ <http://www.apgml.org/>, accessed on 04.03.2018

²⁰ Eric, Vernier, *Techniques de blanchiment et moyens de lutte*, 134

²¹ Annual Report 2014-2015, Egmont Group of Financial Intelligence Units, available online at: https://egmontgroup.org/en/filedepot_download/1660/22, accessed on 04.03.2018

and fighting Money laundering²². When gaining information on financial funds derived from crimes, ONPCSB is obliged to provide the prosecutors with the respective information, to execute the investigations and the criminal charging of the guilty individuals²³.

The Basel Committee was founded in 1974 by the governors of central banks within the Group of 10 or G-10, the most industrialized states²⁴, which, at that time, identified the need to constitute an associative entity to regulate a series of financial-banking standards recognized internationally. Starting 1984 to this group adhered Switzerland also, and the headquarters, as the denomination shows is in Basel, in the BIS building (Bank for International Settlements²⁵). Now, this international committee is made up of the governors of the central banks in 27 states and the European Union. International cooperation allowed the recognition of the best banking regulation practices, managing the elaboration of recognized standards within the field, especially supervision standards, exercised by the central banks²⁶. The minimum requirements concerning the stock, prudential policies and of organization, based on the components of the banking risks (credit risk, operational risk and market risk) or the degree of exposure or the liquidity value, constitute prudential banking standards elaborated by successive agreements in Basel, which contribute today to the increase in the stability of the banking system²⁷. Nonetheless, by the unification of the legislation, the adoption of banking ethical standards and clients recognition policies, the Basel Committee contributed in a significant manner international wide to the consolidation of the fight against money laundering and terrorism funding²⁸. The Supervision Department within the National Bank of Romania, can offer, in togetherness, especially for the identification of the real beneficiary of the suspicious investigated transactions.

The MONEYVAL Group (Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Funding of Terrorism) is a European body subordinated to the Ministries Committee of the European Council, made up of experts who evaluate the actions took by the Member States in consideration of fighting against money laundering and funding terrorism. The standards the experts relate to are those provided by the recommendations of FATF-GAFI, Vienna Conventions, Strasbourg and Palermo.²⁹ For some time this body operated as an observer alongside FATF, and in June 2006, gained the statute of associated member. The MONEYVAL Group contains 28 Member States, that are represented also within FATF, as well as Israel, Vatican and other jurisdictions or offshore territories dependent on the Great Britain (Guernsey, Jersey, Insula Man, Gibraltar). The representatives of the states are experts in the supervision and regulation of financial institutions, experts within the fiscal field, in the field of justice or law application forces³⁰. The evaluation activities include the verification of actions took by the

²² <http://www.onpcsb.ro/html/cooperare.php?section=3>, accessed on 02.06.2017

²³ *The guide to fighting money laundering destined to judges and prosecutors*, available at http://www.inm-lex.ro/fisiere/d_1443/Ghid%20combatare%20spalare%20bani_judecatori%20si%20procurori.pdf, accessed on 04.03.2018, 10

²⁴ USA, Canada, France, Germany, Italy, Belgium, Japan, Sweden, The Netherlands and Great Britain

²⁵ <https://www.bis.org/bcbs/charter.htm>, accessed on 04.03.2018

²⁶ https://en.wikipedia.org/wiki/Basel_Committee_on_Banking_Supervision, accessed on 05.06.2017

²⁷ https://en.wikipedia.org/wiki/Financial_crisis_of_2007%E2%80%932008, accessed on 05.06.2017

²⁸ Slagjana, Taseva, *Money Laundering*, (Skopje- Macedonia:Ed. Akademski Pecat, 2007), 48

²⁹ Alina, Ana, Dumitrache, *Money laundering legal-criminal aspects*, (Bucharest: Publishing House Universul Juridic, 2013), 157

³⁰ <https://www.coe.int/en/web/moneyval/moneyval-brief/members>, accessed on 04.03.2018

member states in fighting money laundering and funding terrorism and especially the degree of implementation of the recommendations of FATF-GAFI. By the reports being elaborated and published (including the internet page of MONEYVAL), are made recommendations destined mainly to the improvement of the regulation frame or the method of implementing the legal dispositions existing in the field of fighting against money laundering and funding terrorism. Unfortunately, certain aspects mentioned into the evaluation report for Romania³¹ can be considered worrisome. Experts recommended among others to the authorities in Romania, the increase in the number of financial investigators and a rigorous evaluation of the ongoing investigations, including from the perspective of geographic distribution, prosecution or delays registered in the resolution of cases registered in Court. Another issue, raised by the experts in Romania, is represented by the insufficient exploitation of information supplied by the Financial Information Units within the EGMONT Group network, especially under the aspect of investigating the dubious origin of certain revenues and application of safe actions destined to subsequent disposition of the special or extended confiscation actions.

*The WOLFSBERG*³² Group was founded officially in 2000, on the occasion of a meeting organized by the shareholders of private banks at the premises of Wolfsberg Castle nearby Ermatingen-Switzerland. Just as FATF-GAFI elaborated recommendations, destined to governments and banking standards for central banks of the Member States, the Wolfsberg Group addressed to the main private banking groups³³, considered the most influential in the field, international wide (such as Goldman Sachs, Barclays, Credit Suisse, Deutsche Bank, Société Générale and others). In order to support and protect its interests, in the context of international pressures against money laundering, the group adjusted the standards imposed by the International Community through FATF, to the requirements of the private banking sector. Thus, there have been elaborated conduct standards in the provisions of financial services³⁴ and have been promoted policies destined to the recognition of clients, reporting suspicious transactions and prevention of funding acts of the entities catalogued by the International Community as being supportive of terrorism. Among the relevant documents elaborated by the Wolfsberg group, important from the perspective of bank management, risks administration or the relationship with the politically exposed individuals we can mention the following: *“The guide concerning the risk based approach for the management of the risk of money laundering”*, *“The guide to fighting money laundering for mutual funds and other investment companies”* or *“The guide to fighting money laundering within the activities of issuing the credit/debit cards and items contracting.”*³⁵

Being an atypical group, made up of the representatives of competing banking groups, whose primary purpose is to reduce the expenses and maximize the profit, was not by-passed by

³¹ *Report on Fourth Assessment Visit of MONEYVAL Comitee of Experts* (2014), available online at [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/ROM4_MERMONEYVAL\(2014\)4_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/ROM4_MERMONEYVAL(2014)4_en.pdf), accessed on 03.06.2017, 55

³²[http://www.wolfsberg-principles.com/pdf/standards/Wolfsberg_Statement_on_the_Suppression_of_the_Financing_of_Terrorism_\(2002\).pdf](http://www.wolfsberg-principles.com/pdf/standards/Wolfsberg_Statement_on_the_Suppression_of_the_Financing_of_Terrorism_(2002).pdf), accessed on 06.06.2017

³³ https://en.wikipedia.org/wiki/Wolfsberg_Group, accessed on 05.03.2018

³⁴ Alina, Ana, Dumitrache, *Money laundering legal-criminal aspects*, 158

³⁵ *Manual regarding the risk based approach and suspect transactions indicators*, edited by ONPCSB and FIU Poland within a project funded by the European Union available online at: http://www.onpcsb.ro/pdf/manual_privind_abordarea_pe_baza_de_risc.pdf, accessed on 05.03.2018

criticism³⁶. The decisions adopted by the group sometimes lacked transparency, and the decisional factors of the banking groups are mostly unknown and therefore the association of the private interests of such banks did not enjoy complete trust.

*Eurojust*³⁷ is the European Judicial Cooperation Unit started in February 28th 2002, with the purpose of coordinating the investigations destined to fight the organized crime at the level of the European Union. The idea of starting such a body was first discussed within a formal setting at the meeting of the heads of states and governments which took place at Tampere-Finland, in October 15th and 16th 1999. Nowadays, Eurojust is headquartered in Hague, the body being funded from the general budget of the European Union and is made up of magistrates, prosecutors and police officers detached by the Member States, who are paying their salaries. In the field of money laundering, Eurojust plays a very important role in the coordination of investigations performed by joint teams made up of prosecutors and police officers within the member states on whose territories take place money laundering crimes or predicate crimes.

*Europol*³⁸ is the intergovernmental European Body whose role is to facilitate the information exchange and cooperation between member states, on fighting organized crime and terrorism. The frame decision 2002/465/JAI of the Council from June 13th 2002, regulates the participation of the Europol officers within joint investigation teams, and the Decision 2009/371/JAI/ from April 6th 2009³⁹ establishes the competence of Europol, as the supporting force for the authorities of the Member State wherein they act. Europol grants support and informative help by means of liaison officers within the joint investigation team, usually acting in close cooperation with Eurojust⁴⁰. A very important role within the international investigations destined to dismantle the specialized criminal groups in money laundering, is assumed by informative packages supplied by the information analysis units within Europol, that have a sophisticated computerized platform, secured (denominated FIU.net) and the highest level experts. The National Office in the Prevention and Fighting Money laundering is the Institution in Romania who has access to this network, being able to disseminate information on the suspicious transactions to the other member states and of course, thus to receive information through Europol from other states⁴¹.

CONCLUSION

Journalistic investigations that unveiled during the past few years numerous cases of funds concealment of dubious origin by means of banking institutions and front companies started on offshore territories, are explanatory for the need to stress the need for international cooperation within the field of fighting money laundering and funding terrorism. The banking secret, argued most of the time when soliciting official information from another jurisdiction, gradually became a contested concept, on the fund of international public pressure, generated mainly by the results

³⁶ Robert Mazur, former federal agent within DEA and US Customs, author of the autobiography that was the base for the movie "The Infiltrator" (2016), catalogued the Wolfsberg group as being "cat among pigeons" [https://en.wikipedia.org/wiki/The_Infiltrator_\(2016_film\)](https://en.wikipedia.org/wiki/The_Infiltrator_(2016_film)), accessed on 05.03.2018

³⁷ <http://www.eurojust.europa.eu/about/background/Pages/mission-tasks.aspx>, accessed on 05.03.2018

³⁸ <https://www.europol.europa.eu/>, accessed on 05.03.2018

³⁹ Decizia 2009/371/JAI/6 .04.2009- concerning the start of the European Police Office (EUROPOL)

⁴⁰ Viorel, Vasile, *Police and international judicial assistance - support for fighting the cross-border crime and terrorism*, (Bucharest: Publishing House Ministry Of Internal affairs, 2016), 253

⁴¹ <http://www.onpcsb.ro/pdf/Reteaua%20FIU.net.pdf>, accessed on 25.06.2017

of the journalistic investigations. Informal collaboration between the passionate journalists throughout the world and the data leaks within the area of information services, constituted favourable factors for starting the aforementioned international scandals. Unlike the collaboration through official channels, by means of international institutions and bodies with duties in fighting money laundering, that are technical and bureaucratic, the collaboration of journalists was more than efficient and proved that dirty money can be discovered. One might say that in spite of the affirmation of the emperor Vespasian, that travelled through history for thousands of years, an efficient international cooperation of certain investigators, can prove that dirty money “do smell”, and that they can be traced.

International bodies dedicated to money laundering, developed rapidly during the last few years, but not as fast as the slickness of the organized crime groups, eager to reinvest the criminal product into the legal economy. The need to confiscate the amounts resulting from fiscal evasion, corruption acts or organized crime, is getting more acute into an economy such as that of Romania. But in order to have the ability to identify and confiscate such amounts, the international support is not enough. It is required the adoption of decisions at the level of political decision-making bodies, whereby to improve the legislative, the investigative potential and to allocate the resources that the importance of fighting such a criminal phenomenon holds.

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FORMS OF RADICALISM OF THE ISLAMIC STATE CHALLENGES FOR THE MIDDLE EAST'S SECURITY

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ABSTRACT

THE PERSISTENCE OF MULTIPLE FORMS OF THREAT FOR THE SECURITY IN THE MIDDLE EAST REGION IS NOT SOMETHING NEW AND IS NOT EVEN CAUSED BY THE ISLAMIC STATE'S EXISTENCE. THE EXISTENCE OF THE JIHADIST EXTREMIST GROUPS IN THE REGION IS NOT NECESSARY NEW, OR SINGULAR, BUT THE WAY THE ISLAMIC STATE EVOLVED AND ESPECIALLY HOW MUCH IT EXTENDED, BRINGS NEW CHALLENGES FOR THE REGION. FROM A SIMPLE GROUP, TO CONTROL FAIRLY IMPORTANT TERRITORIES TO AN OUT OF STATE ACTOR AND PARTICULARLY THE SUCCESS IN THE FRONT OF TWO COUNTRIES, FROM WHICH LOSS YOU CAN BUILD AN OWN STRUCTURE OF AUTHORITY, CREATES A LOT OF QUESTIONS ABOUT WHAT'S NEXT AND WHAT ARE THE NEGATIVE EFFECTS. IN THIS CONTEXT, THE PRESENT ARTICLE AIMS TO ANALYZE THE FORMS OF THE ISLAMIC RADICALISM WHICH DESCRIBE THE ISLAMIC STATE, IN ORDER TO OBSERVE THE CHALLENGES THEY LAUNCH FOR THE MIDDLE EAST'S SECURITY.

KEY WORDS: CHALLENGES, SECURITY, RADICALISM, THE ISLAMIC STATE, THE MIDDLE EAST

INTRODUCTION

The name of the Islamic State is the last official name of this group. Its origins lie in the "once known group as the Islamic State of Iraq (ISI from October 2006 to April 2013), Islamic State of Iraq and Sham (ISIS from April 2013 to June 2014), and the Islamic State (IS since June 2014)."³ The rename in the Islamic State is not just a simple abbreviation of the name, it has a different meaning related to the context in which this rename was made. "On June 29, 2014, the first day of the holy month of Ramadan, the ISIL extremist group announced the restoration of the

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³ Cole Bunzel, „From Paper State to Caliphate: the ideology of the Islamic State” *The Brookings Project on U.S. Relations with the Islamic World: Analysis papers*, 19 (2015) 3.

Caliphate and the renaming of the organization in the Islamic State.”⁴ If we consider what we mentioned in the introductive part, "the formation of an Islamic State with the form of a proto-Caliphate, whose duties are to extend itself through all the region until the instauration of the Caliphate, which will then follow its mission to expand into the whole world,⁵ we can understand what this change means. It is actually the beginning of the proto-Caliphate that has as its main purpose the diffusion of its authority in the region. This is where we need to analyze the actions, the operations, the statements of the Islamic State.

For an even better understanding of the radicalism's forms executed by the Islamic State, in order to explain why it acts in a certain way and to understand its purpose, it is necessary to make an incursion first, into the ideological concepts which represents its foundation.

Then, we can study much better its activity forms and the radicalism's forms, as well as we can estimate the capacity of this group to represent a negative factor on the security in the region.

THE IDEOLOGY OF THE ISLAMIC STATE

A predominantly Sunni jihadist group with the objective to directly threat any source of authority in the region in order to establish a caliphate, a single Islamic state, transnational, based on *sharia*,⁶ the Islamic State is, besides its affiliation of terrorist group, a political and military organisation. All these three elements intertwine and are motivated by its ideology based on a radical interpretation of the Islam, through the political ideology of the religious perceptions that want argue and support the group's fight for extending its authority by force, both over the Muslim world, but also on the non-Muslim one, and for confirming the legitimacy of the group to be seen as the leader of the Sunni Muslim world.⁷ Its ideology is built in such a way that the adherents of this group see themselves as the ones that practice the true islam⁸, and this situate them above the others and give them the right to use the extreme violence on the people considered unfaithful through a justification of their religious mission.

The main explanation for the ideology of the Islamic State is the inclusion of this group in the *jihadist Salafism* movement. This orientation is based on the idea of a return to the pure form of practicing the islam, specific to the period of its founder, Mahomed. That is why there is a rejection of all that is innovation or what has been added to islam in time. For this reason their struggle is not only directed against non-Muslims, but especially against the Muslims considered heretics (*takfir*) which focus on forms considered deviated from the authentic islam.⁹ Still, this movement is based on an extremist interpretation of the islam¹⁰ and on the reject of the national modern states and of the states built in the colonial period.

Demanding the return to the Caliphate that contain the whole *ummah* (muslim nation)¹¹, that pass the borders, the ethnicity and the different nationalisms, the Islamic State finds its

⁴ „From Paper State to Caliphate“ 1.

⁵ „From Paper State to Caliphate“ 4-7.

⁶ Zachary Laub, Jonathan Masters "Islamic State in Iraq and Greater Syria" *Council on Foreign Relations*, 1.

⁷ Elliot Friedland "The Islamic State" *Clarion Project*, May, 2015, 6.

⁸ Friedland "The Islamic State"

⁹ Friedland "The Islamic State", 13.

¹⁰ Bunzel, „From Paper State to Caliphate“, 7.

¹¹ Yosef Jabareen " The emerging Islamic State: Terror, territoriality, and the agenda of social transformation" *Geoforum*, 58, (2015), 52.

objective in the way of organisation and leading of the first Caliphate which followed the Mohamed's death in 632.¹² The importance of the recreation of this *ummah* is visible because it believes that this "didn't submitted to anyone except from Allah"¹³

From here we can understand why the Islamic State does not recognize the secular regimes established in the Muslim states, and that's why it tries to overcome the existing national borders. In its vision there must not exist such boundaries or distinctions between the nations of the Muslim states, all these will represent *ummah* at the moment when the Caliphate's instauration will be completed. This sort of distinctions will no longer be relevant because they will be the nation of the Universal Islamic State, its authority being taken over by a caliph "considered a successor of Mahommed from the point of view of the political authority"¹⁴ It is known the fact that all the territories under the authority of the Islamic State are administrated according to the islamic law, *sharia*.¹⁵

The central ideology of the Islamic State counts on the idea "of a new beginning by returning into the past"¹⁶ This idea is the meeting point between the two ideological dimensions that influence the Islamic state. First of all, it's about the dominant dimension, of the islamic fundamentalism that regains its contemporary application in the Salafist movement, as we have analyzed above and which "claims legitimacy for its violence saying that all its actions are made with the aim of re-launching the islam in its pure, primordial form, uniting the Muslim world under the true islamic belief."¹⁷ Under this interpretation, the fight is firstly against the Muslims who have adopted modified approaches of the islam. That is why the fight must first be a local / regional one, carried by the proto Caliphate against the heretics. Only when the whole Muslim world will be brought to the true belief, it will be possible to establish the true Islamic Caliphate which will then fight against the non-Muslim world. The second ideological dimension is *Ba'athism* that influences the Islamic State, especially from the perspective of the political organization, because it seeks to achieve a pan-Arab state with only one leadership, even if its perspective is secular.¹⁸

It must be also taken into account the favorable context of the principles developed and sustained from the last century by the Muslim Brotherhood (a political Sunni movement founded in 1928 in Egypt).¹⁹ Resuming, its contribution is noticed by the fact that "the islam demands that the Muslim community to unite around a leader, the leader of the Islamic State, and forbids the division of the Muslim community between states."²⁰ The *Wahhabi* movement has a very important contribution to the ideological foundation of the Islamic State. This movement is a subcategory of the *Salafism*, developed in Saudi Arabia. This movement was used here to carry a jihad against those considered heretics. Among its main tactics we can find the destruction of the graves and of the altars and the enforcement of some appropriate religious rituals, as well as the elimination of any influence of Shia from islam.²¹

¹² Jabareen, "The emerging Islamic State"

¹³ Jabareen, "The emerging Islamic State"

¹⁴ Bunzel, „From Paper State to Caliphate“, 4.

¹⁵ Analyzing the timeline *The Rise of the Islamic State (ISIS)*.

¹⁶ Richard Barrett "The Islamic State" *The Soufan Group*, (2014): 19.

¹⁷ Barrett "The Islamic State".

¹⁸ Barrett "The Islamic State".

¹⁹ Bunzel, „From Paper State to Caliphate“, 7.

²⁰ Bunzel, „From Paper State to Caliphate“, 7.

²¹ Bunzel, „From Paper State to Caliphate“, 9.

The jihadism or the jihadist school are relevant to the ideology of the Islamic State because it promotes a radical, revolutionary vision of what the Muslim Brotherhood is pursuing, "its contribution being the long-term influence of a generation of radical and violent groups."²² This means that while the activism promoted by the Muslim Brotherhood speaks of the need to establish the Islamic Caliphate, when the necessary conditions will be fulfilled, the jihadism seeks to immediately eliminate the existing regimes from the Muslim states and to replace them with Islamic states. This ideology was supported by al-Qaeda, only that the precondition for the establishment of the Islamic State is related to the attack of the United States²³ and not to the elimination of the secular governments from the region.

Thus, the *jihadist salafism* which represents the ideological basis of the Islamic State, gives it the opportunity to pursue its objectives by all means, no matter how violent they are, while also offering a religious motivation under which is hidden this violence. The *Salafism-jihadist* is the opportunity by which this group can pursue political objectives by bringing together all the Muslims under a single leadership, that of the Caliphate. The necessity that *ummah* to be organized after the early perceptions of the islam, brings a religious legitimacy, making the political objective to be seen as a simple instrument to reach the religious goal. The types of violence that are allowed against other muslims seem to be instruments to reach the religious purpose because the final objective is to eliminate such developments of the islam that do not correspond to the perception of the muslim's primordial community.

Last but not least, the *jihad* as a tool to eliminate any other form of existing authority is motivated by the need to overthrow the authorities so that the Islamic State can take over this authority in order to have the space, the territory necessary for the instauration of the Islamic Caliphate in the Muslim world.

RADICAL FORMS OF THE ISLAMIC STATE'S ACTIONS

For the beginning, we will briefly summarize the major actions in which the Islamic State was involved. In Iraq, after the 2003 American invasion, the Islamic State, which was then connected to the Iraq al-Qaeda, was involved in the fight against the USA Army and against the new regime set up to establish an authority under the Islamic law. In 2011, with the outbreak of the riots against the Assad regime in Syria, the ISI involved in the conflict, through campaigns against the government forces, using brutal tactics such as decapitations, and they applied *sharia* in the territories where they gained control. Winning more territories, the ISI has moved on to attacks against other rebel groups in the region.²⁴ The struggles with other groups is a tactic that actually supports the objective pursued by the group, the elimination of the existing and potential sources of authority in order to establish the unique authority of the Islamic State.

It can be said that the radicalization of the Sunni groups in Iraq can be recovered since 2003 with the American invasion, due to the creation of a feeling of self-defense justified by *jihad* instruments.²⁵ The success of such actions was limited, its violent manifestation being somehow stopped by the presence of the American troops in the territory. However, the USA retreat managed

²² Tarek Fatah „Chasing mirage: the tragic illusion of an Islamic State, Canada: Wiley, (2008): 247.

²³ Fatah „Chasing mirage“.

²⁴ *** "The Evolution of the Islamic State of Iraq and the Levant (ISIL): Relationships 2004-2014" *National Consortium for the Study of Terrorism and Responses to Terrorism*, June, 2014, 2.

²⁵ Analyzing the timeline *The Rise of the Islamic State (ISIS)*.

to represent a very favorable framework for the group, which quickly expanded its influence in the western region of the country. Taking advantage of the opportunity that the Syrian civil war had in terms of recruiting and mobilizing the popular support, ISI involved in riots. In 2013, it joined its forces with the Syrian Islamist group, Jabhat al-Nusra, the new alliance being the foundation on which ISIS started to control several territories at the border between the two states, which allowed the proclamation of the Caliphate in 2014.²⁶

In a context in which the Iraqi government led by Maliki, a member of the majority of Shiite from Iraq, led to a corrupt society, this government was also accused of promoting some sectarian politics that directly target the Sunni's minority.²⁷ The Sunnis, who had a feeling of marginalization, began to protest for the reform in the Anbar region in 2012. Their protests were violent by the execution of coordinated attacks that led to the deaths of dozens of Shiite Iraqis. In April 2013, the violence intensified again because of the expansion of the group into Syria. In this series of violence were used car bombings, suicide bombings, with over 7,000 deaths in the year 2013.²⁸ At the same time, the extension of the territories in which the two states lost their authority, led to the establishment of *sharia* and certain repressive politics against non-Muslims, such as the introduction of a tax for the possibility of manifesting their confession.²⁹

The actions made by the Islamic State are under the islamic extremism's sign, ideology that sustains that the political domination belongs to Allah, the interpretation of the religious perceptions by them equivalent to *sharia* must be the law of the state, being also the Muslims's duty to try to create an islamic state ment to reflect these principles. For this struggle or the armed struggle, through *jihad* is transformed into *jihadism* that refers to the violence of an out of state actor with political or military instruments to support the cause of the islam, meaning, the politically cause of the islam. For this, it is common to use terrorism as a form of violence, through which the Islamic State wants to produce a political change.³⁰

In Iraq, al-Qaeda and then ISI there was a terror campaign characterized by the kidnapping and the decapitation of foreigners, they targeted the Shiite's majority as the aim of some suicide actions in order to generate internal instability and chaos.³¹ In the civil war in Syria, Islamic militants who fought here under the "flag" of the Jabhat al-Nusra grou, became the most effective rebel group. Success determined the ISI leader to declare in 2013 that Jabhat al-Nusra is absorbed in the new Isis group ISIS by expanding into Syria, an aspect denied by the leader Jabhat al-Nusra, which generated violence between the two groups. Its level of extremism is also visible in the fight with another extremist group, as in this case, which led to the execution of other jihadists by ISIL.³²

The formation of the Islamic State and the Caliphate's declaration in 2014 "differentiate IS from other jihadist groups because this organization not only claimed a large territory between Syria and Iraq, but it also proclaimed the first truly Islamic state under the name Caliphate."³³ In

²⁶ "The Evolution of the Islamic State of Iraq and the Levant (ISIL)".

²⁷ Bunzel, „From Paper State to Caliphate“, 7.

²⁸ Zachary Laub, Jonathan, "Islamic State in Iraq and Greater Syria" *Council on Foreign Relations*, 3.

²⁹ Jonathan , "Islamic State in Iraq and Greater Syria".

³⁰ Erin Marie Saltman & Charlie Winter " Islamic State: The Changing Face of Modern Jihadism, November 2014", *Quilliam* 2014.

³¹ Saltman, Winter, " Islamic State: The Changing Face", 29.

³² Saltman, Winter, " Islamic State: The Changing Face", 30.

³³ Saltman, Winter, " Islamic State: The Changing Face", 31.

this controlled territory, the main violence forces are represented by the suicidal attacks³⁴ that don't have the purpose to subordinate the population of the territories, there is a predisposition of it to accept the authority of the Islamic State considering that it offers a certain degree of stability, which missed in the last period. They are directed either against the Shiite heretics or against the non-Muslims, yet there are situations where they are fighting against other jihadist groups that they see as a threat to their authority which must be singular. In addition, numerous attack campaigns were lead, with access to weapons and having a mobile strategy "they needed only 800 fighters to capture the city of Mosul, proving a great strategic and tactical ability."³⁵

Thus, it is considered that its military component has tactics such as the acts of terrorism, the insurgency actions or conventional military actions. The fighters of the Islamic State follow a certain logic when using these tactics over an established target. Firstly, this one is weakened by a terrorist attack, which is followed by infiltration in some areas of strategic importance that allow to gain the control over the entire target.³⁶

There appears a problem appears regarding the forms of violence made by the Islamic State, an extremist violence such as terrorist acts is the way in which hostages are executed. The "public" decapitations of some non-Muslims, coming from Western states, that are filmed and posted on social media capt the attention through their cruelty and also confirm the extremist nature of the group's strategies. What is representative in this direction is the activity of so-called Islam State's executioner, Jihadi John, who executed several such hostages.

The videos with the execution of the hostages are not just simple documentaries of some war atrocities, but they are powerful propaganda tools, with a great impact, of the terrorists for whom have been committed the murders.³⁷ The videos draw the attention through media and they are available for the whole world on YouTube and other sites. They are the product of a deliberate rational calculation that aims to create a maximum impact on the different target groups and at the same time to achieve a political goal that the directors of such actions would not obtain because of their minority status in what they proclaim and sustain. Therefor, such videos become "a communication strategy and not just another act of violence."³⁸

These videos are full of symbolis. From the colors that dominate, to the English speaking, direct to the Western powers. The ISIS executioner named "Jihadi John gives his statement in English with a British accent." The political leaders and the audience from the hostages' countries are explicitly addressed. The videos mention the abundant political decisions and the military actions of these nations. In an introductory part, the videos contain an edited segment of TV news about the Western political leaders or parliamentary decisions, fitting everything into a clear political context.

Extreme violence is considered to reach a very high level, as the actions of this group are largely translated, besides decapitations or suicide attacks, by "crucifixion, stoning, massacre, burial of living victims and religious and ethnic cleansing."³⁹ The integration of these actions into

³⁴ Richard Barrett, "The Islamic State" *The Soufan Group*, (2014): 40.

³⁵ Richard Barrett, "The Islamic State" 35.

³⁶ Richard Barrett, "The Islamic State" 36.

³⁷ Judith Tinnes "A Backgrounder on IS Hostage Videos – August - December 2014" *Perspectives on Terrorism*, 9, (2015): 77.

³⁸ Tinnes "A Backgrounder on IS Hostage Videos", 75.

³⁹ *** "Islamic State. Can its savagery by explained?, BBC News. Accesed in June, 15, 2015,

the extremist ideology of the group it is necessary and easy to explain if we consider the ideological foundations that represent the base of this group and that we have analyzed in the previous section. The violence is justified through the mission that its ideology gives it, of instauration of the Caliphate in which to establish the Islamic law and the return to the authentic faith promoted by the Prophet Muhammad. With this purpose, the violence can be exerted against anyone who is against this mission, against the Shiites who must be brought on the true way of the islam, against the non-Muslims, whose interference must be removed from the Middle East in order not to oppose the process of establishing the Caliphate, even against other jihadist groups, with the same ideology in order to eliminate any potential alternative source to the unique authority of the Caliphate.

THE ISLAMIC STATE'S CHALLENGE FOR THE MIDDLE EAST'S SECURITY

The persistence of multiple forms of threat for the security in the Middle East region is not something new, and neither due to the existence of the Islamic State. The existence of the jihadist extremist groups in the region is not new or singular, but the way the Islamic State evolved and especially how it managed to expand, brings new challenges for the region. From a simple group to the control of quite significant areas for an out of state actor, and especially the success in front of two states from whose loss to form an own structure of authority, it raises many questions about what's next and what kind of negative effects it has.

The first threat for the security we can identify is human, individual, through the exaggerated violence committed by the leaders of this movement over the possible ideological opponents, over those considered heretics and ment to be brought to the true islam, over the strangers to send a message to their countries regarding the new authority that claims to be legitimate representative of the authentic Muslims. In other words, the main threat for the human security is felt by the Shiite Muslims, the most prominent opponents of the ideology of the Islamic State, the campaigns directed against them, the violence that leads to purge sustain the fact that the Islamic State brings an argumentation of the threat for the security in the region.

The expansion of the Islamic State at the border between the two states, Iraq and Syria, directly threatens their security, but also the whole region. The incorporation of the Sunni areas from Iraq and Syria, as well as the support of other jihadist groups from the Muslim states, raise the issue of the even greater expansion of the Islamic State. The greatest threat does not come from gaining territories and establishing a new authority, since, at least in the case of Syria, the instability was much greater due to the civil war, than after the region was subordinated to the Islamic State, but from its ideology.⁴⁰ Thus, the alarming threat is the perspective of extending the ideology and the practices of the Islamic State to other parts of the region, which would lead to an increase in violence and hence instability, already high after the Arab Spring.

The possibility of the expansion brings another alarming problem. As is the case with the occupied territories between the two states, the Islamic State choose the abolition of any form of authority from the state, establishing the Islamic law and its authority. The pespective of the expansion to other territories also includes this issue and creates worries because the state's

<http://www.bbc.com/news/world-middle-east-29123528>

⁴⁰ Christopher M. Blanchard, Carla E Humud, "The Islamic State crisis and U.S. policy", *Congressional Research Service*, June, 15, 2015, 1.

‘authorities can be abolished⁴¹ and their legitimacy transferred to the Islamic State. But this group is an out of state, extremist group with terrorist activities, whose legitimacy is not recognized internationally. In such a context appears the question of how to negotiate with such authority, which has self-proclaimed its legitimacy to be a representative of the Sunni Muslims, and how to reach an agreement to end the violence when the Islamic State is not actually a state in the larger meaning of this word.

The issue of negotiation, of dialogue, and the agreement for stopping the violence is irrelevant to the Islamic State through its refuse to stop the violent actions considered justified in the name of the cause that it pursues. The Islamic State does not accept the negotiation with the existing political authorities considered as deviations from the Islamic law, it can not have a dialogue with the Shiites whom it consider to be heretics and must be brought on the right way, does not accept agreements with the non- Muslim, Western authorities because the goal of the Islamic State is to eliminate the interference of the Western powers from the region, essential for the Caliphate expansion.

An important element that must be taken into account in any strategy of defeating the Islamic State is "the will and the capacity of the Arab Sunni community from Iraq and Syria, which are under its control, to reject the Islamic State, and then to join the states of Iraq and Syria, reformed."⁴² It is inevitable to ask how this is going to work, considering that, besides the fact that the Islamic State "is under the command of a military force that tries to govern the cities under its authority [...] the measures used in this direction are also of a coercive nature, but also include the provision of services to the population from there."⁴³ It is difficult to estimate how the overthrow of the Islamic State control will succeed when it enjoys the support of the Sunni Muslim precisely because it provides social services, offering a better situation than what the two states offered when they had control of these areas.

The general challenge for the security in the Middle East region is due to the extreme level of violence that can be reached. The use of violence on the distinction made between the Sunnis and the heretics encourages a sectarian war that significantly increases the degree of violence. However, the holy mission of establishing the Caliphate increases the possibility of violence against anyone who opposes this mission, what is relevant here is the fight between the Islamic State and other Sunni jihadist groups that represent a possible threat for the authority of the former.

CONCLUSION

The Islamic state represents a new danger to the security of the Middle East region, especially because of the extremist ideology which stays at its foundation. The threats to the security in the region are due to its violent methods, which increases the insecurity level of the individual, especially of those who can be considered enemies. There is also a perpetual threat regarding the expansion of the group in other parts of the region through its connections with other jihadist groups from the Middle East and North Africa. Therefore, the threat translates into the possible removal of some political authorities which have legitimacy and their replacement with the out of state authorities of the Islamic State, which directly affect the dialogue and the

⁴¹ Kimberly Kagan, Frederick W. Kagan, & Jessica D. Lewis "A strategy to defeat the Islamic State", *Middle East Security Report*, 23, (2014), 7.

⁴² Kagan, Lewis "A strategy to defeat the Islamic State", 7.

⁴³ Kagan, Lewis "A strategy to defeat the Islamic State", 18.

cooperation in the region, both of other international actors involved, but also on the Suniti-Shiite dichotomy.

The increase of the threat for the security of the Islamic State has been highlighted after the actions and successes obtained by this group in the last years, especially in the initiation of the Arab Spring. Basically, this group managed to defeat the security forces of two states and to establish its "own state" at the border between the two. The rapidity with which the group has achieved all these successes has drawn the attention to the fact that its threat is not one that can be undermined, but one that needs to be taken into account because the Islamic State has already shown that there is no limit to force it to temper its actions and operations, and therefore to reduce its violence level.

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PUBLIC PRIVATE PARTNERSHIP FOR SUSTAINABLE INFRASTRUCTURAL DEVELOPMENT IN LAGOS METROPOLIS: PROSPECTS AND CHALLENGES

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ABSTRACT

THIS REVIEW EXAMINES THE PROSPECTS ALONGSIDE THE CHALLENGES ENCOUNTERED BY PUBLIC PRIVATE PARTNERSHIP (PPP) IN ENSURING SUSTAINABLE INFRASTRUCTURAL DEVELOPMENT IN LAGOS, NIGERIA. IT SHOWS THAT IN SPITE OF THE CHALLENGES FACED BY PPP, IF EMBRACED WITH SINCERITY AND TRANSPARENCY CAN IMPROVE SUSTAINABILITY AND INFRASTRUCTURAL DEVELOPMENT THROUGH VALUE FOR-MONEY PROJECT ASSESSMENTS AND IMPROVED DELIVERY PERFORMANCE. THIS PAPER SUGGESTS THAT TO ENSURE SUSTAINABLE INFRASTRUCTURAL DEVELOPMENT, GOVERNMENT SHOULD ESTABLISH THE REQUIRED GUIDING STRUCTURE FOR SUITABLE EXECUTION OF PPP PROJECTS THAT WILL HELP IN CONFLICT RESOLUTION THROUGHOUT THE PERIOD OF PPP CONTRACTS.

KEY WORDS: PUBLIC PRIVATE PARTNERSHIP; SUSTAINABLE DEVELOPMENT; METROPOLIS

INTRODUCTION

Infrastructural growth is key to sustainable development in any nation. No meaningful development can take place in any nation without adequate infrastructures in place. Infrastructural

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development serves as catalyst for growth and sustainable development in many developed countries⁶. Many of the developed nations have succeeded in addressing their infrastructural challenges through different forms of collaboration with the private sector. Among these are the first privately developed and operated toll road in Texas United State done through a PPP arrangement. Similarly, the US Army entered into collaboration with private sectors firms to design and build a special runway use for hot weather vehicle testing through the PPP arrangement⁷. In Nigeria, the need for sustainable development has made the government to embrace various policy options in addressing infrastructural challenges in the country. Notable among these government policies is the privatization policy which entails the transfer of state owned enterprise to private firms. The government relinquished its interest and controlling power in the public firms to the private investors. However, due to perceived exploitation and expensive services rendered by these private firms, the privatization policy was abandoned by the government in search for an alternative⁸. Nigerian government, in search for alternative decided to enter into some sort of collaboration with the private sector in the area of infrastructural development identified as Public Private Partnership (PPP). PPP entails agreement between the government and the private sector, where by the private party is responsible for the provision of public service or infrastructural project and accepts significant financial, practical and functional risk in the task at hand⁹. Unlike privatization policy, the belief here is that instead of outright transfer of controlling power to the private firm, government goes into a mutual collaboration with the private sector. Though PPP had come to stay in the country, Nigeria has not fully explored the gains in PPP as the nation still suffers from gross infrastructural deficiency that had affected sustainable development in the nation¹⁰. Therefore, the focus of this review paper is to examine the prospects and challenges of Public Private Partnership (PPP) in ensuring sustainable infrastructural development in Lagos Metropolis.

Statement of the problem

Sustainable growth and development in any nation is driven by infrastructural development. Many developed nations that had experience improvement in infrastructural development achieve this in collaboration with the private sector.¹¹ in their work titled “Public Private Partnership and Nigeria Economic Growth: Problems and Prospects”, submitted that Public Private Partnership (PPP) is the effective solution to the infrastructural deficit in Nigeria. This was

⁶ Li, B, Akintoye, A, Edwards, P. J, Hardcastle, C. “Critical success factors for PPP/PFI projects in the UK Construction industry”. *Construction Management and Economics*, 23, (2005):459-471.

⁷ Uwem, Abubakar. “Public Private Partnership and Sustainable Development of Infrastructures in Nigeria”. *Advances in Management & Applied Economics*, 3(60), (2013): 113-127

⁸ Oluwasanmi, Ogidi. “Public Private Partnership and Nigeria Economic Growth: Problems and Prospect”. *International Journal of Business and Social Science*, 5(11), (2014): 132- 139.

⁹ Egboh, Chukwuemeka. “Public-Private Partnership in Nigeria: The Challenges of Human Relations Management”. *Kuwait Chapter of Arabian Journal of Business and Management Review*. 1(5), (2012): 99-113.

¹⁰ Oluwasanmi, Ogidi. “Public Private Partnership and Nigeria Economic Growth: Problems and Prospect”. *International Journal of Business and Social Science*, 5(11), (2014): 132- 139.

¹¹ Oluwasanmi, Ogidi. “Public Private Partnership and Nigeria Economic Growth: Problems and Prospect”. *International Journal of Business and Social Science*, 5(11), (2014): 132- 139

supported by ¹² who opined that PPP enhances sustainability of infrastructural development in Nigeria through value for money and improved delivery performance. However, with the growth in population in Nigeria that led to increased demand for more infrastructures by the populace and the frequent changes of government policies coupled with government breach of agreement in past contract with the private sector, the gain of PPP is far from being attained in Nigeria. Emerging countries that had recognized the contributions of PPP in the sustainable development of many developed nations had tapped into it and the result had been very obvious.¹³ adjudged that the development of a country is not achievable by the public authority alone, hence PPP serve as a major contributor to sustainable development of any country. Nigeria however had implemented PPP since the early millennium but the contributions has not been obvious as expected. The quest for sustainable development has made many countries of the world (developed and developing countries) to embrace PPP. But while the developed nations have benefited from this partnership, developing nations like Nigeria are yet to experience much gain. ¹⁴ argued that in Nigeria corruption and lack of transparency by the government is a major setback to PPP. Similar position was put forward by¹⁵ who argued that premature termination of contract and particularly PPP contract is a big drawback to PPP in Nigeria. It is obvious that with this drawback no investor will want to continually stake his resources into partnership with the Nigeria government. Therefore, this paper focuses on identifying the contributions as well as the prospects of PPP and discussing the challenges of PPP in Lagos, Nigeria with the goal of proffering solutions to the numerous challenges so as to realize sustainable development in the nation.

Objectives of the study

The main objective of this study is to examine the challenges and prospects of Public Private Partnership for Sustainable Development in Lagos Metropolis.

The study precisely sought to:

- i. Find out the contributions of Public Private Partnership to Lagos Metropolis.
- ii. Examine the challenges of Public Private Partnership in Lagos Metropolis.
- iii. Determine the prospect of Public Private Partnership in Lagos Metropolis.

LITERATURE REVIEW

The concept of Public-Private-Partnership

Although there is no universal agreed definition for PPP, several scholars had looked at it from various perspectives pointing out various characteristics of what make up a PPP. ¹⁶ described PPP as a general term used to refer to a numerous number of structures that aid the provision of

¹² Uwem, Abubakar. "Public Private Partnership and Sustainable Development of Infrastructures in Nigeria". *Advances in Management & Applied Economics*, 3(60), (2013): 113-127

¹³ Okpara, K. (2012). Public Private Partnership: Catalyst of Economic Development in Africa. Available online at <http://nsacc.org.ng/public-private-partnership-catalyst-of-economicdevelopment-in-africa/>. Accessed on 23/02/2016

¹⁴ Dabak, P. D. "Public-Private Partnership: The Answer to Nigeria's Development Challenges". *Journal of Economics and Sustainable Development*, 5(22), (2014): 143-147.

¹⁵ Afolabi, E. Examining Public Private Partnership in Nigeria: Potentials and Challenges. Available from <http://nairametrics.com/wp-content/uploads/2012/06/Examining-Public-Private-Partnership-in-Nigeria.pdf>. Accessed on 25/04/2016. (2011).

¹⁶ Turley, Semple. Financing Sustainable Public Private Partnerships. Available online at <http://www.iisd.org/markets/procurement>. Retrieved on 23/05/2016. (2013).

public infrastructure as well as public services through the private sector involvement.¹⁷ adds that PPP comprises of contract between the public authority as well as the private investors, where by the private investors provide public service or project and undertakes ample monetary, practical and functional risk in the project. PPP refers to a definite type of plan that involves a durable agreement between the government and private investors in which the private investors' designs, constructs, funds and drives public infrastructure in exchange for payment¹⁸. According¹⁹ PPP project is a project based on franchise agreement, that involve the public authority on one hand and the private sector parties on the other side, with the aim of providing infrastructural amenity with user charges received. Many scholars had contributed immensely in the area of Public Private Partnership. Extensive research conducted by²⁰ revealed that PPP will aid the realization of government goals in the area of infrastructural development as well as the private sector ability to make the desired profit without unduly affecting the citizen in any negative ways by addressing the issue of insecurity in the country which in turn attract investors. This position was further supported by²¹ in his research work "Examining PPP in Nigeria: potential and challenges" and concluded that PPP hold immense benefits to a nations development provided the issue of frequent changes of political office holders is address thus aiding continuity of developmental policies and programs. However,²² viewed this from a different perspective and submitted that though PPP had immense potential, there are no adequate legislations to govern PPP practice in Nigeria and the few available ones are full of flaws giving room to corrupt practices among the PPP relevant parties. However, to achieve these impressive outcomes call for an institutional design, with strong preference for private participation promotion, which handles market development, regulation, facilitation, assessment, and implementation of infrastructure projects in a single hull. He further stressed on the need to create full service central PPP agencies from the merger of a number of related government ministries and agencies, which is expected to be a subsidiary of the Ministry of Finance as obtainable in developed countries, coupled with specialized PPP agencies for strategic infrastructures.²³ advocated in their work on PPP in Nigeria and Improvement in Service Delivery: An appraisal, that Nigeria slow development is a product of its underdeveloped infrastructure, of which government must give high priority to PPP if the issue is to be addressed. They also concluded that to achieve the desired improvement in service delivery certain

¹⁷ Egboh, Chukwuemeka. "Public-Private Partnership in Nigeria: The Challenges of Human Relations Management". *Kuwait Chapter of Arabian Journal of Business and Management Review*. 1(5), (2012): 99-113.

¹⁸ Fussell, Beresford, C (2009). Public-Private Partnerships: Understanding the Challenge. http://www.columbiainstitute.ca/sites/default/files/resources/columbiap3_eng_v8-webpdf.pdf. Accessed on 26/04/2016 <http://www.premiumtimesng.com/news/143629-lagos-terminates-concession-agreement-on-lekki-epe-expressway.html>. Accessed on 25/11/2015.

¹⁹ Idris, A, Kura, S. M, Bashir, M. U. "Public Private Partnership in Nigeria and Improvement in Service Delivery: An appraisal". *Journal of Humanities and Social Science*. 10(3), (2013): 63-71

²⁰ Dabak, P. D. "Public-Private Partnership: The Answer to Nigeria's Development Challenges". *Journal of Economics and Sustainable Development*, 5(22), (2014): 143-147.

²¹ Afolabi, E. Examining Public Private Partnership in Nigeria: Potentials and Challenges. Available from <http://nairametrics.com/wp-content/uploads/2012/06/Examining-Public-Private-Partnership-in-Nigeria.pdf>. Accessed on 25/04/2016. (2011).

²² Nehemiah, Y. S., Daniel, M. M., Akande, E. M. and Adeagbo, D. O. "A Review of Public-Private Partnership for Building and Infrastructure Procurement in Nigeria". *Developing Country Studies*, 6(2), (2016): 5-13.

²³ Idris, A, Kura, S. M, Bashir, M. U. "Public Private Partnership in Nigeria and Improvement in Service Delivery: An appraisal". *Journal of Humanities and Social Science*. 10(3), (2013): 63-71

institutional factors which include improved business environment, well-functioning regulatory framework and more efficient public sector should be put in place. Credence was also added to this position by ²⁴, in their work ‘PPP and Nigeria Economic Growth: Problems and Prospect’ and reported that enabling laws governing PPP should be domesticated in each state of the federation if PPP is to work while relevant training on PPP should be done for the stakeholders as well as orientation of Nigerians on what PPP entails. ²⁵ looked at PPP with respect to its Challenges in Infrastructural Financing in Nigeria with the goal of achieving sustainable development and concluded that there are various funding options open to PPP for infrastructure financing such as government budgetary allocation, loan financing (institutional financing), equity resources from sponsors of the project, debt capital markets (bonds) and structured finance (securitization, collateralised debt obligations among others). He further pointed that a certain percentage of pension funds should be invested in bankable infrastructure project and that government should do more to attract investment into infrastructure from multinational firms and the use of certain percentage of the excess reserve to establish an Infrastructure Guarantee Fund for credit enhancement for banks long term lending ability for development projects.

Characteristics of PPP

Although various scholars had argued that there is no general consensus definition for PPP, but they all agreed to certain characteristics of PPP. ²⁶ argued that the following features typified a PPP: the full or part funding of the infrastructure financed by the private sector; the partnership is made up of risks distributed between them, while the party that is best position for a particular type of risk gets such allocation. PPP involve huge transaction cost with long term of duration as well as multiple parties and the performance risk in PPP is mostly on the private parties, which get paid only on delivery of the services or completion of projects ²⁷. Oyedele (2013) cited in ²⁸ also identified some important characteristic of PPP as follows: Sound legal framework due to different goals of the parties involved, efficient and effective costing with risk consideration. Sure sources of fund with ease of accessibility covering the project duration. PPP project need be established on its money worth, must be economical, efficient and effective. Parties involved in PPP must have technical knowledge of the infrastructure been developed though at different level of expertise.

Types of Public-Private-Partnership

²⁹ identified two basic types of PPP, which are contractual and Institutional PPP.

²⁴ Oluwasanmi, Ogidi. “Public Private Partnership and Nigeria Economic Growth: Problems and Prospect”. *International Journal of Business and Social Science*, 5(11), (2014): 132- 139

²⁵ Ikpefan, O. A. “Challenges of Public Private Partnership in Infrastructural Financing in Nigeria”. *The Nigeria Accounting Horizon*, University of Jos. 4(1), (2010): 61-76.

²⁶ Oluwasanmi, Ogidi. “Public Private Partnership and Nigeria Economic Growth: Problems and Prospect”. *International Journal of Business and Social Science*, 5(11), (2014): 132- 139

²⁷ Oluwasanmi, Ogidi. “Public Private Partnership and Nigeria Economic Growth: Problems and Prospect”. *International Journal of Business and Social Science*, 5(11), (2014): 132- 139

²⁸ Oluwasanmi, Ogidi. “Public Private Partnership and Nigeria Economic Growth: Problems and Prospect”. *International Journal of Business and Social Science*, 5(11), (2014): 132- 139

²⁹ Idris, A, Kura, S. M, Bashir, M. U. “Public Private Partnership in Nigeria and Improvement in Service Delivery: An appraisal”. *Journal of Humanities and Social Science*. 10(3), (2013): 63-71

- i **Institutional PPP:** refers to the formation of a corporate entity jointly by the public and private partner. The corporate entity jointly formed is saddled with all activities relating to PPP operations with priority of ensuring the provision of services for the benefit of the public partner ³⁰. This formation can either be through a body jointly owned by public and private sectors or through private sector buying and owning stocks in an existing public establishment. Generally the public partner controls the company as a shareholder or either as a special rights it hold in the company while the operation of the company is in the hands of the private partner. Institutional PPP had experience real success mostly in nations with well-developed institutional and regulatory capacities ³¹.
- ii **Contractual PPP:** This is a type of partnership between the public and the private sector based solely on contractual relations. In this partnership, the rights and obligations of the parties are regulated by an administrative contract or series of contracts. ³² argued that contractual PPP also involve the concession model where the private sector under the control of the public sector assumes all the responsibility relative to the construction, operation and maintenance of the infrastructure assets and taking charges from users of the service. The concession model is associated with long contractual periods. Contractual PPP are significantly more common, especially in developing economies ³³.

Forms of PPP

According to ³⁴ and Centre for Sustainability in Mining and Industry (CSMI) (2010) cited in ³⁵, the PPP forms commonly adopted are explained in the summarized Table 1 below

Table 1: Public-Private-Partnership Forms

Forms of PPP	Meaning
BOT - Build-Operate-Transfer	The building of the facility is funded by the Private investors who then sell to the government the final output, and transfers it at the end of the contract.
BRT - Build-Rent-Transfer	At the end of the contract the transfer of the facility built by the Private investor is done who must have

³⁰ Idris, A, Kura, S. M, Bashir, M. U. “Public Private Partnership in Nigeria and Improvement in Service Delivery: An appraisal”. *Journal of Humanities and Social Science*. 10(3), (2013): 63-71

³¹ Oluwasanmi, Ogidi. “Public Private Partnership and Nigeria Economic Growth: Problems and Prospect”. *International Journal of Business and Social Science*, 5(11), (2014): 132- 139

³² Oluwasanmi, Ogidi. “Public Private Partnership and Nigeria Economic Growth: Problems and Prospect”. *International Journal of Business and Social Science*, 5(11), (2014): 132- 139

³³ Idris, A, Kura, S. M, Bashir, M. U. “Public Private Partnership in Nigeria and Improvement in Service Delivery: An appraisal”. *Journal of Humanities and Social Science*. 10(3), (2013): 63-71

³⁴ Afolabi, E. Examining Public Private Partnership in Nigeria: Potentials and Challenges. Available from <http://nairametrics.com/wp-content/uploads/2012/06/Examining-Public-Private-Partnership-in-Nigeria.pdf>. Accessed on 25/04/2016. (2011).

³⁵ Uwem, Abubakar. “Public Private Partnership and Sustainable Development of Infrastructures in Nigeria”. *Advances in Management & Applied Economics*, 3(60), (2013): 113-127

	rented the facility out during the tenor of the contract.
BTO - Build-Transfer-Operate	The building and the transfer of the facility to the public is carried out by the private vendor, who receive outright payment or installment from the operation of the facility directly by the government or contracted out by the government.
CONCESSION	Private investor gets involve in the building of the facility or may not, but is allowed to manage the facility and charge users a fee for use of the facility.
DBB - Design-Bid-Build	The public sector come up with the design, puts out tenders and winner builds the facility.
DBMF - Design, Construct, Maintain and Finance	Government designs, private sector construct and maintain while government do the financing.
FRANCHISE	The service provider (franchisee) is allowed to charge a service fee for the use of the infrastructure or service already built or provided by the government. The franchisee pays a lump sum to government.
Lease/Maintain	Rent is paid by private investor for facility and utilizes the resources.
Output specification	Government agency specifies "outputs," and private vendor designs, finances and builds the infrastructure.
RLT - Rehabilitate-Lease-Transfer	The rehabilitation of the facility provided by the government is carried out by the private investors, who signs a lease agreement on the facility with government agency, and transfers at the end of contract.
ROT-Rehabilitate-Operate-Transfer	Private entity rehabilitate facility operates to the extent of complete recovery of cost and transfers.

Sources: Afolabi (2011) and CSMI (2010) cited in Uwem & Abubakar (2013).

PPP Legislation in Nigeria

In Nigeria PPP agreement are at present governed by:

- The Infrastructure Concession Regulatory Commission (ICRC) Act of 2005.
- The public procurement Act 2007
- Rules delivered by ICRC leading the PPP process.
- PPP policies as defined in each state's laws.

According³⁶ a review of the ICRC (2005) Act revealed some short coming of the Act. The Act failed to make clear the funding challenges PPP project may face. The Act neither has a dispute resolution mechanism nor explains how the private investors can be protected in the event of disagreement with the government. There are also no mechanisms for receiving and examining unsolicited PPP proposals from prospective private investors for assessment and sponsorship. Most regrettably, the ICRC is not empowered to package PPP projects, it merely gives approvals and engages in advocacies. Thus, the critical institutional platform for nurturing PPP projects to maturity is lacking in Nigeria, and the entire institutional architecture for capital budget execution is lacking.

Reasons for PPP in Lagos metropolis.

With reference to³⁷, the main reasons that prompted government involvement in PPP agreement are: (i) In order to have the best use of the available limited resources and to guarantee service efficiency. (ii) For fairness as well as transparency in the system of infrastructural delivery. (c) So as to attract more experienced work force that will optimize performance. (d) To sanitize the sector and enhance accountability. ³⁸ adjudged that government went into PPP with the goal of delivering better meaningful public services, via contribution to the enhancement of quality and quantity of infrastructures in the nation. ³⁹ argued that the reasons for PPP in Nigeria include: huge shortage as well as extensive funding gaps seen in the nation's infrastructural domains, high rate of white elephant projects, high level of corruption in project execution and limited public resources to meet the country's rising infrastructure demand. The initial option adopted by the government for infrastructural need was privatization, which was expected to show some form of competitiveness and a way to generate fund needed for capital expenses including infrastructures. However,⁴⁰ posited that since the inception of the privatization process in Nigeria in 1999, it had been marred with lots of abnormalities among which are the partiality in the privatization process, absence of transparency and corruption by the so called privatization officials⁴¹. All these are pointer to the fact that the government good intention in meeting the nation's infrastructural need through privatization had not produce the desire result. Although there is nothing wrong with privatization as its success had been obvious in many nations that had embraced it; it non workability in Nigeria in term of the result delivered not meeting up with the government and the populace expectation led to a stronger developmental synergy referred to as PPP meant to address

³⁶ Uwem, Abubakar. "Public Private Partnership and Sustainable Development of Infrastructures in Nigeria". *Advances in Management & Applied Economics*, 3(60), (2013): 113-127

³⁷ Infrastructure Concession Regulatory Commission (2013). PPP Project Report. Available from www.f.pppn.org. Accessed on 21/04/2016.

³⁸ Dabak, P. D. "Public-Private Partnership: The Answer to Nigeria's Development Challenges". *Journal of Economics and Sustainable Development*, 5(22), (2014): 143-147

³⁹ Dominic. M. U, Ezeabasili, A. C. C, Okoro, B. U, Dim, N. U, Chikezie, G. C. A Review of Public Private Partnership on some Development Project in Nigeria. *International Journal of Application Innovation in Engineering & Management*. 4(3), (2015): 64-75.

⁴⁰ Afolabi, E. Examining Public Private Partnership in Nigeria: Potentials and Challenges. Available from <http://nairametrics.com/wp-content/uploads/2012/06/Examining-Public-Private-Partnership-in-Nigeria.pdf>. Accessed on 25/04/2016. (2011).

⁴¹ Dabak, P. D. "Public-Private Partnership: The Answer to Nigeria's Development Challenges". *Journal of Economics and Sustainable Development*, 5(22), (2014): 143-147

the deficiency in privatization process and to meet the funding gaps in the nation's infrastructural development.

Benefits of PPP

According to⁴², some of the following benefits that can be accrued from PPP scheme are:

Value for money: Projects are executed at lower cost with the utilization of private investors' expertise and technology in efficient service delivery, thus having superior product or service at reduce cost⁴³.

- i. Quicker delivery of project: Since bureaucratic tendencies are reduced if not eliminated, with PPPs projects are completed swiftly and on schedule than those purely funded and executed by the public sector⁴⁴.
- ii. Risk transfer: In PPP contract, the party that is better prepared for a type of risk is made to handle it, thus leading to risk transfer from the other party that could be vulnerable⁴⁵.
- iii. Increased investment: The involvement of the private sector had made governments to be able to execute more projects frequently and on a bigger scale without the need for extra budget or additional funds⁴⁶.
- iv. Enhanced budget/certainty of finance: The shift of responsibility (and risk) to the private investor for some of the project elements free governments from unexpected financial burden resulting from cost overruns and other operational difficulties capable of imparting the bottom line of the organization's budget⁴⁷.
- v. Improved service delivery: Since both the government and the private sector concentrate on their areas of expertise, PPP enhances delivery of improved service, thus government on policy and governance, while the private sector focused on the technical aspects of design, construction, operation, and management. PPP bring out the business efficiency and effectiveness to the public sector service delivery and shun the politically unstable factor of full privatization of public utilities.
- vi. Political benefit: Positive public perception about the government as PPP aid swift projects delivery without impacting much on government budget yet superior quality infrastructure or services are provided⁴⁸.

⁴² Fadeyi, O, Adegbuyi, A, Ogbonna, I, Agwu, E. Assessment of Public Private Partnership on Infrastructural Development in Nigeria: Challenges and Prospects. *Covenant University International Conference on African Development Issues Proceedings*, (2016) pp. 222-227. Available at <http://eprints.covenantuniversity.edu.ng/6660/#.WUj4htLyvIU>. Accessed on 19/06/2017

⁴³ Dabak, P. D. "Public-Private Partnership: The Answer to Nigeria's Development Challenges". *Journal of Economics and Sustainable Development*, 5(22), (2014): 143-147.

⁴⁴ Oluwasanmi, Ogidi. "Public Private Partnership and Nigeria Economic Growth: Problems and Prospect". *International Journal of Business and Social Science*, 5(11), (2014): 132- 139

⁴⁵ Okpara, K. (2012). Public Private Partnership: Catalyst of Economic Development in Africa. Available online at <http://nsacc.org.ng/public-private-partnership-catalyst-of-economicdevelopment-in-africa/>. Accessed on 23/02/2016

⁴⁶ Dabak, P. D. "Public-Private Partnership: The Answer to Nigeria's Development Challenges". *Journal of Economics and Sustainable Development*, 5(22), (2014): 143-147

⁴⁷ Oluwasanmi, Ogidi. "Public Private Partnership and Nigeria Economic Growth: Problems and Prospect". *International Journal of Business and Social Science*, 5(11), (2014): 132- 139

⁴⁸ Dabak, P. D. "Public-Private Partnership: The Answer to Nigeria's Development Challenges". *Journal of Economics and Sustainable Development*, 5(22), (2014): 143-147

- vii. Growth and stability of the Private Sector: The growth and stability of the private sector is guaranteed as inherent contract risk are underwritten by the public authority leading to a reduce risk for the private sector. Also with reduce risk cash flow from the private sector is enhanced stimulating other investment opportunities in the country as well job creation⁴⁹.
 - viii. Elimination of corruption: With PPP corruption in awarding of contract and project execution is drastically reduced if not totally eliminated. White elephant project become a thing of the past, as projects awarded are carried out and completed on time⁵⁰.
- ⁵¹ opined that the benefit of PPP to the private partner is seen in the way the private partner is compensated, which could be either: payments based on user (port charges, airport and toll roads), Payment base on availability from the public authority (strong incentives from government that aid the timely delivery of project by the private partner), Power Purchase Agreements (PPA), Water Purchase Agreements (WPAs) or a combination of the above.

Challenges of PPP in Lagos metropolis.

PPP in Nigeria is faced with various challenges which include:

- i. **Problem of definition:** PPP in Nigeria is faced with the problem of definition as the relevant laws that established it did not properly define how PPP is to be finance in Nigeria; as well as the finance options available to PPP in the country⁵². This problem was one of the main issue between Federal Airports Authority of Nigeria (FAAN) and Bi-Courtney Company in the PPP project of Murtala Muhammed Airport (MMA2) Lagos, which led to the eventual revocation of the contract⁵³.
- ii. **Non Domestication of PPP enabling Laws:** The Nigeria situation is different and peculiar in all its ramifications. The fact that PPP had succeeded in developed Countries and developing nations like Nigeria had embrace it without proper domestication of the enabling laws had made the nation not to fully reap the gain of PPP in the nation⁵⁴.
- iii. **Neglect of Stakeholders:**⁵⁵ opined that PPP involve different stakeholders among whom are the public authority, private investors, and the host communities among others. Failure to properly engage relevant stakeholders in the implementation of PPP project is a major

⁴⁹ Okpara, K. (2012). Public Private Partnership: Catalyst of Economic Development in Africa. Available online at <http://nsacc.org.ng/public-private-partnership-catalyst-of-economicdevelopment-in-africa/>. Accessed on 23/02/2016

⁵⁰ Afolabi, E. Examining Public Private Partnership in Nigeria: Potentials and Challenges. Available from <http://nairametrics.com/wp-content/uploads/2012/06/Examining-Public-Private-Partnership-in-Nigeria.pdf>. Accessed on 25/04/2016. (2011).

⁵¹ Idris, A, Kura, S. M, Bashir, M. U. “Public Private Partnership in Nigeria and Improvement in Service Delivery: An appraisal”. *Journal of Humanities and Social Science*. 10(3), (2013): 63-71

⁵² Uwem, Abubakar. “Public Private Partnership and Sustainable Development of Infrastructures in Nigeria”. *Advances in Management & Applied Economics*, 3(60), (2013): 113-127

⁵³ Afolabi, E. Examining Public Private Partnership in Nigeria: Potentials and Challenges. Available from <http://nairametrics.com/wp-content/uploads/2012/06/Examining-Public-Private-Partnership-in-Nigeria.pdf>. Accessed on 25/04/2016. (2011)

⁵⁴ Oluwasanmi, Ogidi. “Public Private Partnership and Nigeria Economic Growth: Problems and Prospect”. *International Journal of Business and Social Science*, 5(11), (2014): 132- 139

⁵⁵ Afolabi, E. Examining Public Private Partnership in Nigeria: Potentials and Challenges. Available from <http://nairametrics.com/wp-content/uploads/2012/06/Examining-Public-Private-Partnership-in-Nigeria.pdf>. Accessed on 25/04/2016. (2011).

challenge in Nigeria⁵⁶. For instant the revocation of the PPP contract between Lekki Concessionary Company and Lagos State was mainly due to lack of engagement of the relevant stakeholders, that resulted into legal issue and the eventual contract revocation.

- iv. **Lack of transparency in contract process:** Most contract awarded in Nigeria including PPP contract are not done with transparency⁵⁷. The element of godfather's and favoritism are seen in most contract awarded at the expense of competence making the project contracts dead on arrival⁵⁸.
- v. **Corruption:** The major challenge faced by many businesses and investment in Nigeria is the problem of corruption⁵⁹. As many government agencies you have to deal with, so is the number of people you have to grease their palm or bribe for you to get the needed approval. Contractors in Nigeria had to settle many stakeholders in the contract before he can get the contract and this result into substandard execution of projects without any body asking question or querying the quality of job done⁶⁰.
- vi. **Lack of sound legal and institutional framework:** Another problem of PPP in Nigeria is the lack of sound legal and institutional framework⁶¹. Whenever there is a problem with the PPP agreement, the private investors are left to bear the burden alone financially and otherwise due to the absence of sound legal and institutional framework for PPP in the country⁶².
- vii. **Lack of continuity:** Lack of continuity in government policies and political office holders is a big challenge to PPP in Nigeria. Change in government means change in policies and office holders; and since PPP entails a long duration, continuity become a mirage causing setback for PPP in the country⁶³.
- viii. **Financial limitations:** With PPP, government projects that had suffered setback due to finance should receive some boost. But in Nigeria, inability to access loan for a longer duration from banks due to the size of the by the private investors is also a setback experienced by PPP in the country⁶⁴.

⁵⁶ Okpara, K. (2012). Public Private Partnership: Catalyst of Economic Development in Africa. Available online at <http://nsacc.org.ng/public-private-partnership-catalyst-of-economicdevelopment-in-africa/>. Accessed on 23/02/2016

⁵⁷ Okpara, K. (2012). Public Private Partnership: Catalyst of Economic Development in Africa. Available online at <http://nsacc.org.ng/public-private-partnership-catalyst-of-economicdevelopment-in-africa/>. Accessed on 23/02/2016

⁵⁸ Oluwasanmi, Ogidi. "Public Private Partnership and Nigeria Economic Growth: Problems and Prospect". *International Journal of Business and Social Science*, 5(11), (2014): 132- 139

⁵⁹ Afolabi, E. Examining Public Private Partnership in Nigeria: Potentials and Challenges. Available from <http://nairametrics.com/wp-content/uploads/2012/06/Examining-Public-Private-Partnership-in-Nigeria.pdf>. Accessed on 25/04/2016. 2011

⁶⁰ Dabak, P. D. "Public-Private Partnership: The Answer to Nigeria's Development Challenges". *Journal of Economics and Sustainable Development*, 5(22), (2014): 143-147

⁶¹ Idris, A, Kura, S. M, Bashir, M. U. "Public Private Partnership in Nigeria and Improvement in Service Delivery: An appraisal". *Journal of Humanities and Social Science*. 10(3), (2013): 63-71

⁶² Okpara, K. (2012). Public Private Partnership: Catalyst of Economic Development in Africa. Available online at <http://nsacc.org.ng/public-private-partnership-catalyst-of-economicdevelopment-in-africa/>. Accessed on 23/02/2016

⁶³ Afolabi, E. Examining Public Private Partnership in Nigeria: Potentials and Challenges. Available from <http://nairametrics.com/wp-content/uploads/2012/06/Examining-Public-Private-Partnership-in-Nigeria.pdf>. Accessed on 25/04/2016. 2011

⁶⁴ Dabak, P. D. "Public-Private Partnership: The Answer to Nigeria's Development Challenges". *Journal of Economics and Sustainable Development*, 5(22), (2014): 143-147

- ix. **Premature termination of PPP contract:** ⁶⁵ affirmed that premature termination of contract is another challenge faced by PPP in Nigeria. For instance, the concession project of Lekki Toll Road Phase 1 was meant to last for thirty years was terminated prematurely by the Lagos State government due to the litigation issue associated with the contract ⁶⁶.
- x. **The complexity of PPP agreement:** ⁶⁷ posited that most PPP agreement are complex and involve a number of parties bringing different things into the partnership. This complex process alone is a challenge that PPP had to contend with in the country⁶⁸.

PPP projects in lagos metropolis.

According to⁶⁹ various concessions have taken place within the past few years in Nigerian and in particular Lagos Metropolitans area. Laudable among these PPP projects are Lekki Toll road project that is been handled by Lekki Concession Company, the domestic terminal project at Murtala Muhammed Airport Lagos by Bi-Courtney Aviation Services, the Bus Rapid Scheme (BRT) meant to address transport challenges in the state, the Eko Atlantic city project, the proposed fourth mainland bridge, among others. All these projects are privately driven and are all contributing to making Lagos state a mega city in the next few years.

Domestic terminal at Murtala Muhammed airport, lagos (MMA2)

This was a concession/BOT to build a new domestic terminal and additional facilities at the Murtala Muhammed Airport (MMA2) in Lagos. MMA2 was the first major BOT infrastructure project to be contracted by a Nigerian company. In 2013, Bi-Courtney was awarded the contract with 12 years tenor initially later extended to 36 years. The contracting parties were the aviation Minister, Federal Airports Authority of Nigeria (FAAN) and Bi-Courtney. About six banks were involved in this syndicated loan and project financing. The project bump into a number of problems, among which are inability to secure long term financing agreement, and reluctance of FAAN to maintenance the project by enforcing use of MMA2 by airlines as required in the PPP agreement, couple with several claims of breach of contractual rights by both parties. A number of things are worthy of note from the appraisal of MMA2 PPP in Nigeria. Firstly, lack of transparent and sustainable long term financing for PPPs. Secondly, lack of effective planning and failure to set dead line that would have help Bi-Courtney's in overcoming its shortcomings. Thirdly, weak framework to regularly observe and assesses PPP projects, thus making conformity to standard difficult. Fourth, is lack of provision to accommodate unanticipated variations in the project. Fifth, is the nonexistence of relevant dispute resolution mechanism for PPP projects

⁶⁵ Afolabi, E. Examining Public Private Partnership in Nigeria: Potentials and Challenges. Available from <http://nairametrics.com/wp-content/uploads/2012/06/Examining-Public-Private-Partnership-in-Nigeria.pdf>. Accessed on 25/04/2016. 2011

⁶⁶ Dabak, P. D. "Public-Private Partnership: The Answer to Nigeria's Development Challenges". *Journal of Economics and Sustainable Development*, 5(22), (2014): 143-147

⁶⁷ Idris, A, Kura, S. M, Bashir, M. U. "Public Private Partnership in Nigeria and Improvement in Service Delivery: An appraisal". *Journal of Humanities and Social Science*. 10(3), (2013): 63-71

⁶⁸ Oluwasanmi, Ogidi. "Public Private Partnership and Nigeria Economic Growth: Problems and Prospect". *International Journal of Business and Social Science*, 5(11), (2014): 132- 139

⁶⁹ Uwem, Abubakar. "Public Private Partnership and Sustainable Development of Infrastructures in Nigeria". *Advances in Management & Applied Economics*, 3(60), (2013): 113-127

leading to escalation of controversies easily and the failure of FAAN's to comply with several court orders, and inability of ICRC to shield PPP projects and private investors.

Lekki toll road concession project, lagos

The concession of Lekki Toll Road Phase 1 was between the Lagos State Government and the company to handle the project - Lekki Concession Company Limited, for a period of 30 years which involved the upgrading and maintenance of about 50km express road leading to Lekki-Epe. The foremost investors in the scheme comprised Macquarie Bank and Old Mutual of South Africa via the African Infrastructure Investment Fund. Funds for the project were from the support of Lagos Government plus a mixture of debt and equity finance. The project received a loan of 15 years from Standard Bank which served as the first ever local debt financing for such a long time. As the first phase of the project was getting to a close, tolls were built by the company to recover its investment; this met with lots of resistance and litigation from other stakeholders leading to termination of the agreement by the Lagos State Government. Some of the lessons learnt from this project include the importance of stakeholder's consultation as the people living along Lekki-Epe route were the ones that resisted the toll and went to court. Good impact assessment of project done before commencement. There should be better ways of negotiation and management of people's perception during project implementation. Establishment of project performance standard that is supported by operational penalty regime, monitoring framework and a viable long term financing plan.

ppp and the fourth mainland bridge

The proposed fourth mainland bridge is a laudable project of the Lagos state government, meant to open up the state and setting it on the part of realizing its goal of becoming a mega city. Through the Build Own and Transfer (BOT) agreement, this project is meant to be delivered within three years. The project is estimated to worth N84 Billion of the Nigeria currency expected to be raised by big consortium among which are: JP Morgan, Visible Asset Limited, Eldorado Nigeria Limited, Julius Berger Nigeria Limited, Africa Finance Corporation, Nigeria West-Minister Dredging and Marine, Access Bank Plc and Hi-tech Construction Limited⁷⁰. However, as laudable as this project is with all that it promised to deliver, the agreement was cancelled by the Lagos State government owing to the delay in execution and the various consortium not working with the type of speed the state government wanted for the project to take off, forcing the state government to look for new private investors that can deliver with the type of speed expected of a PPP project.

On going ppp projects in lagos metropolis.

From the official website⁷¹, several PPP projects are ongoing in Lagos Metropolis area which include National Theatre Masterplan Complementary Facilities Rehabilitation, National Stadium Lagos facilities renewal and management, Greenfield High speed Land Railway Lines

⁷⁰ Olufowobi, S. (2016, May 26). Lagos State Government signed MOU for Fourth Mainland Bridge. The Punch Newspaper. pg. 6

⁷¹ Infrastructure Concession Regulatory Commission . (2015). PPP Projects Pipeline 2013 and 2014. Available from www.icrc.gov.ng. Accessed on 25/11/2015

across Nigeria, Eko Atlantic city among others. All these projects if properly implemented and the relevant stakeholders played their part well will not only boost the development of the state but lead to a sustainable development as it will help to solve the state infrastructural challenges and also attracts potential investors to the state.

THEORETICAL UNDERPINNINGS

Collective action theory

This theory was propounded in 1965 by Mancur Olson, Mancur Olson in his book titled “The Logic of Collective Action: Public Goods and The Theory of Groups” argued that the logical and general thing for people in a group to do is to support the achievement of the common goal of the organization or nation for the good of all. But this is not usually the case as individuals in the organization/nation has divergent goals and will want the organizational/national goals to be achieved without them contributing to the goal attainment provided they will share from the benefit of the goal attainment. Few individuals put resources together for the attainment of these goals or making the public goods available for everyone to use, while others refers to as free rider benefits from these public goods without being involved in the process of making them available. Hence Olson suggested that to solve the problem of free riders and for organization to be effective in making these public goods available on continuous basis, organization should be very small as this will help to identify free riders easily or they should provide additional non-collective incentives to their individual members.

In relation to PPP, since government alone cannot provide all the infrastructural need of the citizens, hence the need for a collective action jointly by the public authority as well as the private sector in the provision of these infrastructures. The infrastructures on the other hand, are the public goods which serve the general public either they contribute to it directly or not. The free rider are the citizens that do not contribute to the development of the nation’s infrastructures by way of paying their taxes, hence to curb this problem of free rider, government provide some non-collective incentive to the private sector that invested their funds in the provision of these infrastructures in the form of toll fees for users of these infrastructures among others.

CONCLUSION

For realization of sustainable development in the area of infrastructural development, PPP should be embrace with sincerity of purpose by the government so as to gain the confidence of the private investors as well as the backing of the citizenry. PPP had benefited many developed nations, as it is still doing till date and holds tremendous benefits for developing nations like Nigeria and Lagos metropolitan area in particular if properly harness. PPP can improve sustainability and growth of infrastructure development through value for-money project assessments and improved delivery performance. However, to realize these commendable results call for an institutional design, with robust preference for private investors participation drive, which handles market development, regulation, dispute resolution among other PPP challenges.

Policy recommendations

To maximize the gain of PPP in Nigeria while addressing the challenges faced by this partnership the following recommendations are worthy of note to the various PPP stakeholders:

- ❖ The government should ensure proper definition of PPP as a concept as the current ICRC Act failed in this regard.
- ❖ In order to properly implement PPP projects, government should ensure the establishment of legal structure that will look into issues that has to do with dispute resolution during the period of the PPP agreement.
- ❖ Proper domestication of PPP enabling laws is key to the workability of PPP in Nigeria if the gain of PPP is to be fully realized.
- ❖ The ability of relevant government agency to handle cases of corruption without fear or favour as no meaningful development can take place where corruption holds sway in our contracting process.
- ❖ Private investors with the support of the government should ensure proper engagement of the relevant stakeholders before the implementation of PPP project in the state.
- ❖ Nigeria banks through the CBN should be assisted to cope with PPP financing, so as to guarantee a durable financing for PPP projects.
- ❖ Lastly, sincerity of purpose and transparency on the part of the government in handling PPP contract process is key if the nation is to experience any meaningful sustainable development.

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CREATING OF EFFICIENT PROJECT TEAMS FOR SUCCESSFUL IMPLEMENTATION OF PROJECTS

Corina Ana BORCOȘI¹

ABSTRACT:

PERFORMANCE TEAMS HAVE SPECIFIC FEATURES THAT ENABLE THEM TO EXCEL IN TEAMWORK AND ACHIEVE PERFORMANCE. THEY HAVE STRONG FUNDAMENTAL VALUES, VALUES THAT HAVE THE ROLE OF A TEAM CONTROL SYSTEM. PERFORMING TEAMS TURN A GENERAL GOAL INTO SPECIFIC PERFORMANCE GOALS THAT OFFER THEM THE ABILITY TO FOCUS ON SOLVING PROBLEMS AND CONFLICTS, AND SET STANDARDS FOR MEASURING OUTCOMES, HELPING TEAM MEMBERS UNDERSTAND THE NEED FOR COLLECTIVE RESPONSIBILITY, NOT JUST INDIVIDUAL. TO CREATE COMPETENT TEAMS MEANS COMBINING SKILLS, INCLUDING TECHNICAL ONES. AN EFFICIENT TEAM IS CREATIVE, CREATIVELY USED TO CONTINUOUSLY IMPROVE ORGANIZATIONAL PROCESSES. THE PAPER PRESENTS THEORETICAL ASPECTS REGARDING THE FORMATION OF A PERFORMING TEAM AND HOW THE TEAMS THAT IMPLEMENT THE PROJECTS ARE CREATED.

KEY WORDS: EFFECTIVE TEAMS, COMMUNICATION, LEARNING, CREATIVITY, COLLECTIVE RESPONSIBILITY

INTRODUCTION

Throughout the world, organizations discover the strength of properly constructed teams.

The world we live in is far too complicated, the changes are too rapid, and the problems that need to be solved are often too technical for a single leader to solve them. No leader can think today that he can cope with all of the problems that arise. That is why it is necessary to create teams of performers².

To adapt to change, organizations need to change what they are doing, but also how they do it. The trend is to codify past successful practices, turn them into rules for the future, and keep them even after they no longer apply. That is the traditional practices are preserved! The leader's

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² Bogáthy, Z., Erdei, I., Ilin, C. - Formarea și dezvoltarea echipei - suport de curs, Timișoara, 2007
<http://www.diasporatm.ro/regi/upload/files/DECOMP-Formarea-si-dezvoltarea-echipei.pdf>

role is to have vision, to achieve results, focusing on ideas, inspired by correct principles and values.

Reality demonstrates that some leaders have a vision but lack the talent to build teams, other leaders can build teams, inspire people, but lack vision. Happy cases are those in which organizations are led by leaders with insight and inspiration and motivating people to go on the way to success³.

2. CREATING THE TEAMS

Most organizations set their own values and a vision of their future⁴. Due to the rapid changes in the external environment of the organization and in its internal environment, creating effective working teams means: linking the leader's visions with those of the organization; developing changes in structure and system to ensure alignment to visions and values of the organization.

Managers are the most costly resource of an organization, which devalues quickly, and needs to be improved. It takes years to build a high-performance management team that can be quickly destroyed without clear rules on how to operate⁵.

Thus, if in an organization one of the core values is even teamwork, but within the organization there is a rigid hierarchical structure that excludes collaboration (which can bring additional benefits to individual activity), teamwork is not encouraged, reward, success is far more difficult to achieve from the perspective of individual work, compared to the work done within an efficient team⁶.

An effective team has a common goal that every member of the team knows and wishes to reach with his team. In Figure 2.1 the features of an efficient team are presented.

³ Bogáthy, Z., Erdei, I., Ilin, C. - Formarea și dezvoltarea echipei - suport de curs...

⁴ Eales-White, R. – Cum sa formezi echipe eficiente, (București: Editura All Beck, 2004), 18

⁵ Drucker, P., F. – Management Tasks, Responsibilities, Practices, TRUMAN TALLEY BOOKS / E.P. DUTTON / New York, 22

<http://www.icmbpl.com/Management%20->

[%20Tasks,%20Responsibilities,%20Practices%20by%20Peter%20Drucker%20e%20book.pdf](http://www.icmbpl.com/Management%20-%20Tasks,%20Responsibilities,%20Practices%20by%20Peter%20Drucker%20e%20book.pdf)

⁶ Eales-White, R. – Cum sa formezi echipe eficiente, (București: Editura All Beck, 2004), 18

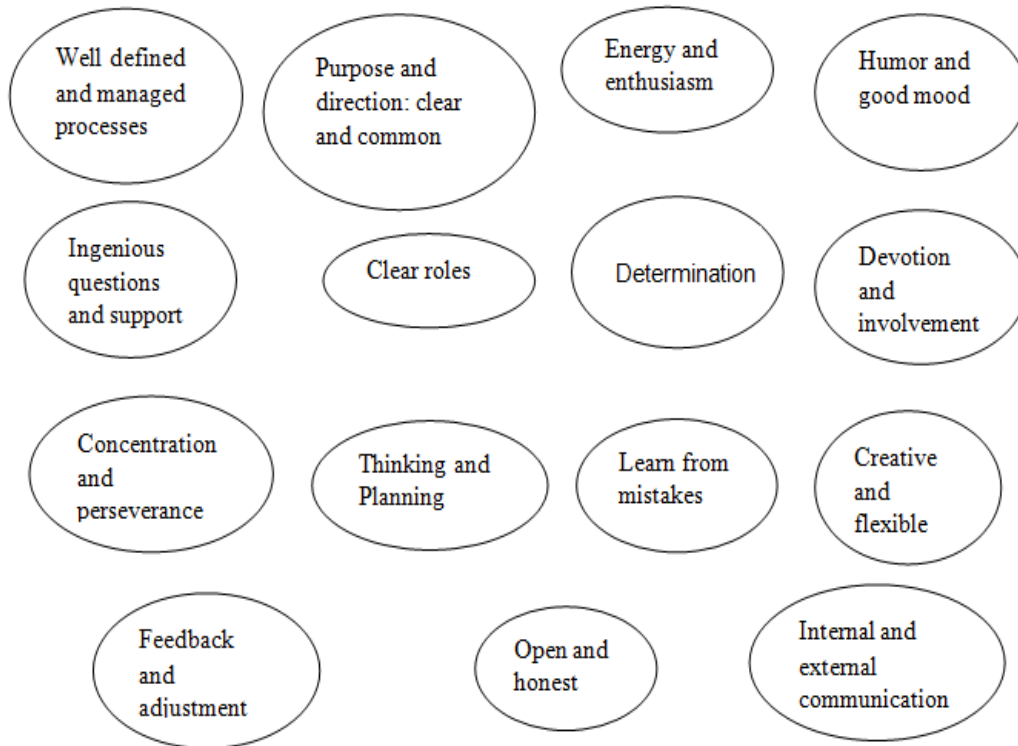


Fig. 2.1. Efficient team

Source : Eales-White, R. – Cum sa formezi echipe eficiente, Editura All Beck, București, 2004, p. 20

Why is not it an easy-to-build efficient team? Why not any team built is an efficient team? We will present the obstacles to the success of building an efficient team. There are two categories of obstacles identified⁷:

- organizational or cultural obstacles;
- obstacles of an individual nature.

Cultural barriers are the organization's beliefs about the benefits of teamwork. If there is a culture in the organization that opposes teamwork, it is inadequate for the organization to tell employees to believe in teams. It is necessary for the organization to become involved in the formation of efficient teams by⁸:

- ✓ abandoning classical, rigid hierarchical structures; introducing flexible hierarchical structures that allow, for example, building efficient working teams with members in several departments of the organization, teams to be coordinated by a leader who is not one of the organization's managers (whether they are top managers or other hierarchical levels);

⁷ Eales-White, R. – Cum sa formezi echipe eficiente..., 21

⁸ Eales-White, R. – Cum sa formezi echipe eficiente..., 24

- ✓ flexibility of classical rewarding systems for individual work that discourages teamwork;
- ✓ discovering leaders who, regardless of the obstacles they encounter, have the ability to form effective teams.

Individual obstacles that stand in the way of efficient teamwork are considered to be the following⁹:

- the team members (starting from the leader and up to the team member who has the most simple tasks in the team), whose efficiency (of each) depends on the success of the whole team;
- abilities are represented by: the technical skills, the skills of the team members, as well as the communication and strategic thinking skills;
- the location in which team members work; in order to create an efficient team, it is necessary for it to work in the same location;
- the number of members influences the efficiency of teamwork; the more members are, the smaller the team yield, and can appear the phenomenon of non-synergy. The number of team members depends on the requirements, the complexity of the project to be implemented.

3. EFFICIENT PROJECT TEAMS FOR SUCCESSFUL IMPLEMENTATION OF PROJECTS

The way of building and leading a project team depends on the successful implementation of a project. These are the tasks of the project manager. The team of a project is made up of members with distinct personalities, specific knowledge, qualifications and different qualities.

Team spirit is the state that reflects the desire of people to think, feel and act according with other team members to achieve common goals¹⁰.

The role of the project manager is to evaluate the project before choosing its staff, building a team that is valued and using the qualities of each member. It is necessary to know the activities to be done, the knowledge and skills necessary to carry out each activity, the risks that may arise, the persons proposed to be involved in the project.

The selection of team members starts with informal discussions, regarding the availability and willingness to participate in the project. The basic team of the project, the team directly responsible for implementing the project, consists of two to four persons (project manager, project assistant, financial officer, human resource manager) to better coordinate all members of the project.

The following are required to form an efficient team:

- selected people have experience in project management;
- it is necessary to encourage learning in the project teams, the least involved in project management from those with more experience;
- selecting competent persons who have achieved performance in the areas covered by the project;

⁹ Eales-White, R. – Cum sa formezi echipe eficiente..., 25

¹⁰ Niculescu, O., Verboncu, I. – Fundamentele managementului organizațional – curs în format digital
<http://www.biblioteca-digitala.ase.ro/biblioteca/carte2.asp?id=60&idb=8>

- informing the members of the project team about the project as a whole;
- providing specific information to those who are part of a specific team to know what the current situation is and where it is to be achieved as a result of implementing the project, what are the resources available and the risks that may arise;
- assign responsibilities and leave the freedom of each member to define their own working methods to achieve the objectives;
- it is necessary to solve all problems that arise and to know the individual merits.

4. CONCLUSION

The necessary conditions for forming an efficient team are related to some important elements. It is therefore necessary for all members of the project team to have a common view of the purpose and objectives pursued. People who are part of the project team must be the right people for the tasks to be done. It is necessary for an efficient team to be allocated the necessary resources, the working methods to be clear, the team meetings to be effective, the team to be documented.

The project management team should apply as management methods and techniques: time management, conflict management, stress management. There must be good communication and flexibility among the project team members, the team must be strongly motivated to achieve their goals.

An effective management team that successfully implements a project is a team that communicates, motivates and is made up of professionals in the project area, people motivated by the desire to learn continuously.

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THE CRIME OF ABUSE OF SERVICE - ABROGATED BY NOT ELIMINATING UNCONSTITUTIONALITIES

Gavril PARASCHIV¹

ABSTRACT

CONSTITUTIONAL COURT DECISIONS ARE NOT DIRECTLY APPLICABLE IN PRACTICE BECAUSE THEY CAN NOT MAKE A MANDATORY LEGAL INTERPRETATION FOR THE JUDICIAL BODIES OR DIRECTLY ALTER THE CONTENT OF CRIMINAL LAWS. THEY ARE ADDRESSED TO THE LEGISLATIVE BODIES, WHICH MUST REMOVE THE NON-CONSTITUTIONALITY ASPECTS OF THE LEGAL CONTENT OF SOME CRIMES; OTHERWISE, THE RESPECTIVE INCRIMINATIONS ARE DISCRIMINATED.

KEY WORDS: ABUSE OF SERVICE, CONSTITUTIONAL COURT DECISION, UNALTERED LEGAL CONTENT, ABROGATION.

INTRODUCTION

It is clear from the content of Article 146 of the Constitution of Romania that the Constitutional Court's powers do not include *the adoption, modification or authentic interpretation* of the law, which only has the role of deciding whether the legal provisions are constitutional or not.

As expressly emerges from the content of Article 2 (3) of Law No. 47/1992, on the organization and functioning of the Constitutional Court, completed by Law No. 138/1997: "The Constitutional Court rules only on the problems of law, without being able to amend or complete the legal provision subject to control. The Constitutional Court also cannot rule on how to interpret and apply the law, but only on its meaning contrary to the Constitution".

As a result, the decisions of the Constitutional Court are addressed directly only to the legislative bodies, which have to remove the unconstitutional aspects from some of the judicial norms, the Court being unable to adopt laws, to amend them directly, or to issue decisions on the interpretation of the law.

Thus, the Constitutional Court, not being a legislative body, cannot modify the legal content of Article 297 paragraph 1 of the Criminal Code (restricting the scope) and has no legal

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capacity to impose a certain interpretation for the judicial bodies of the provisions of these rules of incrimination.

Article 297 (1) of the Criminal Code cannot be applied because it was abrogated

The content of the offense referred to in Article 297 (1), as formulated in the new Criminal Code, is of a very general² nature, allowing criminal sanctions to be imposed for any of the many violations of service duties, in the various fields of activity.

Since the legal content of this crime is vague and can be interpreted in a discriminatory way, one of the rules of the principle of criminality (*nullum crimen* itself) is violated, namely the requirement that the rules of criminality be well determined and predictable so as to ensure good knowledge and respect for them, both by recipients and by judicial bodies³.

In the absence of clear conditions of criminal offense, which should have been expressly provided for in the rule of incrimination, it was left to the discretion of each judicial body to choose- like a true lawmaker - which, out of the multitude of facts, would make the legal content of the offense of abuse of service, according to personal concepts and criteria, so many serious violations remained unchecked, while for others, with a reduced social danger even non-specific to the crime, there were punishments, sometimes quite severe.

By decision no. 405/2016 of the Constitutional Court it was stated that the provisions of Article 297 (1) of the Criminal Code are constitutional as far as, by the word "faulty" from their content, they are understood to be "performed by breaking the law"; also, for the existence of the offense it would be necessary to set a minimum value threshold of the created prejudice and the gravity of the prejudice to the rights or legitimate interests of the injured persons.

Given the way in which the Decision is drafted (it is not stated directly for what reasons the content of the offense is unconstitutional, but how it should look to be constitutional) it was issued the theory that this decision would interpret the norm of incrimination, and that it is no longer imposed the intervention of the legislator for the removal of the aspects of unconstitutionality, Article 297 (1) of the Criminal Code and can still be enforced by the judicial bodies, which must however take into account the "amendments" and / or "interpretation" of the Constitutional Court.

If it is subjected to a careful analysis through the constitutional provisions and the fundamental regulations and principles of law, this opinion is submitted to critic, being hard to find relevant arguments within the limits of the law to support it.

Thus, the legal interpretation is carried out only by the body that has adhered to the interpreted norm⁴ and the norm of interpretation is common to the interpreted norm, being applied retroactively for all the acts committed from the date of adoption of the initial normative act (as opposed to any decision of the Constitutional Court, which applies only for the future - Article 147 (4) of the Constitution); it follows that the formal legal interpretation of criminal laws can not be achieved in any case by the Constitutional Court, which is not a legislative authority.

The Constitutional Court is not a law enforcement body, so that it does not have the power to perform the formal causal interpretation, but neither the general-mandatory judicial

² G. Paraschiv, *The explanations of the New Criminal Code, Vol. IV (coord. G. Antoniu/T. Toader)*, (Bucharest: Universul Juridic Publishing, 2015), 323-324.

³ G. Antoniu, *The explanations of the New Criminal Code, Vol. I (coord. G. Antoniu/T. Toader)*, 35 and seq.

interpretation for all courts, with a view to the unitary application of the criminal law in the future – task that is exclusively attributed to the High Court of Cassation and Justice, in accordance with Article 126 (3) of the Constitution and Article 471 et seq. of the Criminal Code.

From the content of Article 147 (1) of the Constitution, stipulating: "The provisions of the laws and ordinances in force, as well as those of the regulations found to be unconstitutional, cease their legal effects 45 days after the publication of the Constitutional Court's decision if, within this interval, the Parliament or the Government, as the case may be, do not agree on the unconstitutional provisions with the provisions of the Constitution. During this period, provisions found to be unconstitutional are legally suspended.", it follows that the reality can only be that Article 197 (1) of the Criminal Code has been *abrogated*.

Under this norm, for 45 days from the publication of Decision no. 405/2014 the application of Article 297 (1) of the Criminal Code was *suspended* on August 22, 2016, this offense *ceased its*⁴

legal effects, being abrogated because the legislature did not agree unconstitutional regulations with the provisions of the Constitution⁵.

If this reality is accepted, it results that the abrogation would have the effect of removing the criminal liability for all the acts committed before and after, until the adoption of possible new crime, except for the facts that may be included in other subsidiary inculpations in force.

During the 45 day period when the provisions of Article 297 (1) of the Criminal Code were suspended, this incrimination was still in force, so that, if within this period a legislative act was adopted by the legislator, by which were removed aspects of unconstitutionality, then the abrogation of the first regulation took place on the date of entry into force of the second one, and the more favorable law would be applied - which would have the effect of removing criminal liability only for facts that were no longer in line with the new regulation.

CONCLUSIONS

Even if we abstain from the fundamental principles of law, the provisions of Article 1 (5) of the Constitution and all other specific legal provisions, and we were to accept that by Decision no. 405/20016, the Constitutional Court amended, instead of the legislator, the content of Article 297 (1) of the Criminal Code, in the sense of restricting the scope (or made a general and mandatory interpretation of that incrimination, instead of the HCCJ), the court can still not solve the cases having such an object, because they not only cannot legislate, but also substitute (themselves) to the legislator regarding the setting of the minimum threshold of damage or the gravity of the damage to the rights or interests of injured persons, but even if the possibility of such substitution would be accepted, it would be impossible to form a unified practice in the matter, creating a judicial chaos, discriminations - generated by the multiple "legal contents" of the abuse of service, prefigured by each of the judicial bodies, who will be able to set their own "thresholds".

Whether or not it is accepted that the provisions of Article 297 (1) of the Criminal Code are already abrogated, it is imperative to act urgently for the adoption of new, complete regulations that fully respect the principle of the lawfulness of incrimination, by making the delimitation - by the legislator - of the criminal offense, of the acts that may be within the competence of other organs, so that they can act with good results against serious violations of service duties.

⁴ Costică Bulai, *Manual of Criminal Law*, (Bucharest: All Publishing, 1997), 83.

⁵ Constantin Mitrache, *The explanations of the new Criminal Code*, Vol. I, page 60

A new incrimination of a general nature would fail to determine precisely what facts can be penalized (and which not), even if the decision of the Constitutional Court is fully respected - mainly because it is practically impossible to build a clear definition, well-defined and (at the same time) containing all aspects of the offense of abuse of service, applicable to all spheres of activity and to all categories of civil servants or other employees, since in society there are a multitude of institutions, economic entities, organs etc., which carry out various activities, distinct from one domain to another.

Investigating and sanctioning only the facts that violate any primary law is not a flawless solution, as some of these violations do not present the specific social danger of the offense, because it acted in good faith through a different or misinterpretation from that of the judiciary organs of some unclear administrative regulations etc. On the other hand, the violation of secondary regulations, which are enforced in accordance with primary law and for their application, without exaggerating them - cannot always be removed from the criminal offense, as often the violation in bad faith of a registered duty for example, in an internal regulation, may result in particularly serious consequences, the resulting social danger being specific to the offense.

The solution that would ensure the clarity and predictability of regulations, removing the possibility of arbitrariness, subjectivism, and implicitly non-unitary practice, would be the incrimination of dangerous facts, separate for each field of activity (where no such criminalizations exists), following the pattern of already approved rules of incrimination, would be, for example, Article 295, Article 296 or Article 321 of the Criminal Code or Article 264, etc.

It would be preferable for these regulations to be included in special laws, so that a better understanding and respect would be possible- by civil servants and other employees, in the performance of their duties – of the rules of incrimination by correlating them with the other provisions contained in those normative acts.

CONSIDERATIONS ON THE THEORY OF NONEXISTENT LEGAL ACTS IN ROMAN LAW

Andra-Ioana ALEXE¹

ABSTRACT

WORDING THE NONEXISTENT LEGAL ACTS THEORY BY M.C.S. ZACHARIAE, GAVE RISE TO A CONTROVERSY ABOUT ITS USEFULNESS IN THE LEGAL WORLD. IF AT THE TIME OF ITS APPEARANCE, THE LEGAL ABSENCE WAS BOUND TO BE APPLIED ONLY IN THREE CASES OF MARRIAGE MATTER, THE SUPPORTERS OF THIS THEORY HAVE EXPANDED ITS SCOPE OVER OTHER LEGAL DOCUMENTS AS WELL, SUCH AS SALES. ALTHOUGH OUTLINING THIS THEORY TOOK PLACE IN THE NINETEENTH CENTURY, THE ROMAN SOCIETY WAS NOT FOREIGN TO THIS SANCTION. THIS STUDY AIMS TO PRESENT THE CAUSES DETERMINING THE NONEXISTENCE OF LEGAL ACTS IN ROMAN LAW. ALSO, WHERE POSSIBLE, I TRIED DRAWING COMPARISONS WITH THE CURRENT ROMANIAN CIVIL LAW.

KEY WORDS: THEORY OF NONEXISTENT LEGAL ACTS, NULLITY, ROMAN LAW

INTRODUCTION

The theory of nonexistent legal acts was drawn up for the first time by Professor M.C.S. Zachariae from the Faculty of Law in Heidelberg in order to complement the classical theory of the legal act invalidity. According to Zachariae's theory, the legal act lacking an essential element in order for it to take form (such as consent, object, cause) is more than null, it is nonexistent². This was aimed to resolve the following cases with respect to marriage: the lack of consent, gender identity and lack of marriage conclusion by the official state authority. From this point, the doctrine extended the nonexistence theory to other legal acts as well, and "*according to most authors' opinion and doctrine, it was admitted also by the legislator, when determining nullities of marriage*"³. Although the outlining of the nonexistent legal acts theory took place in the nineteenth century, the Roman society was not foreign to this concept.

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² M.C.S. Zachariae, "*Cours de droit civil français*", (F. Lagier Librairie, Strasbourg, 1839) tome I: 66; tome III: 210-211.

³ George Plastara, "*Curs de drept civil român pus la curent cu noua legislație*", vol. IV, (Cartea Românească, București, 1925): 615.

THE THEORY OF NONEXISTENT LEGAL ACTS IN ROMAN LAW

The Roman law did not draw a clear distinction between the nonexistence of legal acts and their nullity. This was due to the fact that a general theory on invalidity of legal acts was not expressed. In the primitive Roman society the nonexistence was closely linked to its social and legal structure. Thus, "*for the human beings to be able to participate in legal life, it should have had capacity or personality (caput)*"⁴. According to the Roman law, not all beings were born with personality and could have rights and assume obligations, but only free people. However, they were not equal, but their capacity was distinctive according to "*membership of a particular social class, ethnic origin, or attitude adopted towards the Romanian state expansionism*"⁵. The nonexistence of legal acts was aimed primarily at slaves and pilgrims.

The slaves had no personality and could not conclude legal acts because they had no possibility to become holders of rights and assume obligations. "*From a legal perspective, the slave was considered a simple thing (res), and was part of his master's property*"⁶. Therefore, the legal acts concluded by slaves in their own name were "*believed to have no legal existence*"⁷. There was an exception to this rule and the legal acts concluded by slaves were considered valid if they improved their master's condition, that is if the master acquired rights. In this case, the Romans thought the slave borrowed the master's personality, because they could not act as his representative as long as they had no capacity. "*This mechanism could work only as long as the contracts were unilateral*"⁸. With the development of Roman society and hence of the commercial operations, due to the emergence of bilateral contracts, "*it was admitted that in some cases, the slave should undertake in his own name, while binding the master at the same time*"⁹, although their personality was still not recognized.

Pilgrims were part of free men, who were not citizens though. They did not enjoy *jus civile*, but could use the law of the city in which they lived as long as it was not contrary to the principles of Roman law. Therefore, pilgrims had no access to civil law provisions, and "*with the exception of those who enjoyed jus commercii, they were believed to have no legal existence*"¹⁰.

The doctrine developed also the idea that in Roman law the lack of fulfilling a substantive condition resulted in the absence of the legal act. Thus, it was asserted that the nonexistence may have as cause the lack of an essential element for its formation "*so that the act cannot be conceived without this element*"¹¹. The main causes for nonexistence of substance discussed in the doctrine are the lack of consent, lack of action and lack of capacity because these three are essential elements of the contract, giving it own identity. "*In the absence of any one of those three elements, there is no contract*"¹². With regard to the cause of the contract, the Romans did not consider it an essential element as they mistook for the reasons of the legal act conclusion.

⁴ Emil Molcuț, "*Drept privat roman*", (Universul Juridic, București, 2007): 83.

⁵ Emil Molcuț, "*Drept privat roman*"..., 83.

⁶ Emil Molcuț, "*Drept privat roman*"..., 85.

⁷ Pavel Filip, "*Nulitatea actului juridic prin prisma interesului ocrotit*", (Hamangiu, București, 2016): 40.

⁸ Emil Molcuț, "*Drept privat roman*"..., 86.

⁹ Emil Molcuț, "*Drept privat roman*"..., 86.

¹⁰ Pavel Filip, "*Nulitatea actului juridic civil prin prisma interesului ocrotit*"..., 40.

¹¹ Marcel Planiol, Georges Ripert, "*Traité élémentaire de droit civil*", ed. 12-a, (Paris, 1935): 354.

¹² Emil Molcuț, "*Drept privat roman*"..., 181.

The definition given by Romans to consent has remained rooted in modern civil law as well. Thus, consent means the "*substantive, essential and general condition of the civil legal act which is the outwardly manifested decision to conclude a civil legal act*"¹³. The term *consensus* derives from the phrase *cum sentire* which meant to have a common view with the other side. The old Roman law was coordinated by the principle of formalism and in order to produce legal effects, the consent had to be externalized in the form required by law. The causes altering the consent were twofold: the first category entailed the absence thereof, and the second category resulted in its vitiation. The first contained frivolity and error, and the second, fear and undue influence/deceit.

Earnest/Reliability assumed that the consent expression should not be done in jest or in circumstances showing beyond doubt that the intention of the parties was to exclude assuming obligation. Such circumstances existed when one party was mental or one of the contractors was an infans, who could not speak coherently.

The error is "*misrepresenting reality on the occasion of the civil legal act conclusion*"¹⁴. Depending on the aspects toward which it was directed, the Romans made a distinction between *error esentialis* leading to the nonexistence of contract, and *error minus esentialis* which had no effect on the same. The following were considered essential errors whose existence made it impossible for a contract to be concluded: error in negotio, error in persona, error in corpore and error in substantia.

Error in negotio is misrepresenting the nature of the legal act in the sense that a Party considers that they conclude a particular legal act, while the other Party believes it is another legal operation. "*In such a situation, both Parties are in error, with no consensus for any of the contracts*"¹⁵. In this regard, Ulpian wrote that "*If I gave you money as donation, and thou hast received it as loan, it is neither donation nor loan*".

Error in persona is the error on the identity of the person with whom the contract is entered into, and consists in that a Party believes it has completed the legal act with a certain person, and in fact has concluded it with another. For example, A believes they are granting a loan to B, and in actual fact the borrower is C.

Error in corpore wears on the object identity and it occurs when a Party believes that the legal act object is a certain property, and the other Party is considering another one. For example, A believes they will borrow a car, and B believes that it is a motorcycle.

Error in substantia is the error on the essential qualities of the object, and it occurs when the goods acquired by concluding the legal act is made from another material than that which the Party believes it will have. Traditionally the examples given are acquiring a brass vessel the Party believes of gold, or of a slave woman whom they consider man.

It is noted that these four types of errors that the Romans considered essential for the conclusion of a legal act, have been preserved also in the current Romanian civil law. Unlike Roman law, the penalty applicable today to the legal act concluded by a Party whose consent was vitiated by an essential error is the relative nullity. Also in contemporary civil law is retained as error in persona also the error on a quality of the Party without which the contract would not have been concluded.

¹³ See Ion Dogaru, Sevastian Cercel, "*Drept civil Partea generală*", (C.H. Beck, București, 2007): 115; Gabriel Boroi, Liviu Stănciulescu, "*Instituții de drept civil în reglementarea noului Cod civil*", (Hamangiu, București, 2012): 94.

¹⁴ Ion Dogaru, Sevastian Cercel, "*Drept civil Partea generală*"..., 118.

¹⁵ Ion Dogaru, "*Drept civil român. Idei producătoare de efecte juridice*", (All Beck, București, 2002): 364.

In a legal sense, the fear is the "*violence that is exercised against a person in order to induce them to conclude the contract*"¹⁶. From this definition one may see that the Roman law fear is the vitiated consent of violence in the current civil law as it is presented both in theory and in Art. 1216 from the Romanian Civil Code. However, there are clear differences between the two.

In the ancient Roman law, as now, there was a distinction made between physical and psychological violence. The first occurred when a person concluded a legal act under the influence of physical constraints. In this case, violence represented a case of absence of consent. The second type of violence, the psychological one, consisted in threatening one Party with something evil to cause them to conclude the contract and did not affect the consent in any way. Therefore, in case of psychological violence the legal act could not be attacked. Considering the constraints of the ancient Roman law formalism, the use of any type of violence against one Party was almost impossible. Amid trade development and completion of further more diversified categories of contracts, formalism so present in Roman law experienced a decline that led to the need to punish also psychological violence. Thus, towards the end of the republic, the victims of violence could defend themselves citing *exceptio metus* or could invoke a procedural means (*actio metus*) through which it was possible to obtain the cancellation of the contract.

Consequently, if physical violence represented a case of absence of consent and hence of the legal act, only toward the end of the old Roman law era psychological violence could lead to cancellation of the contract. Currently, the Romanian civil law sanctions by relative nullity the legal acts concluded by a Party whose consent has been undermined by physical or moral violence.

The deceit/deception consisted in using cunning or deceptive manoeuvres by one Party to cause the other Party to enter into a particular contract. It is noted, as in the case of violence, that this Roman legal reality corresponds to the vitiated consent of deception in the current civil law. Unlike in the Romanian legal present where deceit is sanctioned with the relative nullity of the act, in Roman law it was not punished. As with physical violence, in the first century and following the development of trade acts, the praetor made available for the victim of deception a procedural means by which they could obtain the cancellation of the contract.

The object of the contract in Roman law consisted solely in creating obligations which were later executed by separate acts from the contract they were provided in. In this respect, the object of the contract was confused with its effects and was not transferring ownership, but only generated obligations. Broadly, the object of the contract was confused with the object of the obligation which was represented by the performance of the obligor had to perform to their creditor. In the absence of the object, the contract did not exist.

In the current civil law, the object of the contract is the legal operation upon which the Parties agree as resulting from the contractual rights and obligations. In Art. 1225 par. 1 Civil Code, sale, lease, loan, and the like are given by way of example. The object of the obligation is defined in Art. 1226 par. 2 Civil Code as the "*services the debtor undertakes*" such as the seller's obligation to deliver the object to the buyer. It should be noted that "*the object is a substantive, essential, of validity, and general condition of the civil legal act*"¹⁷ and according to Art. 1225 par. 2 Civil Code, its absence causes absolute nullity of the contract.

¹⁶ Emil Molcuț, "*Drept privat roman*"..., 182.

¹⁷ Gabriel Boroș, Liviu Stănciulescu, "*Instituții de drept civil în reglementarea noului Cod civil*"..., 116.

Apart from the legal nonexistence based on the lack of capacity to contract or a substantive condition, in the doctrine was presented the view according to which nonexistence also resulted from the conclusion of a legal act in violation of imperfect laws. Thus, during the Republic, laws were the most important source of law and depending also on the nature of the penalty, they were classified as: perfectae, minus quam perfectae and imperfectae. Perfect laws were those which ordered that the legal act concluded in violation of the law was to be cancelled. The less perfect laws provided that the legal act would not be cancelled, but its author had to be sanctioned usually by paying a fine. Imperfect laws did not provide any penalty for drafting a legal act in violation of the law. In the latter case, it may be considered that the act did not exist since the law expressly provided the cases of nullity for the acts drafted in violation of legal requirements.

CONCLUSION

Consequently, from the research conducted I can conclude that the Romans knew the nonexistence of legal acts based on the following reasons: the lack of capacity to contract, the existence of a frivolous consent or one affected by one of the errors considered essential or by physical violence, and the absence of the object. Also, after nullity was expressly provided for in the perfect laws, the absence continued to be applied in parallel with the latter for acts concluded in breach of the conditions required by the imperfect laws.

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LEGAL CONTENT ON THE ABBUSE OF OFFICE OFFENCE – WITH NO PREDICTABILITY

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ABSTRACT

AS THE LEGAL CONTENT ON THE ABBUSE OF OFFICE OFFENCE, PROVIDED IN ART. 297 ALIN. (1) OF THE CRIMINAL CODE, IS DESCRIBED IN VERY GENERAL TERMS, ANY ACT OF JOB DUTY MISCONDUCT MAY FALL WITHIN IT, REGARDLESS OF ITS SERIOUSNESS OR THE CIRCUMSTANCES UNDER WHICH IT WAS COMMITTED. AS A RESULT, UNTIL AN ADEQUATE LEGISLATIVE MODIFICATION, IT IS THE JUDICIAL BODIES' RESPONSIBILITY TO DECREE WHAT TYPE OF VIOLATIONS ARE IN THE SCOPE OF THIS INDICTMENT – WHICH IS SOLELY THE LIABILITY OF THE LEGISLATURE, ACCORDING TO THE SEPARATION OF POWERS PRINCIPLE.

KEYWORDS: ABBUSE OF OFFICE, LEGAL CONTENT, UNPREDICTABLE, NON-UNITARY ENFORCEMENT, AMENDMENT MOTIONS.

INTRODUCTION

In order to procure the legal knowledge and law enforcement, the indictment rules must have an assignable content (*nullum crimen sine lege certa*), meaning to accurately and completely define the sanctioned acts, hence ensuring the compliance with the principle of the lawfulness of indictment, provided in art. 1 of the Criminal Code, art. 5 of the Constitution of Romania and art. 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms.²

By this procedure, the excessive involvement and the subjectiveness of the legal bodies in *finding the field of the facts* that could be charged by enforcing the indictment rules, are avoided – which is solely the liability of the legislative power. Also, the unitary law enforcement could be applied for all the defendants.

Accurately defining the limitations of law enforcement, in relation to certain facts, prevents the courts from sanctioning facts that are not the object of the indictment rules – which guarantees the compliance with the principle of legal identity between citizens, as well as with the principle of non-discrimination. Therewith, being acquainted with the prohibited acts, each individual may

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² G. Antoniu, *Notes on the New Criminal Code Vol. I* (co. G. Antoniu/T. Toader), (Bucharest:Universal Law Publishing, 2015), 39 and fol.

act consciously and trust the protection of his rights and freedoms, free from the risk to be sanctioned for actions unconsidered by the legislator.

REVIEW OF THE LEGAL CONTENT ON THE ABUSE OF OFFICE OFFENCE

The Content of the offence provided in art. 297 alin. (1) of the Criminal Code, within the statement of the new Criminal Code, has a very general character, inaccurate and unpredictable, contrary to the principle of lawfulness of indictment, so that any act of job duty misconduct or misfeasance may fall within it, if any consequences resulted according to the indictment rule, respectively any prejudice or violation of the rights or the rightful interests of any natural or legal person, regardless of the severity of the resulted prejudice or the importance of the violated rights or the resulted consequences.

As a result, in the activity of law enforcement, every judicial body has come into the „responsibilities“ of a legislator, distinctly deciding – adapted to his vocational training, ideas, etc. – on the facts that should be sanctioned as abuse of office, from the dozens of offences that formally fall within the relative definition, for it almost doesn't exist any branch or official violating (for various reasons) more than once his job duties, more significant or less critical – hence enforcing the non-unitary and discriminating law.

Within the legal content on the reviewed indictment, are not provided enough conditions that should be complied neither with the certain facts (neither marks or limits, nor any relation to the fields of activity, the severity of violations nor the resulted consequences), nor any subjective element (like: dishonesty, motive, intention, fraudulent intent or the intent of turning to profit, etc), so that, in practical terms, it has been created the possibility of a distinct approach of the judicial bodies, who determined the activities representing the social threat specific to the offence – and the approach resulted to be criminally liable only for some individuals and facts (more or less severe), while more other thousands of violations (even more severe and committed with bad faith), that shall fall within the same indictment rule, have remained *uninvestigated*.

As a matter of fact, for the similar *investigated* facts has been created a non-unitary practice, and some judicial bodies considered the abuse of office offence, while others decided the closure (the exoneration), just because the enunciation with the very general character of the indictment rule allows the uncoherent and non-unitary interpretation.

In default of the preciseness of the indictment rule and on the strenght of some distinct interpretations, unguided by strict existence conditions, that should have been provided in the legal content of the offence, were sanctioned - as abuse of office offences –some other facts that, according to other regulations (undetermined or disregarded by the judicial bodies), are the object of disciplinary offence, contraventions, or for which are provided other resources (ex. The cancellation of the illegal contract, making appeal to the superior body, the administrative legal department, etc.).

The Order no. 405/2016 of the Constitutional Court of Romania, stated for the motion to challenge the constitutionality of the enuntiation with a very general character of the offence legal content provided in art. 297 par. (1) of the Criminal Code, was not provided to fully solve the problems concerning the exact approach and enforcement of this indictment rule, because a simple replacement of the term „defective duty performance“ with the expression „law-breaking duty performance“, or setting up a minium threshold of the prejudice, could not result in the removal of the reviewed aspects.

Therefore, we can meet situations where the abuse of office offence could not be considered, even if the officials ungracefully violate (for example, for the purpose of wreaking damages, by way of turning to their advantage) some assigned duties or directives of the management, or job duties provided in the service instructions, etc, without their express and precise specification in the initial regulations.

The matter of appropriately bringing under regulation the art. par. (1) of the Criminal Code will not be solved neither by setting a ceiling hence the certain facts make the offence effect, just for this condition would be discriminating and the legal content would continue to be relatively defined. As a matter of fact, the value of the prejudice doesn't define overall the generic social threat specific to the offence, so that, it isn't basically the component part of the offence, but could rather be considered for a retrogressed version of the regulation or for the individualization of the sanction; when the court states that there is a minimum violation of the law protected social values (and due to the limited prejudice), it has the opportunity to enforce the art. 80 of the Criminal Code, related to the abnegation of punishment, or the art. 83 of the Criminal Code, related to the suspension of punishment.

Moreover, some acts are serious, even though they result in insignificant prejudices, like the case of overcharging sales, that, at some times, was the object of several cases, considering their frequent occurrence.

On the other hand, the violation of certain rules of civil rights or of any other nature, could produce very serious prejudices, however the respective acts cannot fall within the legal content of the abuse of office offence, as the legislator stated any other solutions – since it didn't proceed with measures specific to criminal law, hence excluding the social threat associated with the offence³.

CONCLUSIONS ȘI RESOLUTIONS

In relation to the evidenced lacks, we consider that it would be reasonable that the art. 297 par. (1) of the Criminal Code to be abrogated (if it is not accepted the fact that this is already abrogated, according to the art. 147 of the Constitution), so that the judicial bodies shall not have any legislative prerogatives, complying with the principle of the separation of powers, as well as excluding the risk to proceed in practice, in a subjective and discriminating manner, according to the different approaches of those making the judicial decisions – and for that matter the abuse of office shall not be indicted as a distinct offence (with a general character), in most of the countries with a developed democracy.

The general indictment would be replaced by special indictments (which provide a definite and ample background), that shall be adopted in certain fields, for the acts considered generic social threats of some offences.

For that matter, the resolution of non-incrimination may be advocated also towards the elimination of the redundancy effect, that occasionally floors the practitioners when deciding on the appropriate legal classification for certain facts, since within both the Criminal Code, and many criminal provision laws are indicted several special acts, committed by officials, which could all fall within the actual legal content of the abuse of office offence.

Starting from the sacred principle, according to which *nobody must be unfairly accused* (even for a partial interpretation of an indictment rule, inappropriately defined) and also aiming to

³ Antoniu, *Notes on the New Criminal Code Vol. I...*,152

achieve that *no serious crime go unpunished* (in response to the abuse of office non-incrimination), the process of adopting new special indictments for the abusive acts in certain fields could persist, as their legal content would be better determined, including an adequate background that shall precisely define their scope (which shall prevent from both unpredictability and misinterpretation with discriminating results).

Concerning the protection of human rights and fundamental freedoms, an individual indictment may be elaborated (potentially within the indictment of abusive behavior), which shall include several elements defining the criminal character of the facts. For that matter, within the art. 297 par. (1) of the Criminal Code, could have fallen (following a possible restatement, on the supposition of keeping this offence) too, the acts provided in par. (2), that stipulate, in addition, for the existence of a certain motive (which hadn't actually a high relevance, as the legislator didn't stated major punishments); by the Government Emergency Ordinance no. /2017, on par. (2) have been provided minor punishments than mentioned on par. (1), but under the legal content haven't been stipulated conditions concerning the seriousness of the repercussions, and, most of all, the circumstance to provide the "restricted right" under an initial law.

However, as long as the indictment rule stays as it is and is still being enforced (although it was abrogated pursuant to the Decision no. 405/2016 of the Constitutional Court), it falls upon the judicial bodies to approach its content according to the criminal law fundamentals and the general conditions that underlie the criminal illicit acts, so that it shall be enforced only for the serious offences, committed by illicit ways, with a *fraudulent intent* (thus having a high risk of social threat), as the criminal charge is the most severe charge.

Considering anyway that the offence provided by the art. 297 par. (1) of the Criminal Code must be preserved in future and the specification of all the prohibited activities is not possible (out of those already provided within the special indictments), its legal content has to insist upon the subjective element, as the indictment rule is stated in such a way that it shall sanction only the individuals who, in full knowledge and bad faith, defy their statutory job duties, making use of illicit proceedings, with an illicit fraudulent motive and intent.

In the interest to hold the pointed offence, it should have been determined that the self-consciousness reflected upon the author's will, and through its conveyance on the act⁴, meaning that the act should have been guiltily committed according to the offences, presenting both the intelligential (featuring the consequences that may occur) and the volitive aspect (following the occurrence of the illicit consequences).

Therefore, according to the *ethic-legal* evaluation of the reviewed case – in default of a special indictment, that may sanction even the approach of the enforced law – the author should have been totally aware of the unlawfulness of the act (evidently prohibited by the criminal law) and have been self-conscious of the consequences prejudicial to the organization, in order to be declared culpable.

Most of the above-mentioned arguments may be applied for the misfeasance in office (art. 298 of the Criminal Code), which could hold the incrimination only for high culpabilities, with peculiarly injurious repercussions (a value threshold should rather be denoted for it, to differentiate between the criminal and the material liability).

⁴ V. Dongoroz and co., *Theoretical notes on the Romanian Criminal Code, Vol. I*, (București: The Publishing House of Romanian Academy, republished at Al. Beck, 2002), 104.

INTENSIFICATION OF THE INTERNATIONAL POLICIES REGARDING WASTE RECYCLING AND ITS TRANSFORMATION INTO ALTERNATIVE SOURCE OF ENERGY*

Daniel-Ștefan PARASCHIV¹

ABSTRACT:

IN THE PRESENT CONSUMERIST SOCIETY, THE DEVELOPMENT OF ALL THE ECONOMIC AND SOCIAL ACTIVITIES GENERATES A LOT OF RESIDUES, WHICH HAVE BROUGHT ABOUT, ALONG WITH MULTIPLE BENEFITS, POLLUTION PROBLEMS THAT RESULT FROM WASTE ACCUMULATION, WITH NEGATIVE EFFECTS ON THE ENVIRONMENT. IN ORDER TO KEEP THE ECOLOGICAL BALANCE, ALL THE STATES SHOULD PROPERLY MANAGE THE WASTE, IN ACCORDANCE WITH THE INTERNATIONAL CONVENTIONS IN THE FIELD AND TAKE THE REQUISITE MEASURES FOR WASTE RECYCLING AND TRANSFORMATION INTO ALTERNATIVE ENERGY, AVOIDING AS MUCH AS POSSIBLE THE TRANSFER INTO OTHER DEVELOPING COUNTRIES, THE CREATION OF IMMENSE DEPOSITS, WITH HARMFUL EFFECTS ON PEOPLE'S HEALTH AND ENVIRONMENTAL BALANCE IN ALL THE AREAS WORLDWIDE.

KEYWORDS: WASTE RECYCLING, ALTERNATIVE SOURCE OF ENERGY, INTERNATIONAL POLICIES, ECOLOGICAL BALANCE.

INTRODUCTION

Nowadays waste has become a real problem for the environment, taking into account the fact that its generation is practically inevitable; any activity also produces unusable scrap and its amount permanently rises because of the increase in the society's progress needs.² The industrial

*This paper is written during the sustainability stage of the project entitled "Horizon 2020 - Doctoral and Postdoctoral Studies: Promoting the National Interest through Excellence, Competitiveness and Responsibility in the Field of Romanian Fundamental and Applied Scientific Research", contract number POSDRU/159/1.5/S/140106. This project is co-financed by European Social Fund through Sectoral Operational Programme for Human Resources Development 2007-2013. Investing in people!

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²Paraschiv Daniel-Ștefan *Reglementări internaționale privind circulația transfrontalieră a deșeurilor toxice*, Acta Universitatis George Bacovia. Juridica - Volume 4. Issue 1/2015, 77-90.

development aims mainly at getting immediate profit, so no correspondent management techniques of the resulted waste have been developed in parallel.

Consequently, it was necessary to gradually adopt an international legislative framework in the field, in parallel with the creation of an important “waste market”, around which a lot of economic interests co-exist.

In the past, waste management did not represent a priority for the manufacturers, since it was non-profitable for them. As a result, the hazardous waste producing companies in the developed states chose the solution to export it in countries less developed, through numerous brokers in the field, thus avoiding the much higher costs, with direct impact on the business of the respective companies, as well as on the business of the manufacturers.

The world’s new legislative framework allowed the creation of some waste management companies and a market in which waste ceases to represent unusable products, becoming object of commercial operations, being even exchange-traded, so that now according to the environmental legislation, the waste producers, as well as the economic agents specialized in its recovery and disposal, are obliged to provide for its management in a rational way from the ecological point of view.

Nevertheless, there still is an imminent cross-border danger because of the export and international traffic of toxic, hazardous waste, from the industrialized zones, significant waste producers, in particular towards the countries that have no restrictive regulations.

The massive industrialization for the last decades and the stricter international and national law regarding the environment (which restricts the international traffic), put the states with a strong economy in a difficult situation, being necessary to identify the best solutions in respect of waste management, depositing, recycling or disposal, with as small costs as possible.

INTENSIFICATION OF THE WASTE RECYCLING ACTIVITIES WITH A VIEW TO OBTAINING SOURCES OF ALTERNATIVE ENERGY

The desideratum of bringing about a common policy in the field of waste management, including recycling in order to obtain alternative energy sources, implies permanent compliance of the states’ rights, specific environment administrative practices and procedures, to the ensemble of international and European Union’s specific regulations, to the principles and interpretations resulted from the jurisprudence of the European Union’s Justice Court, as well as of other bodies with attributions in the field.

Up to now, the adoption of some efficient techniques and specific legal instruments in order to properly manage the residues was only partly realized, while the necessity to perfect the waste treatment, recycling and disposal being still an imperative for hygiene and public sanitation reasons³.

Nature follows its own way, and on the platforms where the household garbage and the industrial garbage similar to the household one are deposited, after a short while, by microbial processes, will inevitably end up decomposing and producing biogas.

Hence, the methane gas on the depositing platforms can lead to the occurrence of greenhouse effect, having a harmful influence upon the environment 32 times bigger than that of the carbon dioxide.

³ M. Duțu, *Dreptul mediului*, 3rd Edition, (Bucharest:Publishing House C.H. Beck, 2010), 443.

The proportion of the methane gas resulted from the garbage platforms is estimated at 8-18% of the methane gas released in the entire world, so that these alarming data impose collecting and using the gas resulted from the garbage platforms if in high amount, as an alternative source of energy; due to the fact that the methane gas has a much greater greenhouse effect than the carbon dioxide, the biogas should be recovered and used as alternative source of energy, being beneficent to the environment⁴.

The possibility of using the domestic residues to obtain biogas as alternative energy source is beneficent, because biogas has a complex usage, both for heating living quarters and obtaining electric power, with the help of an internal combustion engine; the internal combustion engine can operate a power generator, thus enabling energy independence, and the extra electric power can be introduced into the public grid, against payment.

Another category of residues is represented by plastic waste, which is generated in great quantities because of the use of such materials in various industrial domains.

At the global level is recorded an increase in plastics production by 5-6 %, so nowadays besides the need to process the waste resulted from these materials, a present problem is environment protection and reduction of the polymer sources; under these circumstances it is necessary to harness the plastics waste as a major source of raw material for energy generation.

The issues related to environment pollution could be solved, but only by significant capital investments. Therefore, the specific characteristics of the plastics make the cost of the resulted waste processing and disposal very high, exceeding approximately 8 times the costs of processing most industrial waste and almost 3 times the costs of domestic waste disposal, because the methods used for the plastics are different from the known methods of solid waste disposal.

At the same time, by using the polymeric waste, the raw material (in the first place petroleum, natural resource), as well as electric power, could be saved.

Using plastics waste is getting more and more difficult from the technical and economic point of view, as a result of the plastics quality improvement in industry and their higher resistance against oxidation. Because plastic products are used in several branches of economy, the evacuation of the waste to the garbage pit has no utility, on the contrary, it leads to the registration of a continuous growth of the waste quantities resulted from these materials and surfaces dedicated to their storage.

Thus, a significant part of this waste is disposed of, being buried in the soil or incinerated, unprofitable procedures in terms of the economy and harmful from the environmental point of view; the decomposition of the plastic materials in nature is extremely slow and results in the reduction of the usable land surfaces, and the incineration of the polymeric waste leads to environment pollution.

According to the physical, chemical, mechanical and technological properties of the waste resulted from plastics, technological processing parameters and the areas of use of the resulted raw materials are chosen, which differ significantly from the initial polymer.⁵ China's industry, in steady ascension, has needed raw materials for many years in order to develop and consolidate itself, but recently, following the commitments made in the *Paris Agreement* on environment,

⁴ Rusu A.T., T. Rusu – „Deșeurile, Sursă Alternativă de Energie”, ProEnvironment 3 (2010), 586, 587, 590, <http://journals.usamvcluj.ro/index.php/promediu/article/download/5570/5189>.

⁵ Cibotaru V., Angelescu A. „Gestionarea deșeurilor urbane”, Economia, 1/2004, 78-83.

favoring the “emergent technologies” becomes the goal, as very developed countries such as USA or UK, annually export millions of tons of carton into China in order for them to be recycled.

The new regulations in the field, rigorous enough in this state regarding the conditions of accepting the waste, may cause more than half of the amounts exported to return to the original countries. The big economies of the world were surprised at China’s measures to prohibit waste imports and improve the related security measures, because the developed countries do not have implemented recycling techniques and methods commensurate with their own industries, this aspect leading to the accumulation of an immense quantity of waste. In the short run, that constitutes an immediate threat, both for the environment and population’s health. China’s intension to intensify the conditions with regard to the imports of Western waste triggered a real waste crisis at a global level. This situation should determine the industrialized states to take a lot more responsibility for the waste they generate, because every country must have in view not only the economic development, but also the citizens’ right to live in a healthy environment.⁶

If China closes its waste import market, the nations will send waste to other jurisdictions, which are even less prepared to recycle and use it, and a vicious circle arises, as a consequence.

CONCLUSIONS

At international level, new sustainable solutions are being worked on, with regard to residue management, taking into account the accumulation of rising amounts of waste.

Among the present’s measures of the international, European and national institutions, is in the first place the adoption of legislative measures, as efficient as possible, and new production technologies, as less polluting as possible.

Secondly, recycling should increasingly prevail in waste management, having at its basis selective waste collection within each household.

In the third place, special attention should be paid to the ecological education, with respect to generating as little waste as possible, correlated with recycling measures in order to obtain alternative energy.

All in all, we may say that at present we are witnessing a crisis related to waste management, so that methods to stop this phenomenon are being looked for, through measures provided internationally, inclusively in the European Union and by the environmental legislations of the states.

The most accessible solution is for each of us to take his/her responsibility, whether a physical person or economic operator, in relation with the environment, respecting, first of all the specific environmental legislation.⁷

According to the considerations above, recycling the waste, including the one resulted from plastics, represents a rational solution both economically and environmentally, with respect to avoiding the problems caused by atmospheric pollution⁸.

⁶China nu mai vrea să importe „gunoi străin“, article coming out in the magazine Ecologic, in the section „Politici & Economie” in 13 February 2018 - <http://www.ecologic.rec.ro/articol/read/politici-economie/16109/>

⁷China blocheaza importurile de deșeuri – care sunt consecințele pentru noi?, article coming out in the magazine „Raportare mediu”, <http://www.raportaremediu.ro/2018/01/26/china-blocheaza-importurile-de-deseuri/>, accessed on 09.03.2018

⁸ F. Macaev, S. Bujor, A. Mereuță „Reciclarea deșeurilor din mase plastice prin procedee mecano-chimice”, Magazine „Akademos Revistă de Știință, Inovare, Cultură și Artă” no. 1(20), March 2011 – 29, 30,

Because the main causes why waste recycling does not operate at the required parameters are the lack of technology, values or intentions, it is necessary to find alternative solutions, strong and stable markets for the transformation of waste and recycled goods into alternative energy sources

TRENDS IN CLIMATE CHANGE AND SOME OF ITS DETERMINANTS IN BANGLADESH

Ahmmed MORTUZA¹

ABSTRACT

BANGLADESH IS A COUNTRY COMPRISING OF SIX SEASONS SUCH AS SUMMER, RAINY, AUTUMN, LATE AUTUMN, WINTER AND SPRING. BUT WE ARE IN DANGER OF LOSING A FEW OF THEM DUE TO THE NEGATIVE CONSEQUENCES OF EVER INCREASING GLOBAL WARMING. WE HAVE BEEN NOTICING SOME UNUSUAL SEASONAL PATTERNS FOR LAST FEW YEARS. THE EXTENT OF WINTER HAS DECREASED DRAMATICALLY. ON THE OTHER HAND, THE MONSOON IS SHIFTING MORE AND MORE. IN THE YEAR 2017, WE HAVE EXPERIENCED UNWARRANTED RAINFALL THAT CONTINUED UP TO LATE OCTOBER. IN THIS STUDY, I HAVE TRIED TO ASSESS THE CLIMATE CHANGE IN BANGLADESH OVER THE YEARS BASED ON HISTORICAL DATA AVAILABLE. AT THE SAME TIME, I HAVE ALSO ANALYZED THE TRENDS IN DEFORESTATION, URBANIZATION AND CARBON DI OXIDE (CO₂) EMISSIONS IN BANGLADESH OVER THE YEARS. SIGNIFICANT CORRELATIONS HAVE BEEN FOUND BETWEEN TEMPERATURE AND RAINFALL AS WELL AS BETWEEN DEFORESTATION AND CO₂ EMISSIONS. THE FINDINGS OF THE STUDY ARE IMPORTANT SINCE THE PATTERN OF THE SEASONS OF BANGLADESH DETERMINE ITS ECONOMY AS WELL AS ENTIRE LIFESTYLE OF THE PEOPLE.

KEYWORDS: RAINFALL, TEMPERATURE, DEFORESTATION, CO₂ EMISSIONS, CLIMATE CHANGE.

INTRODUCTION

Bangladesh is a country decorated lavishly by its nature with the contribution of its six seasons. But the seasonal chain is being disturbed every now and then. The seasonal pattern of recent years is a proof of that. Winter is getting shorter and monsoon has been shifting further as well as lasting longer. According to Global Climate Risk Index (GCRI) 2017 developed by German watch, Bangladesh is ranked sixth among the disaster-prone countries in the world.

According to Bangladesh Bureau of Statistics (BBS), the population density for Bangladesh was 976 persons/kilometer² in 2011. The national urban density was 3785 persons/kilometer² at the same period. Rapid urbanization is creating adverse impacts on the environment. More people

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means more consumption of natural resources including land and forest and if it continues, it would trigger the discharging rate of CO₂ in the atmosphere, affecting the environment.

The ever-increasing population is causing deforestation. The area covered by natural hill forests declined from 128630 hectares in 1990 to 79160 hectares in 2015 in Bangladesh according to Bangladesh Forest Department. Forests engross greenhouse gases that cause global warming. Deforestation diminishes the accumulation of CO₂ in the exterior atmosphere. It also increases the amount of water vapor in air. Both the issues are related to climate change.

As per World Bank database, CO₂ emission per capita in Bangladesh has increased from 0.2 Metric Tons (MT) in 1995 to 0.4 MT in 2010. According to Intergovernmental Panel on Climate Change (IPCC), CO₂ emission has been the highest contributor of global warming so far. IPCC also estimated that about fifty percent of the CO₂ emissions happened in last forty years. Heat being ensnared in the atmosphere by CO₂ increase the average temperature of the earth.

METHODOLOGY

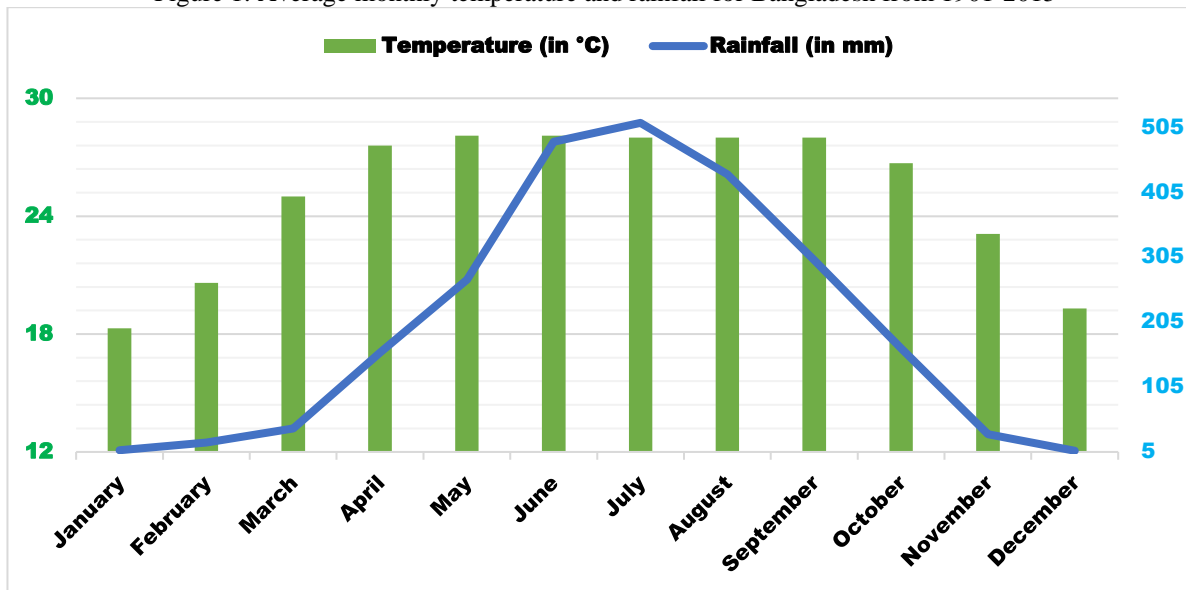
Information regarding both average monthly temperature and rainfall from 1901 to 2015 and forest area percentage with respect to land area from 1990 to 2015 in Bangladesh were collected from the website of World Bank. Data of deforestation trends from 1990 to 2010 in Bangladesh were collected from the website of World Bank along with mongabay.com. Data about urbanization trends in Bangladesh between 1901 to 2016 were collected from the website of banglapedia.org. Finally, information about trends in CO₂ emissions in Bangladesh from 1972 to 2016 was collected from the website of World Bank and ychart.com. We have performed graphical analysis of the data using Microsoft excel 2016. Also, some relevant statistical analyses like Pearson's correlation coefficient, test of significance etc. were performed using SPSS (Statistical Package for Social Science). Significance was determined with p-value ≤ 0.05. Mathematically,

$$r = \frac{Cov(x y)}{\sqrt{V(x)V(y)}} = \frac{\frac{1}{n} \sum (x - \bar{x})(y - \bar{y})}{\sqrt{\frac{1}{n} \sum (x - \bar{x})^2} \sqrt{\frac{1}{n} \sum (y - \bar{y})^2}} = \frac{\sum xy - \frac{\sum x \sum y}{n}}{\sqrt{[\sum x^2 - \frac{(\sum x)^2}{n}][\sum y^2 - \frac{(\sum y)^2}{n}]}} = \frac{SP(xy)}{\sqrt{SS(x)SS(y)}}$$

RESULTS AND DISCUSSION

We can see the patterns of average monthly temperature and rainfall in Bangladesh from 1901 to 2015 in figure 1. The Climatic Research Unit (CRU) of University of East Anglia (UEA) produced the dataset using which the figure was developed. This figure is telling us that the maximum average temperature occurs between April to October varying from 27.6°C to 28.1°C.

Figure 1: Average monthly temperature and rainfall for Bangladesh from 1901-2015



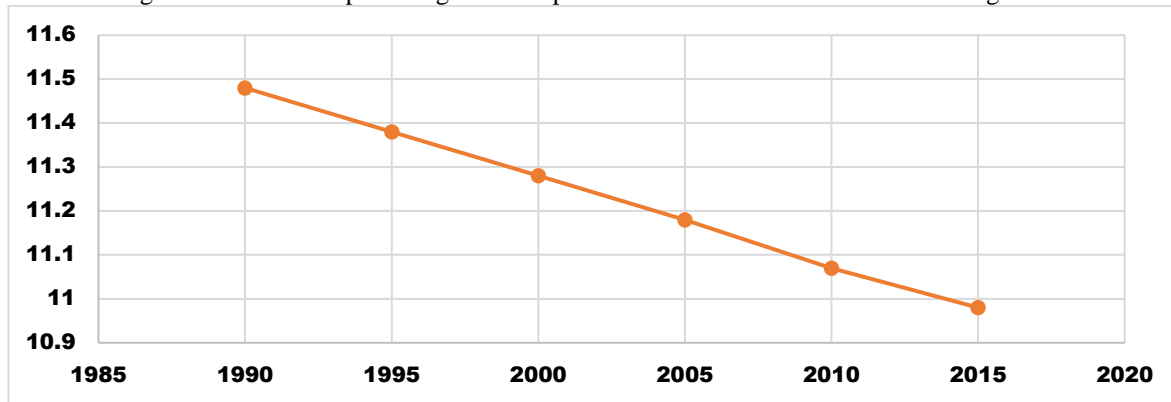
On the other hand, as we can see from figure 1 is that the maximum average rainfall occurs between June to August varying from 4327.6 mm to 512.1 mm. Analyzing the data in SPSS, we got highly positive correlation ($r = 0.795$) between temperature and rainfall which was significant as well ($p\text{-value} = 0.002$).

But it is the picture of last few years which has now become an issue of serious concern. Take this January for example. On 8th January 2018, the country experienced its lowest ever temperature (2.6°C) in Panchagarh district breaking the previous record of 4th February 1968 (2.8°C). Even the average temperature of the country was the lowest ever according to Bangladesh Meteorological Department. The cold wave is being happened very frequently than before. This is a clear shift in the usual winter people of Bangladesh have been used to experience before.

According to World Meteorological Organization (WMO), there was an increase of about 1.1°C in the mean universal temperature from January to September 2017. Its record also showed that the year 2016 was the warmest ever, followed by 2015 and 2017 respectively. One noticeable point in this period was the unusual weather of Asia where the maximum temperature readings were hitting the high forties in many countries. According to Bangladesh Meteorological Department, the average temperature in the country has increased by 0.5% in last 50 years. The maximum temperature readings of the country for last couple of years have been far away from the above-mentioned range of 27.6°C to 28.1°C . Dhaka, the capital of Bangladesh, experienced its highest temperature (40.2°C) on 24th April 2014, only the second highest ever since 1960 (42.3°C). Heatwaves have become very common in the summer in Bangladesh for last few years. An upsurge in frequency as well as concentration of heatwaves was very much expected (Kirtman et al. 2013).

Data of Bangladesh Meteorological Department shows that in the year 2011, the country witnessed its highest rainfall (66762 mm) during the monsoon period since 2005. Four years later, this record was broken as 63987mm rainfall was recorded during the monsoon period in 2015. Last year the country experienced its highest ever rainfall for the month of April since 1981. Within the first three weeks, 8904 mm rainfall was recorded which was 119.7% higher than the expected one for the same period (4053 mm). Even at the ending part of the year 2017, we witnessed rainfall around the country which was very unusual.

Figure 2: Forest area percentage with respect to land area from 1990-2015 in Bangladesh



As we can see from figure 2, forest area percentage with respect to land area continued to decline over the years in Bangladesh. Moreover, this current percentage of forest area is not enough for us. Table 1 gives us a clear idea how drastically deforestation occurred in the country over the years. Urbanization along with industrial development without proper planning are the main contributors of this fast deterioration of natural forests. Deforestation plays an important role in climate change scenario of a country as it increases the amount of CO₂ in the atmosphere.

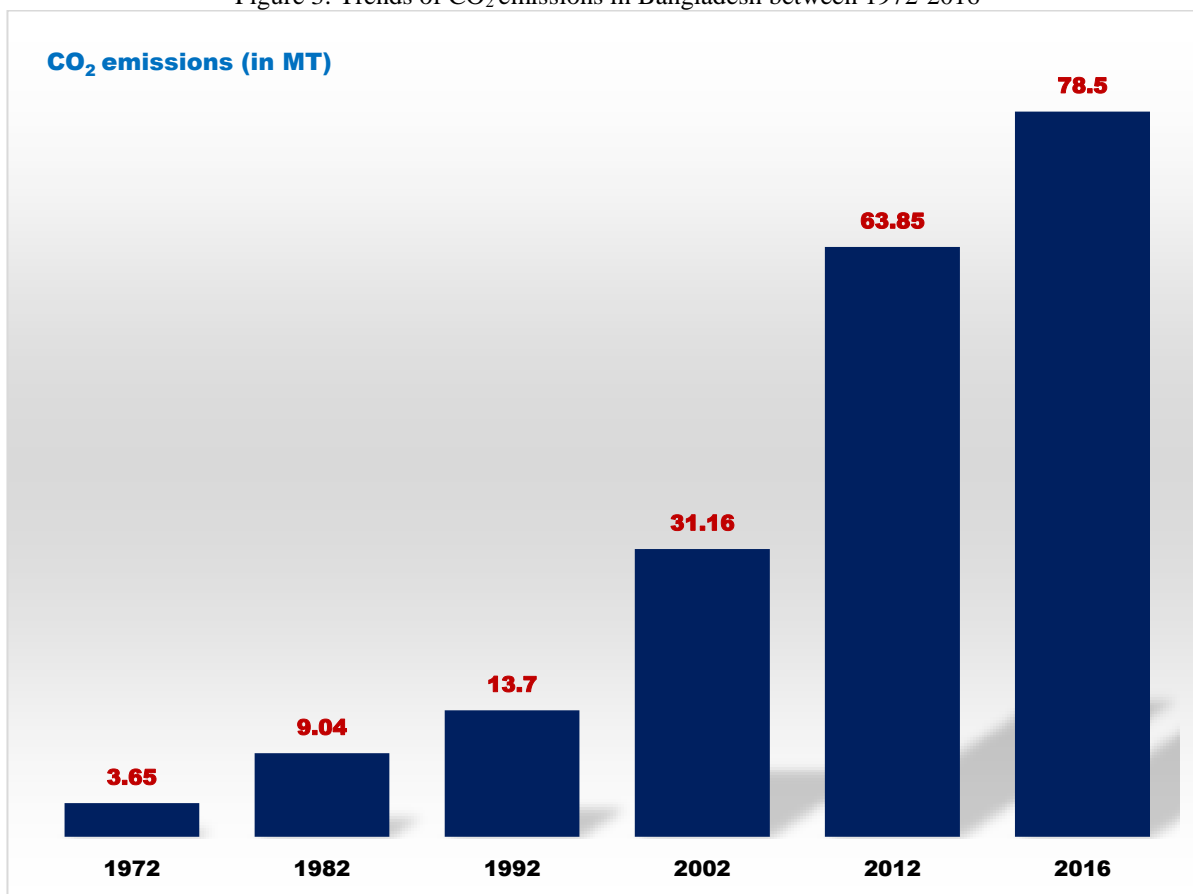
Analyzing the data in SPSS, we got highly negative correlation ($r = -0.952$) between forest area percentage with respect to land area and CO₂ emission which was significant as well ($p\text{-value} = 0.003$). This means, if we have more forest, then there will be less CO₂ emission and vice versa.

Table 1: Trends of deforestation in Bangladesh between 1990-2010

	Forest covered area (in 1000 hectare)		
	Natural	Planted	Total
1990	1255	239	1494
2000	1197	271	1468
2005	1177	278	1455
2010	1205	237	1442

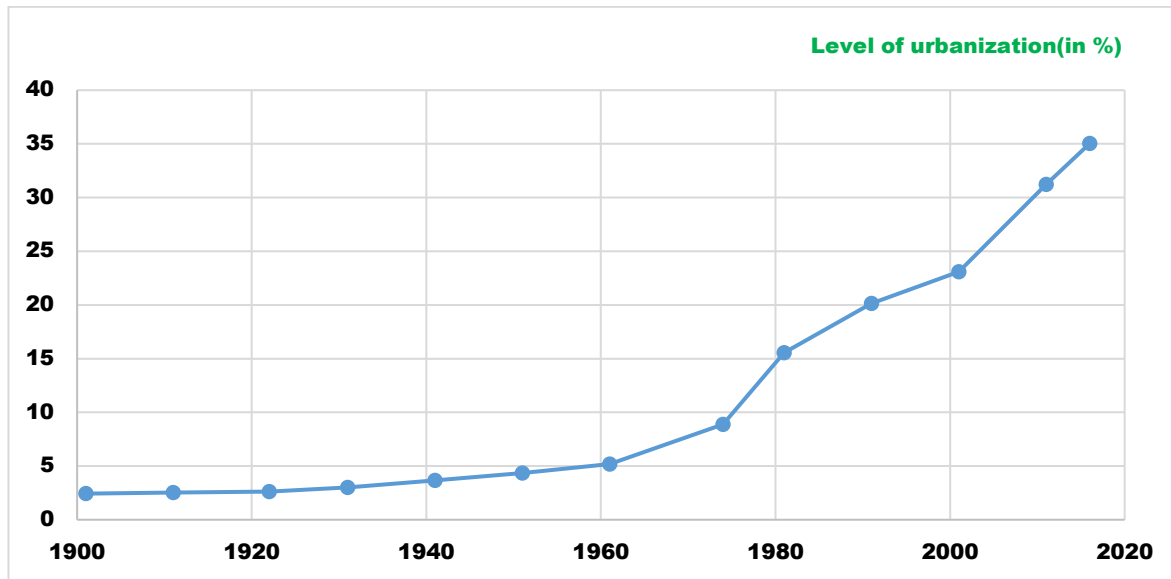
Figure 3 gives us a clear indication how rapidly the amount CO₂ emissions has increased over the years in Bangladesh post the liberation war in 1971. Urbanization is one of the main reasons behind this. Figure 4 shows how swiftly the level of urbanization has increased between 1901 to 2016 in Bangladesh. There seems to be a positive correlation between the two but unfortunately, we could not check that as the data of these two variables were available in two different types of series (not similar year).

Figure 3: Trends of CO₂ emissions in Bangladesh between 1972-2016



It is quite evident from both figure 3 and figure 4 that it is the ongoing millennium during when urbanization as well as CO₂ emissions increased extraordinarily. The more urbanization, the more CO₂ emissions, consequently, the more increase in temperature and so the climate change.

Figure 4: Trends of urbanization in Bangladesh between 1901-2016



CONCLUSION

After analyzing the mentioned datasets regarding different parameters of climate change, it is quite clear that this change has not happened over night. It is the outcome of a process that has been developing for years. The findings of this study will help the respective policy makers to have some idea regarding the trends as well as determinants of climate change in Bangladesh over the years and adopt necessary actions.

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FIVE REASONS AGAINST JOHN MOTT'S CONCEPTION ABOUT MISSION

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ABSTRACT:

IN THIS RESEARCH, BASED ON THE WORKS OF JOHN R. MOTT – IMPORTANT THEOLOGIAN FROM THE PROTESTANT SPACE OF THE 19TH AND 20TH CENTURIES – BUT ALSO BASED ON OTHER PUBLICATIONS (DEDICATED TO TOPICS LIKE THE 1ST WORLD MISSIONARY CONFERENCE HELD IN EDINBURGH IN 1910), THE AUTHOR TRIES TO PRESENT THE VISION ABOUT MISSION OF THE AFOREMENTIONED WRITER AND TO OFFER FIVE REASONS THAT DEMONSTRATE WHY HIS OPINION WAS NOT POSSIBLE FOR IMPLEMENTATION. BECAUSE OF THE RELEVANCE OF HIS WORK AND OF HIS PERSONALITY, MOTT'S IDEAS (LATER HE WILL RECEIVE ALSO A NOBEL PRIZE FOR THEM), WILL CONSTITUTE THE LEITMOTIV OF THE NAMED EVENT, FIRST FROM A BIG SERIES. THEREFORE, PRESENTING HIS VISION, IT IS FIRSTLY AN ATTEMPT TO BRING AGAIN INTO THE ATTENTION OF READERS HIS LIFE AND ACTIVITY, WHILE OFFERING 5 REASONS THAT PROVE WHY HIS VISION WAS WRONG. THIS RESEARCH REPRESENTS A WAY TO REALIZE A THEOLOGICAL ANALYSIS OF HIS WORKS BUT ALSO A POSSIBILITY TO OFFER ANOTHER PERSPECTIVE ON HIS APPROACH.

KEY WORDS: EDINBURGH CONFERENCE, 1910, YMCA, EVANGELIZATION, MISSION.

INTRODUCTION

Important personality of his time, who had a huge contribution in the organisation of 1st Mission Conference from Edinburgh (1910)² and of its editorial outcomes³, missionary and artisan

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² For more information about his contribution there, see also: David A. Kerr and Kenneth R. Ross (eds.), *Edinburgh 2010*, (Regnum Edinburgh Centenary Series 34), (Oxford: Regnum Books International, 2009); Kenneth R. Ross, *Edinburgh 1910: Scottish roots and contemporary challenges*, "Theology in Scotland", 17 (2010): 5-21.

³ Oplihant Anderson, Ferrier Oplihant (eds.), *World Mission Conference, 1910. Report of the Commission I: Carrying the Gospel to all the non-Christian World, with supplement: Presentation and discussion of the report in the conference on 15th June 1819*, (New York, Chicago, Toronto, Edinburgh, London: Fleming H. Revell Company, 1910); Oplihant Anderson, Ferrier Oplihant (eds.), *World Mission Conference, 1910. Report of the Commission II. The Church in the mission field. With supplement, presentation and discussion of the report in the conference on 16th June 1910*, (New York, Chicago, Toronto, Edinburgh, London: Fleming H. Revell Company, 1910); Oplihant

of ecumenism, but also theologian⁴, often quoted and refereed to until today⁵ and in the same time, holder of a Nobel Prize, John Mott presented in his writings, an interesting vision on ecumenism and mission. His ideas about mission as apostleship, the evangelisation of the world "in this generation"⁶, which should not be regarded as an end in itself, about the missionaries societies and their work and s. o., were certainly viewable and constituted starting points for important initiatives. But, despite of their importance, his ideas were in that moment to utopic and this was what/that constituted the main reason why some of them were not realisable. Knowing the importance of the ideas, life and activity of the aforementioned theologian and writer, we will try here to emphasize his ideas and to offer also a few reasons that show why ~~its~~ his missionary conception, which constituted one of the leitmotivs of the 1st World Mission Conference from Edinburg (1910), was not totally right.

Anderson, Ferrier Oplihant (eds.), *World Mission Conference, 1910. Report of the Commission III. Education in Relation to Christianisation of National life. With Supplement: presentation and discussion of the report in the conference on 17th June 1910 together with the discussion on Christian literature*, (New York, Chicago, Toronto, Edinburgh, London: Fleming H. Revell Company, 1910); Oplihant Anderson, Ferrier Oplihant (eds.), *World Mission Conference, 1910. Report of the Commission IV: The missionary message in relation to non-Christian religions. With Supplement: presentation and discussion of the report in the conference on 18th June 1910*, (New York, Chicago, Toronto, Edinburgh, London: Fleming H. Revell Company, 1910); Oplihant Anderson, Ferrier Oplihant (eds.), *World Mission Conference, 1910. Report of the Commission V: The training of teachers. With Supplement: presentation and discussion of the report in the conference on 22th June 1910*, (New York, Chicago, Toronto, Edinburgh, London: Fleming H. Revell Company, 1910); Oplihant Anderson, Ferrier Oplihant (eds.), *World Mission Conference, 1910. Report of the Commission VI: The home base of missions. With Supplement: presentation and discussion of the report in the conference on 23rd June 1910*, (New York, Chicago, Toronto, Edinburgh, London: Fleming H. Revell Company, 1910); Oplihant Anderson, Ferrier Oplihant (eds.), *World Mission Conference, 1910. Report of the Commission VII: Missions and Governments. With Supplement: presentation and discussion of the report in the conference on 20th June 1910*, (New York, Chicago, Toronto, Edinburgh, London: Fleming H. Revell Company, 1910); Oplihant Anderson, Ferrier Oplihant (eds.), *World Mission Conference, 1910. Report of the Commission VIII: Cooperation and Promotion of Univty. With Supplement: presentation and discussion of the report in the conference on 21st June 1910*, (New York, Chicago, Toronto, Edinburgh, London: Fleming H. Revell Company, 1910); W. H. T. Gairdner (ed.), *"Edinburgh 1910". An account and interpretation of the World Missionary Conference*, (Edinburgh, London: Fleming H. Revell Company, 1910).

⁴ Author of important theological works like: John R. Mott, *Addresses and Papers of John R. Mott.*, vol. 1-6, (New York: Association Press, 1946-1947); John R. Mott, *Confronting Young Men with the Living Christ*, (London: Hodder & Stoughton, 1923); John Mott, *The Future Leadership of the Church*, (London: Hodder & Stoughton, 1909); John R. Mott, *Strategic Points in the World's Conquest: The Universities and Colleges as Related to the Progress of Christianity*, (London: Nisbet, 1897); John R. Mott, *The Present World Situation*, (New York: Student Volunteer Movement for Foreign Missions, 1914); John R. Mott, *Leadership of the Constructive Forces of the World*, (London: Oxford University Press, 1931); John R. Mott, *Liberating the Lay Forces of Christianity*, (London: Student Christian Movement Press, 1932); John R. Mott, *The Present-Day Summons to the World Mission of Christianity*, (London: Student Christian Movement Press, 1932); John R. Mott, *Cooperation and the World Mission*, (London: Student Christian Movement Press, 1935); John R. Mott, *The Larger Evangelism: The Sam P. Jones Lectures at Emory University, 1944*, (London: Lutterworth, 1944).

⁵ For more information about his biography, see also: <http://www.bu.edu/missiology/missionary-biography/l-m/mott-john-r-1865-1955/>, accessed 12. 12. 2017;

https://www.nobelprize.org/nobel_prizes/peace/laureates/1946/mott-bio.html, accessed 12. 12. 2017; Howard C. Hopkinks, "The Legacy of John R. Mott," in *International Bulletin*, 4 (1981): 70-73.

⁶ Norman E. Thomas (ed.), *Classic texts in mission and world Christianity*, (Maryknoll, N.Y : Orbis Books, 1995), p. 74. Cf. John R. Mott, *The Evangelization of the World in This Generation*.

2. FIVE REASONS AGAINST JOHN MOTT'S CONCEPTION ABOUT MISSION

Viewed from the perspective of nowadays man, however, most of them may seem incomplete or out-dated. Moreover, his aim is not realistic for several reasons. We will therefore try to emphasize here five of them:

1. Over-evaluation of the missionary capacity of churches and missionary societies

Aware of the missionary enthusiasm of churches' societies of his time, he speaks about the evangelization of the entire world in that period, as an important target: "it is obviously must be done while they are living". Moreover, he is emphasizing the fact that the church "has unexampled opportunity to evangelize the world", and it has the necessary resources (in his time, there was existing 537 foreign missionary and auxiliaries societies).⁷ But, he omits the fact that regarding the missionary needs of his time, all this meant very little.

2. Over-evaluation of the importance of policy for missionary work

In the chapter dedicated to the opportunities and resources, he shows that "the influence and protection of Christian governments it is an immense help to the work of missions". Apparently, he is right. But, if we take a look in the history of the mission and missionary societies from that time⁸, we will find that, in most of the situations, colonial empires were encouraging only the mission of their own confessions and missionary societies, or, they were not interested of this topic. Sometimes, they have even tried to hijack the mission from its true meaning, putting it at the service of their economic interests.

3. The truncated understanding of the meaning of the mission and the omission of its fundamental ideal

John Mott speaks in one place about the fact that "evangelization of the world in this generation should not be regarded as an end in itself,"⁹ and he show that "such evangelisation must be followed by the baptism of converts, by their organization into churches, by building them up in knowledge, faith and character and by enlisting and training them for service."¹⁰ Although his ideas are, from this point of view interesting, useful and pragmatically oriented, he omits the real purpose of the mission: the Salvation of the faithfuls and spreading of Salvation message. Or, this should be the starting point of his approach. Without thinking at this aspect and noticing the leitmotiv of the mission, each tentative to speak about the mission or to do mission is, from the beginning, failed.

⁷ Cf. James S. Dennis, "Centennial Statistics", a paper prepared for the Ecumenical Conference on Foreign Missions, (New York: 1900), 17-18.

⁸ An interesting approach can be founded there: Alexis Lekpea Dea, *Évangélisation et pratique holistique de conversion en Afrique. L'union des Eglises Évangéliques Services et Œuvres de Côte d'Ivoire 1927/1982*, col. "Ethics Thèses", Tome 14ième, (Geneve: Globaletics.net, 2015).

⁹ Norman E. Thomas (ed.), *Classic texts in mission and world Christianity*, 75.

¹⁰ Norman E. Thomas (ed.), *Classic texts in mission and world Christianity*, p. 75. Cf. N. A. Nissiotis, "Interpreting Orthodoxy", in *The Ecumenical Review*, 14 (1961): 23.

4. Overestimation of the importance of time in the act of mission

One of the main points of his writings is the idea of the "evangelization of the world in this generation."¹¹ Probably marked by apocalyptic tension similar to that of the apostolic and post-apostolic period, he sees the mission not only as an important act of church's life, that must be done, but also as a fact that must be realised as soon as possible. It is, however, well-known that the truly durable results of a well-done action are noticeable over time, not immediately, and that to succeed, an approach must be well planned, and its goals must be pursued with consistency, not done in a hurry. Therefore, the way in which he presents this aspect rather leaves the impression of a vision marked by childish, superficial enthusiasm, and not of a rigorously drawn plan, as appropriate.

5. Underestimation of his own cultural and spiritual context

In the aforementioned topic of his work, John R. Mott is also speaking about the fact that "if Christianity were to die out in Europe and America, it would abide in purity as a missionary power in its new homes and would live on through centuries."¹² His assumption starts from the interesting idea of Providence that God's care about world's fate. But, in the same time, it seems that the author is disregarding the spiritual valences and resources of the two continents and is supra-evaluating the other lands, where Christianity was hardly born. On the other side, reading carefully his works, one can find that he also, like any man of his time, sometimes disregards indigenous culture, which is also reflected in his conception of mission and missionary activity.

3. CONCLUSION

As we could see from the lecture of some of John R. Mott's ideas – although, we must add that he is marked by the cultural patterns of his time – we realize that he develops a bold and innovative vision about the mission, providing principles that are still used in the work of this field. But, despite of that, because of his idealism and of his superficial evaluation of some aspects and some other aspects he emphasizes there, we are forced to conclude that his vision is unfortunately one not completely realistic.

¹¹ Norman E. Thomas (ed.), *Classic texts in mission and world Christianity*, p. 76. Cf. John R. Mott, *The Evangelization of the World in This Generation*.

¹² Norman E. Thomas (ed.), *Classic texts in mission and world Christianity*, 75.

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 27. https://www.nobelprize.org/nobel_prizes/peace/laureates/1946/mott-bio.html, accessed 12. 12. 2017;

POLITICS, IDEOLOGY AND LITERATURE AT THE BEGINNING OF COMMUNIST REGIME IN ROMANIA. A FEW THEORETICAL ASPECTS

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ABSTRACT

OUR ARTICLE REPRESENTS A SHORT ANALYSIS OF THE LITERATURE FROM IDEOLOGICAL POINT OF VIEW DURING COMMUNIST REGIME IN ROMANIA. TAKING INTO CONSIDERATION THE COMPLEXITY OF THIS TOPIC, WE FOCUSED PARTICULARLY ON THE FIRST STAGE OF THE COMMUNISM. AFTER 1944-1945, THE PROCESS OF SOVIETISATION AND SATELLISATION HAS JUST BEGUN IN CENTRAL AND EASTERN EUROPE. THE ROMANIAN COMMUNIST PARTY AND ITS INTERNAL ALLIES MANAGED TO SEIZE POWER. AFTER THAT, THE ROMANIAN SOCIETY UNDERWENT RADICAL TRANSFORMATIONS. IT IS ALSO THE CASE OF THE CULTURE AND LITERATURE. THEY BOTH SUFFERED TOTAL CHANGES, BEING INFLUENCED BY THE SOVIET PATTERN. WE CAN PERCEIVE A TOTAL METAMORPHOSE OF ROMANIAN LITERATURE. THE LITERATURE, LIKE THE HISTORIOGRAPHICAL DISCOURSE, TURNED INTO A DOCILE AND VERY USEFUL TOOL FOR PROPAGANDA AND COMMUNIST IDEOLOGY. SO, IN THIS PERIOD THE LITERATURE BECAME PROFOUNDLY IDEOLOGIZED. AS A CONSEQUENCE, WE NOTICE THE POOR QUALITY OF LITERARY TEXTS. WE RESORTED TO A THEORETICAL APPROACH, EXPLAINING THE MAIN CONCEPTS. WE IDENTIFIED AND ANALYSED THE MAIN DIFFERENCES BETWEEN SOCIALIST REALISM AND PROLET CULTISM. WE UNDERScoreD THE PRINCIPLES AND CHARACTERISTICS OF THE SOCIALIST REALISM INSISTING ON ITS ANTI-COSMOPOLITANISM. ACTUALLY, IN ROMANIAN PEOPLE'S REPUBLIC, WE HAD A DIFFERENT TYPE OF ANTI-COSMOPOLITANISM, NOT SIMILAR TO THAT FROM U.S.S.R.

KEYWORDS: LITERATURE, IDEOLOGY, POLITICS, SOCIALIST REALISM, PROLET CULTISM.

The sovietisation process profoundly and irredeemably affected Romania after 1944-1945 years. Political and economic life and the whole society as well have been entirely changed and transformed according to the Soviet patterns.³ In Stelian Tănase's opinion, local elites' leaders

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³ On this topic, we share Vlad Georgescu's opinion. The historian, who was also a well known anti-Communist dissident, referred to three facets of the stalinism (the political, economic and cultural one), in people's democracy

fully believed that they had belonged to Communist “world system”. They did not perceive themselves as representatives of the peoples kept under their rule.⁴ The independence level of the Romanian Communists was the lowest in the Soviet bloc. They just executed orders from Moscow. The National Democratic Front and Petru Groza government have to hide the true nature of the power. The popular fronts’ strategy was promoted by Soviets in the occupation zone. They aimed to obtain the recognition for “puppet-government” by the Western powers.⁵ In November 1946 the elections were falsified by the Communists. After that the “duality of power”, characteristic to the period 1944-1947 will be over. The dictatorship of the proletariat, namely the power monopoly installed after 30 December 1947. There were just a few months after Cominform’s foundation in Szklarska Poreba, in Poland.⁶

The traditional interwar system of values and the cultural institutions have been destroyed. In people’s democracy regime, the Communist Party established as a major objective the creation of the *new man*⁷, in fact a Romanian copy of *homo sovieticus*, from USSR. For the achievement of this essential goal, the Communist propaganda disseminated Marxist-Leninist precepts and carried out an active russification campaign.⁸ The Romanian history, all the past, the national idea and the concept of *patriotism* were completely distorted and modified. Vlad Georgescu wrote about a kind of socialist patriotism.⁹ In fact, after the seize of power by the Communists with the substantial Red Army’s aid, to be patriot did not mean any longer to love your own country, but to love Soviet Union and mainly its supreme leader, the dictator Iosif Vissarionovici Stalin. Due to Romania’s sovietization and satellization, patriotism meant only loyalty for Moscow and Stalin. The national values became obsolete and were rejected. We are now in the era of internationalist communism. The communist regime from Bucharest was completely obedient to Kremlin. In fact, in his works, a writer could not express the feeling of love for his own country. This was practically forbidden. The national idea vanished. Any reference to nationalism and to the home country was eliminated. The writers and historians could not choose their topics from national history. In fact all Romanian history had to be subordinated to the Russian history or to the history of Slavic peoples. The offensive against cosmopolitanism started in 1949 when the communist ideologue Leonte Răutu published the study entitled *Against cosmopolitanism and objectivism in social sciences*. His study was strongly inspired by Andrei Jdanov’s theories. Jdanov was the main promoter of socialist realism in Soviet Union. Any reference to the national identity was condemned.¹⁰

Like all Romanian society, the culture, the art and the literature suffered total changes, according to the patterns brutally imposed by U.S.S.R. The intellectuals, in general and particularly the writers were compelled to cease immediately and forever the traditional and natural relations

regime from Bucharest. Of course, the cultural stalinism prevailed by force, the same way the political and economic stalinism did. For these aspects, see Vlad Georgescu, *Istoria românilor*, (București: Editura Humanitas, 1992).

⁴ Stelian Tănase, *Elite și societate. Guvernarea Gheorghiu-Dej 1948-1965*, (București: Editura Humanitas, 1998), 42.

⁵ Stelian Tănase, *Elite și societate...*

⁶ Stelian Tănase, *Elite și societate...*, 41-43.

⁷ V. Georgescu, *Istoria românilor...*, 261.

⁸ V. Georgescu, *Istoria românilor...*, 262.

⁹ V. Georgescu, *Istoria românilor...*, 264.

¹⁰ V. Georgescu, *Istoria românilor...*, 264

with the West¹¹ and to establish close ties (in reality, servitude relations) with „Big Brother” from the East.¹² Romanian Academy was dissolved in 1949 and replaced with a new institution whose members were very obedient to the regime. Many of them have no genuine professional merits. They were appointed by Communist authorities. All the ancient research institutes were dissolved. The purge of intellectuals did not take place only from administrative point of view. A great number of scientists, scholars, men of culture, writers were thrown into jail where some of them died. Several scholars and writers like Constantin Rădulescu-Motru, Simion Mehedinți, Dimitrie Gusti, Lucian Blaga and others were marginalized. On the contrary, other famous writers like Mihail Sadoveanu (first of all), Tudor Arghezi, George Călinescu or Tudor Vianu were “rehabilitated” (the last three authors after a long period of purification).¹³ A lot of titles were censored or even banned. The works of more writers and scientists were entirely or partially forbidden. We mention Mihai Eminescu, Titu Maiorescu, Vasile Alecsandri, Grigore Alexandrescu, Costache Negruzzi, Petre Ispirescu, Panait Istrati, Liviu Rebreanu, George Coșbuc, Constantin Rădulescu-Motru, Henri H. Stahl. Among the very few Mihai Eminescu’s accepted poems was *Împărat și proletar* (*Emperor and proletarian*), due to its strong social character. In the marxist-leninist theory, the economic and social factors were of utmost importance. These factors determine the political one. The social conflict, the class struggle represent the engine of historical development.¹⁴ Moreover, Titu Maiorescu, one of the founders of the Romanian modern culture was blamed by the Communist propaganda being labeled as “the cosmopolitan one without country”, “the valet of the court”. His only one goal would have been to keep the masses in ignorance.¹⁵

Only Soviet Union could choose the topic for any work or act of creation in the new people’s democracy regime in Romania. In this sense, Mihail Sadoveanu’s volume *Lumina vine de la Răsărit* (*The Light Comes from the East*) is relevant. In his book the writer expressed his impressions after a travel in Soviet Union. The vice-president of Great National Assembly represents maybe the the most eloquent example of conformism, compromise and complicity with the communist regime from Bucharest subordinated to Kremlin.¹⁶ The literature, the same way as the historiographical discourse, turned into a docile and very useful tool for propaganda and Communist ideology. So, in this period the literature became profoundly ideologized. As a consequence, we notice the poor quality of belletristic literary texts. Due to the sovietization process and to the growing role of ideology, the literature became the servant of politics and ideology.

The intense russification campaign involved the establishment of “Cartea Rusă (The Russian Book)” publishing house and bookshop (1946), Romanian-Soviet Studies Institute (1947),

¹¹The West was perceived and labeled as “decayed”. For this issue, see Marin Nițescu, *Sub zodia proletcultismului*, Editura Humanitas, București, 1995, pp. 63-64. Surely, in the first stage of Romanian Communist regime, U.S.S.R. was the only one example to follow.

¹² Hadrian Gorun, „O ideologie a poeziei în timpul regimului comunist”, in *Analele Universității “Constantin Brâncuși” din Târgu-Jiu*, Seria Litere-Științe Sociale, Supplement 3/ 2015, 42.

¹³ V. Georgescu, *Istoria românilor...*, 262.

¹⁴ Robert Jackson, Georg Sorensen, *Introduction to international relations. Theories and approaches*, 4th edition, (Oxford University Press, 2010), 189-190; Hadrian Gorun, *Relații internaționale în secolul al XX-lea: concepte fundamentale, școli de gândire, repere istorice*, (Târgu-Jiu: Editura “Academica Brâncuși”, 2011), 159-162.

¹⁵ V. Georgescu, *Istoria românilor...*, 262-263.

¹⁶ H. Gorun, *O ideologie a poeziei în timpul regimului comunist...*, 42.

The Romanian-Russian Museum (1948), Russian Language Institute “Maxim Gorki” (1948). The publishing house, the bookshop and institute had to disseminate in Romania the achievements of Soviet culture and science, which was supposed to be the most advanced in the world. The institute had as fundamental objective to prepare thousands of teachers. They were really necessary to teach Russian in Romanian schools and universities. In 1953, the apogee of russification process was represented by the introduction of the new orthography following the Soviet pattern. Some Latin elements were removed from language. The name of the country changed from România to Romînia. The linguistic reform was necessary because the old spelling had become intolerable, a „preoccupation of the working class and a state problem.”¹⁷

As the well-known political scientist Raymond Aron asserted, in a totalitarian regime we have the absolute authority of the ideology. Thus, the ideology becomes the official truth of the state. On the other hand, the police terror and ideological terror are the result of a complete politicization and ideologisation.¹⁸ The ideology represents the main tool of legitimation for the Party-State. The ideology represents also the main weapon of the Party-State because it turns into the sole truth accepted by the state. The freedom and democracy are endangered and violated when the state (identified with the sole party) has the monopoly over the truth itself. The escamotation of reality and mystification of the truth according to the interests of the regime make the lie turn into the truth. Thus the lie is not only accepted, but legitimated as truth, the only one truth for the party and communist ideology.¹⁹ One can say that in this circumstance, when the lie becomes truth and it is legitimated like this even the foundations of the world are shaken. Hannah Arendt also wrote about the omnipresence of the ideology in his book *The origins of totalitarianism*.²⁰

In the first stage of Romanian communism the culture and literature evolved under the sign of socialist realism. In literature, the expression of sovietization was represented by the imposition of *proletcultism* and *socialist realism*.

It is necessary to explain these two concepts. Ion Simuț published an article entitled „Proletcultism sau realism socialist? (Proletcultism or socialist realism?)”, in *România literară*²¹. Romanian proletcultism of the years 1948-1950 was completely different from Soviet initial proletcultism of 1918-1920. The second one had the sense of avant-gardist art, rejecting any tradition, adjusting the vision and proletarian style to the anarchical manner, ignoring any discipline or party ideology. On the contrary the proletcultism from Romania signified a proletarian, partinic and patriotic culture. It represented the ideology of a class which carried out successfully anti-bourgeois revolution.²²

¹⁷ V. Georgescu, *Istoria românilor...*, 263-264.

¹⁸ Raymond Aron, *Democrație și totalitarism*, translated by Simona Ceașu, (București: Editura All, 2001), 212-213

¹⁹ Hadrian Gorun, “Reminiscente totalitare, mituri politice și manipulare în primele luni postdecembriste”, in *Polis*, no. 2/2017, 200.

²⁰ For the Romanian version of the book, see Hannah Arendt, *Originile totalitarismului*, (București: Editura Humanitas, 2nd edition, 2006).

²¹ Ion Simuț, „Proletcultism sau realism socialist? (I, II)”, in *România literară*, no. 30-31/2008, online http://www.romlit.ro/proletcultism_sau_realism_socialist, http://www.romlit.ro/proletcultism_sau_realism_socialist_ii, 28. 05. 2015.

²² Szabo Zsolt, „The Role of Steaua Magazine in Proletcult”, in *Journal of Romanian Literary Studies*, Issue no. 6/ 2015, 838.

The anti-cosmopolitanism represented one of the main features of the stalinism in Soviet Union and of the people's democracy regime from Bucharest. But the nature of anti-cosmopolitanism was totally different. If in the first case, the Russian national traditions were valorized²³, in Romania any expression of nationalism was impossible.

Socialist realism in general and the struggle against cosmopolitanism particularly involved in Romanian people's democracy a perfect imitation of Soviet canons and patterns, of themes and subjects the Soviet ideology agreed with. Thus, the Romanian literature, both poetry and prose, became annexes of the Russian literature. In Romania, during internationalist communism of Gheorghe Gheorghiu-Dej's era, socialist realism and anti-cosmopolitanism involved an exacerbated servility for the country of world communism, simultaneously with the repudiation of many national symbols. Practically the adoption of socialist realism in Romanian People's Republic meant the sovietization of Romanian literature.²⁴

Aleksandr Bogdanov founded in Soviet Russia the organization called Proletcult. Proletcult elaborated „the cultural tasks of the proletariat” independently from Bolshevik Party. So, proletkultura, as it was conceived by Bogdanov, remained autonomous from Party and state. Ion Simuț shares Michel Aucouturier's opinion²⁵ when he tells that proletkultura had as goal „the development of spontaneous creativity of working class in the field of culture”.²⁶ In other words, Aleksandr Bogdanov's main objective was to crystallize a proletarian culture, but not a partinic one. Therefore Bogdanov's proletcultism was different from Romanian proletcultism after 1948.²⁷ In fact, this last one was an expression of Soviet socialist realism. This Romanian proletcultism was unconceivable otherwise than inseparable from Party-State. The Professor and literary critic Nicolae Manolescu also prefers socialist realism concept.²⁸

Since 1905, Vladimir Ilici Lenin condemned all intellectuals and writers who promoted a non-partinic culture: „[...] Down with the literates without Party! The literary issue should become a part of the work party [...] organized, planned and unitary”.²⁹ As Marin Nițescu concluded, for the Bolshevik leader, the culture had no axiological role, but a social and political one.³⁰ The message was clear. Any literary demarche was similar and assimilable to economic activities. They suffered centralized planning and were directly controlled by the Party-State.³¹

Maxim Gorki was the first who slightly defined socialist realism. However, in 1934, at the first Congress of the Soviet writers, the ideologue Andrei Jdanov imposed the socialist realism as official doctrine. The life had to be “veridically reflected in the work of art”. On the other hand, Iosif Stalin himself considered the writers as „engineers of the souls”, whose role was to mould and recreate the man. The writers also committed to create the new man.³²

²³ M. Nițescu, *Sub zodia proletcultismului...*, 85.

²⁴ H. Gorun, *O ideologie a poeticii...*, 43.

²⁵ See Michel Aucouturier, *Realismul socialist*, (Cluj-Napoca: Editura Dacia, 2001).

²⁶ I. Simuț, *Proletcultism sau realism socialist?*..., I, no. 30/ 2008

²⁷ Marin Nițescu's book, *Sub zodia proletcultismului*, represents an important contribution on this topic.

²⁸ For that, see Nicolae Manolescu, *Inutile silogisme de morală practică*, Editura Albatros, București, 2003.

²⁹ M. Nițescu, *Sub zodia proletcultismului...*, 89-90.

³⁰ M. Nițescu, *Sub zodia proletcultismului...*, 90.

³¹ H. Gorun, *O ideologie a poeticii...*, 44.

³² In Eugen Negrici's opinion, Alexandr Fadeev used for the first time the concept *socialist realism*, in the year 1932. See Eugen Negrici, *Literatura română sub comunism. Poezia*, (București: Editura Fundației Pro, 2006), 15-16; M. Nițescu, *Sub zodia proletcultismului...*, 91.

According to Lucian Boia, through socialist realism, the literature also became scientific and metamorphosing. The literature itself became a science. Thus, the poet turned into scientist had the mission to discover “the budding new man” among numerous “human specimens”.³³ The literature turned into science due to the political interference. The literature answered the necessities of the ideology. The literature will be one of the mechanisms used for the creation of the new man. As we know, creating the new man represented one of the fundamental objectives for the communist ideology. The literature had to reflect the world in its essence and dynamic, not only according to appearances. The literature had to teach common people to live like the heroes from novels. Working as scientist, the writer was exploring the present reality in order to find in it the germs of the future reality.³⁴ The recommended language was direct, transparent, narrative and didactic. The message should have easily understood. The art aimed at making true the allegory and fiction, even more authentic than reality.³⁵ It was not necessary to demonstrate the superiority of socialist realism over bourgeois literature, if we take into consideration the so-called superiority of the communism over capitalism. This superiority resulted from the objective laws of the history.³⁶ Despite their poor quality, the socialist- realist works had an important role as ethical lessons and pedagogical tools.³⁷

The literature had a difficult condition. Like the historiographical discourse, the literature turned into a docile and very useful tool for propaganda and Communist ideology. Its main mission was to legitimate the communist regime offering the indispensable credibility on the so-called scientific foundations.³⁸

In the literature of Romanian People’s Republic, there are some principles and characteristics of the socialist realism. Thus, according to the accessibility principle, the socialist realism used a very simplistic language. Its target was a public with a minimal degree of education and literacy.³⁹

The socialist realism is founded on the marxist-leninist doctrine, on the deterministic, dialectical and scientific materialism. On this topic, socialist realism opposed to idealism and mysticism.⁴⁰ Being a reflex of the marxist-leninist dogma, socialist realism promoted the class struggle, the social conflict. Even Vladimir Ilici Lenin affirmed that a national culture had incorporated two cultures: one of the exploiting class and the other one belonging to the exploited classes. The poet was compelled to feel hatred for the class enemy and love for the heroes of the working class.⁴¹

³³ Lucian Boia, *Mitologia științifică a comunismului*, (București: Editura Humanitas, 2011), ediția a III-a, 151-152.

³⁴ Lucian Boia, *Mitologia științifică a comunismului...*, 152.

³⁵ Lucian Boia, *Mitologia științifică a comunismului...*, 152.

³⁶ Lucian Boia, *Mitologia științifică a comunismului...*, 155.

³⁷ Lucian Boia, *Mitologia științifică a comunismului...*, 157.

³⁸ H. Gorun, *O ideologie a poeziei...*, 44.

³⁹ H. Gorun, *O ideologie a poeziei...*,

⁴⁰ E. Negrici, *Literatura română sub comunism...*, 19; I. Simuț, *Proletcultism sau realism socialist?*..., II, no. 31.

⁴¹ E. Negrici, *Literatura română sub comunism...*, 21, 43.

The social commandment was compulsory. The socialist realism responded to a social commandment.⁴² Therefore, we have a militant literature, an „agitational” poetry, in Eugen Negrici’s opinion. The image of a poet involved and very active in the social life is predominant.⁴³

Another feature of the socialist realism is the anti-individualism.⁴⁴ In the communist totalitarianism, the person, the individual is insignificant in comparison to collectivity. Only collectivity matters, but in reality the amorphous mob made up of docile and aboulitic individuals.

By excellence, the socialist realism was optimistic and wanted to be moralizer. On the other hand, all that matters is the present. The writers did not refer to the past. However, if they make any allusion, the past appears in antithesis with the present. The present and future are „painted” in bright and alive colours. The ideologized prose and poetry of the socialist realism presented the new man, his wealthy and happy life, in contrast with one-time life, full of privations and characterized by obscurantism.⁴⁵

The apoliticism is rejected as a form of deviationism. So the socialist realism is essentially political and partisan.⁴⁶ All the writings should respond to Party commandment.

Socialist realism opposed to formalism and to esthetic factor. In other words, it rejected art for art’s sake. The poetry should have exclusively educational goals. The esthetic nature of the literature was sacrificed in the name of almighty and omnipresent ideology. At last, but not the least we add the anti-cosmopolitanism to all these features.⁴⁷ Yet the Marxist philosopher György Lukács criticized the optimism promoted by the socialist realism, categorizing it as “bureaucratic” optimism or “facade” optimism. He also suggested the replacement of “class struggle idea” with „the notion of people”.⁴⁸

In socialist realism, the writers are not really interested in the quality of their works. They are a kind of workers carrying out a production work. In fact there was just a race to surpass the standards. These workers of the pen⁴⁹ or ideological scribes carried out activities according to the stahanovist pattern. The quality was sacrificed to exclusive advantage of the quantity and utility for the communist regime. The poet who had left forever his „ivory tower” should „produce” works in series. These works had to respect the utility principle. The literature turned into an accessory of the politics and were fully subordinated to politics. Literature became profoundly ideologized. The prose writers and poets were servants of the ideology and of communist regime.

For which reasons they accepted to serve the power? Why did they apply the canons of socialist realism? Ioana Dunea⁵⁰ shared political scientist Stelian Tănase’s point of view.⁵¹, considering that an attitude of subordination, collaboration and compromise with the communist regime assured to intellectuals and particularly to writers numerous advantages, a better visibility, a fast promotion, material benefits and especially the possibility to travel abroad for study and

⁴² E. Negrici, *Literatura română sub comunism...*, 19.

⁴³ E. Negrici, *Literatura română sub comunism...*, 18.

⁴⁴ E. Negrici, *Literatura română sub comunism...*, 20.

⁴⁵ H. Gorun, *O ideologie a poeziei...*, 45.

⁴⁶ I. Simuț, *Proletcultism sau realism socialist?...*, II, nr. 31.

⁴⁷ See *supra*.

⁴⁸ I. Simuț, *Proletcultism sau realism socialist?...*, I, nr. 30.

⁴⁹ E. Negrici, *Literatura română sub comunism...*, 34-35.

⁵⁰ See Ioana Dunea, *Literatura reideologizării 1957-1964. Poezia*, (București: Editura Tracus Arte, 2012).

⁵¹ See Stelian Tănase, *Elite și societate. Guvernarea Gheorghiu-Dej 1948-1965*, (București: Editura Humanitas, 2006).

publishing facilities. It is very clear that the manuscript could be published only after the censorship's "purgatory".⁵²

On the other hand, unscrupulously using blackmail (concerning the respective person, a family member or even a friend or colleague) the communist authorities speculated with ability the feelings of fear and/or culpability of the writers. In world literature, in his prose Edgar Allan Poe valorized this motive of acting on the culpable conscience of an individual.⁵³ Looking to the past, we can't judge too harshly the behaviour of the writers who accepted the compromise with the communist regime, but we also share Albert Camus' opinion: "Two concessions compose a cowardice. Two acts of cowardice give birth to dishonour."⁵⁴

The condemnation of class enemies (kulaks, capitalists, bourgeois elements), of the "fascists" (in fact, the communist regime labeled as *fascists* all its enemies, real or fictitious), of Western „imperialists" (for example, the demonisation of American troops which fought in Korean war), Lenin's cult and mainly Stalin's cult (after the year 1958 replaced Gheorghe Gheorghiu-Dej's and later Nicolae Ceaușescu's personality cult)⁵⁵, the Soviet-Romanian friendship, the love for Soviet Union, the liberating Soviet army (in the first stage), communist party, the new man, building of socialism and communism; the anniversary of Great October Revolution, the exaltation of work and working class, the peace and peace campaign are just some of the favourite topics in the literature (particularly in poetry) of socialist realism.

Later, in the period of the neostalinism with strong nationalist features of "Ceaușescu's age", the national values were perverted because of the personality cult and wooden language, as the historian Florin Müller wrote.⁵⁶ Under the influence of the Protochronist current⁵⁷, alongside the ridiculous and absurd Leader's Cult (a privileged subject) various themes as the country, the Romanian people that possessed the noblest virtues, the pre-eminence and the old age of Romanians (so-called millenary) or the battle for peace. Under the strong influence of the ideology, the Leader, the dictator identified himself (including literary creations) with the Party and the Country. The reverential volumes are relevant. They fully contributed to the crystallisation of the personality cult.⁵⁸

CONCLUSION

Unlike the proletcultism from Soviet Russia (developed by Alexandr Bogdanov), that desired not to be partinic and proposed to stimulate the creativity of the working class, Jdanov's socialist realism practically meant the official doctrine, in fact the only one doctrine accepted by the Party-State from cultural and artistic point of view. Like in other fields, any "heresy", any deviation from the dogma was condemned on ideological foundations. The socialist realism

⁵² H. Gorun, *O ideologie a poeziei...*, 45.

⁵³ See Edgar Allan Poe, *Povestea lui Arthur Gordon Pym*, translated by Liviu Cotrău, (Iași: Editura Polirom, 2013).

⁵⁴ *Apud* Nicolae Merișanu, Dan Talos (editors), *Antologia rușinii după Virgil Ierunca*, (București: Editura Humanitas, 2009), 9, nota 1.

⁵⁵ E. Negrici, *Literatura română sub comunism...*, 74.

⁵⁶ Florin Müller, *Societate, ideologie, dictaturi*, (București: Editura Universității București, 2014), 48.

⁵⁷ See Katherine Verdery, *National Ideology Under Socialism. Identity and Cultural Identities in Ceaușescu's Romania*, (Berkeley and Los Angeles: University of California Press, 1991).

⁵⁸ For Nicolae Ceaușescu's era and its characteristics, see also Adrian Gorun, *Dezvoltarea socială și globalizarea*, (Târgu-Jiu: Editura „Academica Brâncuși”, 2012), 87-111.

influenced Romanian literature (both prose and poetry). In the first stage of the Communism (at least until the Soviet army's withdrawal, in 1958) the socialist realism represented the expression of sovietization in culture, art and literature. Thus, Romanian literature took mimetically only topics approved by the regime from Moscow. In Nicolae Ceaușescu's neostalinist and national communist regime, the national symbols were distorted and perverted. After the birth and development of protochronism, alongside with the glorification of the communist party (a theme we can find in the first phase of Romanian communist regime too) the predominant topics will be Romanian people, the country and especially the personality cult of the Leader.⁵⁹

⁵⁹H. Gorun, *O ideologie a poeticii...*, 48.

THE ROLE OF ACTIVE LISTENING IN THE ACQUISITION OF SECOND LANGUAGES

Răzvan BRAN¹

ABSTRACT

THE ACQUISITION OF FOREIGN / SECOND LANGUAGES IS A COMPLEX PROCESS AND INVOLVES A GREAT DEAL OF FACTORS, WHICH BOTH EDUCATORS AND STUDENTS SHOULD TAKE INTO ACCOUNT. NOT ONLY THE INFORMATION (WHAT WE TEACH) AND THE TEACHING METHODS (HOW WE TEACH) COUNT, BUT ALSO OTHER ASPECTS, SUCH AS THE LEARNING ENVIRONMENT. MORE PRECISELY, ALONG WITH THE CONTENTS AND SKILLS THAT ONE SHOULD ACQUIRE IN ORDER TO BE AN EFFICIENT L2 USER, TEACHER'S ATTITUDE PLAYS AN IMPORTANT ROLE IN THIS PROCESS. A SUPPORTIVE AND POSITIVE TEACHER, THE STRESS-FREE LEARNING ENVIRONMENT COULD EASE THE ACQUISITION OF L2 AND INCREASE STUDENTS' COMMUNICATION AND LINGUISTIC SKILLS. THE ACTIVE LISTENING COULD BE EFFICIENT IN CLASS IN MANY WAYS: ESTABLISHING RELATIONSHIPS, SOLVING PROBLEMS, PROVIDING STUDENTS WITH CONFIDENCE, DEVELOPING A WIDE RANGE OF SKILLS, ERROR CORRECTION, ASSESSMENT, FEEDBACK.

KEY WORDS: ACTIVE LISTENING, TEACHING, LEARNING ENVIRONMENT, SECOND LANGUAGE ACQUISITION, SPEAKING ACTIVITIES

1. INTRODUCTION

The complex process of teaching and learning involves a wide range of psychological, pedagogical and personal factors, which should be taken into account from both teacher's and student's point of view. The present paper discusses the acquisition of foreign / second languages from the angle of teacher's attitude during classes, an essential aspect when dealing with students of all ages and levels. More precisely, we will highlight the importance of active listening, as a communication technique, in the teaching / learning process: class activities, error correction, evaluation and feedback. The idea developed in the present article came after reading *Practical techniques for language teaching*, where it was briefly expressed the importance of active listening in the teaching process. This paper is mainly based on our teaching experience and direct empirical

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observations during classes and will give special attention to groups of beginners or elementary students.

Our paper is structured as follows. Section 2 provides a definition of the term *active listening* and presents some of its advantages. Section 3 refers to the characteristics of verbal and nonverbal communication. The main parts of the present paper are sections 4, 5 and 6, that discuss how active listening can be effectively applied in the field of language learning and teaching. In the final section, we will present the conclusions of the analysis.

2. ACTIVE LISTENING - DEFINITION AND ADVANTAGES

Generally, listening is an active process that requires conscious efforts, concentration and interest. So it implies not only hearing, but also understanding and involvement. Moreover, active listening is a communication technique, used in the field of relationships and problem solving. It is the ability of paraphrasing information and supposes not interrupting the speaker and not formulating responses or comments until the speaker is done.² Therefore, active listening can help solving problems and seeing other aspects of a given situation. It builds relations by diffusing emotional situations at work, family or in any other group.

As modern theories claim, teachers do not merely play the role of an information container or provider. They should also be a behaviour model, give confidence and support their students. Therefore we consider that active listening used in class could improve these apparently 'external' aspects, such as the learning environment, building confidence and relations, and the overall language acquisition, as we will explain in the following parts of our paper.

3. VERBAL AND NONVERBAL COMMUNICATION. ACTS OF SPEECH

As it is widely known, human communication is both verbal and nonverbal. We do not communicate only by words and phrases. The acts of speech also include gestures and intonation, for instance, which can express more than a simple phrase. Nonverbal elements play an important role in decrypting speaker's intentions, attitude, mood and even the meaning of a word or phrase. The pragmatic context is also fundamental in communication and transmitting the message.

Therefore, teachers should react positively, having the adequate attitude, gestures and intonation, especially during speaking activities. By adopting this attitude, teachers encourage and motivate students to talk and provide them with confidence. They can either transmit indifference or an aggressive attitude or interest.

Moreover, apart from the linguistic input, teachers should provide non-linguistic elements, as well, in order to develop students' communicative skills. Thus nonverbal communication can contribute to the acquisition of both intercultural competence and pragmatic uses of languages. They will know *what* to say in a particular situation, *how* to say it or react, what to avoid etc. A wide range of phrases and nonverbal elements are specific to a particular community of speakers, who use them in certain situations, and a foreign language learner must understand and use them properly.

Beyond grammar and the semantic content of language, we have to take into consideration the pragmatic functions of language and the general communicative competence³. A great role in

² <https://www.slideshare.net/kdbourque/active-listening-presentation-36893005>.

³ We are referring here to interacting with others in conversations, public presentations etc., that imply not only linguistic competence, but also social skills and personal characteristics.

communication is played by the situation and the purpose of communication, such as introducing, inviting, accepting or refusing, agreeing or disagreeing, suggesting and advising, giving directions, making a request, a complaint, apologising etc. More precisely, the appropriateness in interpersonal relations develops the communicative competence, which is based on a set of social norms and values that we have to follow in our everyday interaction. Pratima Dave Shastri says that one cannot address their teacher the way they addresses a friend or a family member: “this leads to the concept of correctness and appropriateness. A grammatically correct sentence can be inappropriate in a particular context. For example, ‘*hey, coming for the film!*’ is acceptable between friends, but is unacceptable if a subordinate uses it for his boss.”⁴ Moreover, the same sentence can have a different meaning according to the communicative (pragmatic) context, speaker’s intention, intonation, gestures, position of the body etc. All communication situations are based on the so called functions of language or pragmatic uses of language. Each function can be performed in different ways and learners, therefore, should acquire these ways and their appropriateness in a formal, semiformal or informal situation.

4. THE RELATION BETWEEN ACTIVE LISTENING AND SPEAKING

Reading, listening, writing and speaking are the four basic skills in the acquisition of foreign languages. Speaking is a productive competence that consists of both producing oral messages (e.g. presentations, monologues etc.) and interacting with other language users (in conversations, for instance). Nevertheless, it could be considered one of the most difficult skills to acquire, as it implies a complex cognitive activity and a wide range of other information and skills. In order to be an efficient speaker, apart from language content (lexis and grammar), one needs to cover other areas too, such as general knowledge, life experience, communicative and social skills (emotional intelligence), body language, intonation, gestures, language functions and pragmatic uses. So there are many different factors involved in the act of speaking or language learning. For example, shy learners, in spite of their solid grammar and vocabulary knowledge, might encounter some difficulties when speaking in public or in a foreign language. That is why teacher should have positive reactions and encourage communication in order to develop student’s self-esteem. Sometimes, beginners or elementary students find speaking activities the most difficult as they have to use a great deal of linguistic and non-linguistic elements. Moreover, intonation, gestures and body language, that accompany and give consistence to our oral presentations and speaking acts, emphasise ideas and make our discourse more persuading.

Teachers should give some further consideration to speaking skills in language classes, by providing students with more time for speaking activities in order to express their opinions and interact with others. Speaking activities – either guided exercises or free conversation – should play an important part in a course. Beginners, but not only, should overpass their fear or shyness when speaking. Teachers’ behaviour and attitude are fundamental in initiating and guiding different speaking activities, such as free conversation, expressing opinions, dialogues, role playing etc.

More precisely, when teaching foreign languages, it is essential to have a positive attitude to what students say. Teachers should express their interest in the conversation with their students

⁴ Pratima Dave Shastri, *Communicative Approach to the Teaching of English as a Second Language*, Himalaya Publishing House.

and motivate their students to continue the dialogue. All teacher's reactions must show interest in the topic and conversation.

(Free) conversation must exploit real events and students' opinions about a particular topic. Guided speaking activities might have, in a certain degree, an expected output depending on the input, topic and students' level. Students' imagination and experience play an important part in speaking, especially when students have a higher language level. On the other hand, at lower levels (A1-A2), students give expected answers and tend to use only a reduced set of grammar contents and lexical units that belong to their active grammar and vocabulary resources. Elementary students, for instance, talk about things they learned (house, family, job, daily routines etc.) and they mostly 'tell lies'. They do not say what they *really do* or they *would like to say*, but what they *are able to say*. Part of exploiting real events involves reacting naturally to what students say, both in exercises and in free conversation. Look at the following situation, provided by Lewis and Hill in their *Practical techniques: For language teaching*⁵:

T: So, have you seen "The Sound of Music"?

S1: Yes, but only on television.

T: And what about you?

S2: No, I don't like musicals.

T: Oh, don't you? Have you seen it, S3?

S3: Yes I have — 18 times.

T: Yes, and what about you, S4?

Now, let us analyse teacher's reactions and comments. The authors cited emphasise that the teacher's response to S2 is appropriate, as "it is natural and gives the students a chance to notice a typical feature of active listening (*Oh, don't you?*)". By this question, he / she shows interest and involvement. On the other hand, the teacher's reaction to S3 is a disaster for two main reasons. Firstly, the teacher's reaction seems to be quite automatic and such a reaction is possible if he / she was not listening. Realising that you are not listening has a strong demotivating effect on students. Secondly, the teacher missed a wonderful opportunity to demonstrate in a natural context the intonation appropriate to expressing surprise: *18 times! What on earth for?*. Lewis and Hill conclude that "if you are surprised, shocked, curious, doubtful, etc. make sure you show it in your general reaction, in what you say, and in how you say it. Encourage other students to show their reactions too. Such reacting develops an important language skill — the active role of the listener in a conversation — and makes both the language and your lessons more alive for students."⁶ In such situations, active listening creates the impression of real life conversation by the interlocutor's involvement.

5. TEACHER'S ATTITUDE, TEACHING ACTIVITIES, CLASS MANAGEMENT

Other aspects concerning class organisation could be affected by teacher's attitude: the selection of teaching activities / materials, the class management and the general atmosphere during classes. Among the factors one should take into consideration is the class environment: the

⁵ Michael Lewis, Jimmy Hill, *Practical techniques: For language teaching*, (Hove: Language Teaching Publications, 1992), 13.

⁶ Michael Lewis, Jimmy Hill, *Practical techniques: For language teaching...*, 13

classroom as a physical space with all its elements (furniture, light, board, equipment, plants), the group of students and their particularities (age, interests, habits, level etc.), materials, activities, teacher's and students' attitude. All these contribute to a more or less efficient (language) class.

The teacher is in charge with designing his / her class, according to all the elements mentioned above. Thus teachers adapt materials, contents and activities to the group. He / she should encourage and promote values such as cooperation, tolerance, confidence, self-esteem, group work and progress and create a relaxing, stress-free atmosphere. Once again active listening plays a great part in building relations and such an atmosphere based on confidence, respect and security⁷. In class and during conversations or other activities that simulate real life situations, teacher's and other students' reactions are very important. Thus, patience, respect and involvement are required during classes.

Moreover, in the relations between the teacher and his / her students or between students, there are many problems that might appear, but conflicts or discipline problems can also be solved by appealing to active listening.

6. CORRECTING ERRORS, ASSESSMENT AND FEEDBACK

Finally, we will discuss here other significant aspects in the interaction teacher-student: correcting errors during class activities, final or periodical assessment and, last but not least, providing feedback. No activity, the teaching-learning process included, should lack of (periodic and / or final) evaluation and feedback from both sides, in order to improve it. Teacher's attitude is essential in these three aspects and active listening could be of great help, as corrections, evaluation and feedback should not be a stressful part of a course.

As *The Common European Framework of Languages* suggests, "all errors should be noted and corrected at a time when doing so does not interfere with communication"⁸. More precisely, teachers must not interfere in students' conversation or presentation each time they commit errors, because this would impede communication and would make students lose their flow of ideas and confidence. For instance, the corrective feedback, if we want it efficient, must be given at the end of the oral production and should present systematically the errors and explain them.

We have to consider the three aspects mentioned above as a constructive way of improving the language acquisition. Thus, teachers should assert their opinions respectfully and respond appropriately, not aggressively. As in real life we treat the others like we would want to be treated, the same should happen in class. Otherwise, the overall class atmosphere could become stressful, less friendly and less efficient.

7. CONCLUSIONS AND FINAL REMARKS

The main purpose of our paper was to present another significant element of teaching and learning foreign languages, namely the teacher's attitude towards his / her students, with respect to the development of an essential skill: speaking competence.

A language teacher should cover a wide range of aspects in class, in order to help his / her students to develop not only their grammar and vocabulary knowledge, but also their (general)

⁷ Sabina Manes (coord.): *83 de jocuri psihologice pentru animarea grupurilor*, trad. rom., (Iasi: Polirom, 2008), 12-18.

⁸ *The Common European Framework of Reference for Languages: Learning, teaching, assessment*, 155

communicative and interaction skills. Active listening could play an essential part in speaking activities. Teachers should take part in the conversation, by expressing involvement and interest in the topic. This creates a relaxing learning environment and gives the impression of real life communication. Students concentrate on their speaking task, they become more confident and their self-esteem is increased.

At least at elementary levels, the emphasis should lay on the development of students' speaking skills and not on the correctness of their performance. A teacher who is not involved, who has a neuter tone, who is not interested in the conversation itself, could discourage the speaker. Moreover, teachers should avoid correcting their students over and over again while speaking, because they could inhibit them and stop their flow of ideas.

To conclude, among the activities in which active listening can prove its efficiency, we can mention the process of teaching/learning foreign languages. The class is a social environment, a group with different members that establish relations. The teaching environment should not be stressful, in order to be efficient, and active listening can help in a great deal of situations: building relations (teacher-students or student-student), problem solving, class management, stress control, corrections, assessment, feedback. The control of these aspects - which characterise every group or are class-specific - can increase the language acquisition (especially, the speaking competence) and confidence.

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4. *The Common European Framework of Reference for Languages: Learning, teaching, assessment*, http://www.coe.int/t/dg4/linguistic/source/framework_en.pdf, accessed in March 2018
5. <https://www.slideshare.net/kdbourque/active-listening-presentation-36893005>, accessed in March 2018

BOOK REVIEW: *DUUDHAA* [CUSTOM]

Author: Mammo Gada; **Language Used:** Afaan Oromo; **Year of publication:** 2016; **Pages:** 274; **Publisher:** MYBT Printing Press; **Category:** Ethnography; **Book Condition:** Third Edition; **Price:** 95 Ethiopian Birr (3.52 USD)

Milkessa EDAE TUFA¹

ABSTRACT

THIS BOOK REVIEWED EMPHASIZES ON OROMO BELIEF SYSTEM, NORMS, CULTURE AND CUSTOM. THE TITLE OF BOOK IS "DUUDHAA" (MEANING 'CUSTOM'). THE BOOK DEALS WITH THE CONCEPTS OF WAAQEFFANNA (OROMO INDIGENOUS RELIGIOUS), MAMMO GADA, WAAQAA (GOD), IRREECHAA (THANK GIVING RITUAL) AS WELL AS CULTURAL AND SOCIAL ISSUES OF THE OROMO COMMUNITY FROM EMIC PERSPECTIVE. IN DOING SO, MAMMO GADA, THE AUTHOR OF THE BOOK REVIEWED, UTILIZED EXPLORATORY RESEARCH DESIGN WHERE PERSONAL OBSERVATION, LIFE EXPERIENCE AND INTERVIEW WERE USED TO COLLECT PRIMARY DATA THROUGH WHICH HE ASSESSES THE ACHIEVEMENTS AND CHALLENGES OF 'DUUDHAA' OROMO (OROMO CUSTOM). DESPITE MAMMO HAS MADE A PARAMOUNT CONTRIBUTION IN UNCOVERING OROMO CUSTOMARY WISDOM, HIS BOOK FAILED TO ADDRESS THE ROLE OF OROMO'S INDIGENOUS KNOWLEDGE SYSTEM FOR ECOLOGICAL PRESERVATION AND SENSITIVENESS IN DETAILS.

KEYWORDS: DUUDHAA, IRREECHA, OROMOO, WAAQEFFANNAA, WAAQA

INTRODUCTION

This book review is on Mammo Gada's work entitled '*Duudha*', written in Afaan Oromo, published in 2016. The book addresses a number of socio-cultural, politics and religious issues like *waaqeffannaa* (Oromo indigenous religion), *Qaalluu* (Oromo religious expert), *Ayyaana* (spirit), *Irreechaa* (Thanksgiving ritual), *Dhugaa* (Truth) *Gaa'ela* (Marriage Custom of the Oromo, the largest ethnic group in Ethiopia).

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CONTENTS

Theoretically, Mammo Gada has used three theories the book. The first theory is historical reconstruction, which highly explain and narrating ideas from historical perspective. The theory is employed to state out the history and origin of ‘*Duudhaa*’ Oromo (Pp 80-85) through which he reconstruct the history and identity of Oromo with particular emphasis on Oromo custom. Besides, he utilized this theory to claim negative interpretations and understanding of some Oromo and non- Oromo peoples about Oromo custom (Pp 86-89). Functionalism is other theory which is being used by the author to elaborate the function and significance of Oromo custom (Pp 49-55). Mammo, also, tried to magnify benefits that the Oromo societies can acquire from enthusiastic of those customs and the risk of losing it side by side (Pp 49-55). The third is theory is a comparative theory used in comparing the relationships between different points to trace the knowledge systems, and to contrast Oromo custom with western (Christian and Islam religion) and other religions broadly (Pp90).

To this end, onpage 15, the author indicate that many non-Oromo’s have negative attitude and they believe asOromo peoples thank and worship creatures ‘*Tulluu* (Mountain)’*Odaa* (Sycamore tree)’ , ‘*Malkaa* (river) and the like rather than creator (*Waaqaa*). But the writer tried to correct such like distortion by saying that the Oromo basically Oromo not give thanks for creator rather they worship and give thanks for God (*waaqa*). According to these people, Oromo go to *Tulluu* (Mountain), *Malkaa* (River bass) and *Odaa*(a sycamore utilized to perform ritual; symbol of presence of *Waaqaa*) centers to worship and pray them; their *Uumaa* (Creator) is abstract or no have unique manifestation (Pp 70-74). But, as the author correctly noted that these sites are not Oromo *Waaqaa* (God) (Pp 86-89); and that is they sacrifice various things for their God according to *Seera waaqeffanna* (Rule of Oromo indigenous religion) (Pp 9-12). The Oromogo to such ritual site to pray and thank their ‘*uumaa*’ or *waaqa* (Creator) using like *Coqorsa* (ever green grass; which used as the symbol of fertility and peace), *Tulluu* (Mountain), *Malkaa* (River), *Hora* (salty mineral water) , *caffee* (Swamp), *Siidaa* (monument), *Korm266-269aa* (Bull),*Dhibaayyuu* (Libation),*Caaccuu* (It is a ritual material and symbol of blessing),*Kallacha* (A ritual object from prepared Iron) and other creations which given to them from their *waaqaa* (God) (Pp253-257).For these reason Oromo said that “*uumaman uumaa kadhanna*”(Meaning that praying *Waaqaa* by his creations) (Pp30); and on the cover page of the book reviewed, the author stated that “*waaqa nu uumetti ni amanna; ayyaana dirree fi lamaan namaa ni kadhanna*” (We belief in *Waaqaa* and praying to give us his *ayyaanaa* (spirit). The author’s is on this issue seems to be complementary with Soorii (2008) &BATO (2007) on Oromo customary and indigenous wisdom.

In the first section of the book, the author has also contributea very important ideas to reconstruct Original and indigenous Oromo customs by strengthen *Gadaa* system (The holistic socio-political wealth) (Pp 53). Besides, he argued that *Eebba*(Blessing), *Dhugaa* (Truth), *Ayyaana* (Spirit), *Ayyaanaa fi Amantii* (Spirit and belief), *Amantii alagaa*(western religion) elaborate under the category of producers, rules and norms one by one (Pp 90-93). And, he has also discussed the socio-cultural issues; indigenous conflict resolution *Jaarsummaa* (Negotiation) (Pp165); and its significances, and gender issue and *waaqeffanna* were also the concern of this author (Pp211). Accordingly, *Eebbaa* (Blessing) is religious ceremony that practiced to get wealth before engaging particular ritual events (Pp 38). However, blessing is necessarily not limited to precondition of ritual engagement rather it will extended to closing events at the same time. It has also the sense of traced back to past, examining and catch-up the future life in the power of hope.

On other hand, the concept '*safuu*' (*Norm*) has a great value in Oromo world view. *Safuu* (Norm) is the hardy sick which used as spiritual bridge between creation and creator (Pp93-96). Thus, they belief that, if the on failed to respect *safuu* (Norm) he/she will be segregated andexcluded from social as well as cursed and taken off grace and reputation in front of *Waaqaa* (God)(Pp95).

In addition, he tries to discuss the history of Oromo peoples in classifying into three phases/periods (Pp260-262). These are the history before colonized, history during colonized and after colonization by Abyssinians. Accordingly, he argued that Oromo loses his identity and custom, and enforced to worship western religions (Pp 70-93), and replaced their indigenous religion with Orthodox Tewodo Church as well as indeed they did aimed at 'De-Oromonization' in all means; gadaa system was superseded and its elements were limited to specific rituals only and reserved to government purposes(Lambert,(1983), (BATO, 2007); (Balaambaras,2003), despite a large number of Oromo's scarified their lives to preserve and save indigenous custom (Pp I).

Although Mammo's work is priceless in exploring the customary wisdom of the Oromo, as an author his presence in the text is not such clear. But, he just used terms and phrases like '*keenya*' (We), *Ani* (I) which is somewhat a good evidence to know his positionality. Above all, regarding to field work, he was not stay in field for long period of times as ethnographer which he admitted in the book. To this end, he states that "*Balinaan fagaadhee hin deemne, hayyootaa fi jaarsota OromooTuulamaan gaafadhe*" in his script (Pp5). This indicates that the author has not spent his time in field work during data collection. Furthermore, Mammo failed to delimit the scope of his study geographically; rather he wrote the overall Oromo custom as general evidences since there is subjectivity and variation of custom even among Oromos' of different geography(Daaniyaa,2006), Dirribii,(2009), Firaa'ol,(2012)Hayiluu, (1997) and Lambert,(1983).

Besides, the organizational format of this book is not as such attractive and trying error is also here there. For instance, the table of content has no coherence and clear categories; the page numbering is also has not flow the current format; the classification and title and sub-titles are not up to the standard as well as there is no citation and references acknowledgement in the book.

CONCLUSION

The book is partially ethnographic; one of the most excellent books explores the Oromo's religion, its uniqueness, its pillars and other Oromo social and culturalissues and would serve as a reference book in higher education especially in the fields like Oromo Folklore and cultural studies; that is why it is read with great pleasure.

Declaration of conflict of Interests

The reviewer declares that there is no conflict of interest and all sources and materials used in this book review have been properly acknowledged.

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PERITONEAL ADHESION SYNDROME AND HOSPITAL READMISSIONS AFTER OPEN ABDOMINAL AND PELVIC SURGERY

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Florian POPA²
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ABSTRACT

THE PURPOSE OF THE PRESENT STUDY IS TO DEMONSTRATE THE HIGH INCIDENCE OF THE PERITONEAL ADHESIONS AFTER OPEN ABDOMINAL OR PELVIC SURGERY, IN ORDER TO PROVIDE A BASIS FOR THE FUTURE STUDIES REGARDING THE NEW AND EFFICIENT PREVENTION METHODS.

MATERIAL. DATA FROM THE MEDICAL RECORD DATABASE OF THE SURGICAL DEPARTMENT OF "SFÂNTUL PANTELIMON" EMERGENCY HOSPITAL FROM BUCHAREST, ROMANIA, WERE USED IN ORDER TO IDENTIFY PATIENTS UNDERGOING OPEN ABDOMINAL OR PELVIC SURGERY IN 2014, WHO HAD NO RECORD OF SUCH SURGICAL INTERVENTIONS IN THE PRECEDING 5 YEARS, BEING FOLLOWED UP FOR 3 YEARS, UNTIL JANUARY 2018, ANALYSING THE SUBSEQUENT READMISSIONS. THE RATE OF ADHESION-RELATED ADMISSIONS AMONG THE TOTAL NUMBER OF ADMISSIONS BETWEEN JANUARY 2014 AND JANUARY 2018 IN THE GENERAL SURGERY DEPARTMENT WAS, ALSO, ASSESSED.

RESULTS. 7% OF ALL READMISSIONS WERE RELATED TO POSTOPERATIVE PERITONEAL ADHESIONS, MOST OF THEM BEING MANAGED OPERATIVELY. 35% OF THE PATIENTS WHO UNDERWENT ABDOMINAL OR PELVIC SURGERY IN 2014 WERE READMITTED FOR AT LEAST ONE TIME OVER THE 3 YEARS OF FOLLOW-UP FOR A COMPLICATION OF THE PERITONEAL ADHESION SYNDROME, MOST OF THE READMISSIONS OCCURRING IN THE FIRST YEAR AFTER THE INITIAL INTERVENTION, BUT CONTINUING STEADILY THROUGHOUT THE 3-YEAR PERIOD. BETWEEN JANUARY 2014 AND JANUARY 2018, 15% OF THE ADMISSIONS WERE DIRECTLY RELATED TO POSTOPERATIVE ADHESIONS.

CONCLUSIONS. POSTOPERATIVE PERITONEAL ADHESION SYNDROME HAS AN IMPORTANT IMPACT UPON PATIENTS, SURGEONS AND THE HEALTHCARE SYSTEM, HIGHLIGHTING THE NECESSITY OF EFFICIENT PREVENTION METHODS.

KEYWORDS: PERITONEAL ADHESIONS, READMISSION, SURGERY, PREVENTION.

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INTRODUCTION

The incidence of peritoneal adhesion syndrome in patients following general pelvic and abdominal surgery ranges from 63% to 97%⁵.

The postoperative peritoneal adhesion syndrome significantly increases the length of time required in subsequent surgical procedures, affecting the workloads of surgical teams [8], and increasing the risk of postoperative morbidity, especially by causing enterotomies during laborious adhesiolysis.

Although asymptomatic in its early stages, this syndrome is frequently associated with serious complications, such as bowel obstruction⁶, female secondary infertility⁷, chronic abdominal pain and complications related to surgical reintervention⁸.

Awareness of the severe complications that affect the patients' evolution and of the health care system problems associated with adhesions has increased in recent years, due to the publication of scientific data, one of the important studies being represented by the Surgical and Clinical Adhesions Research (SCAR) analysis⁹.

The first Surgical and Clinical Adhesions Research (SCAR) study, developed in Scotland in 1986, aimed to determine the frequency of adhesion-related complications in patients undergoing open abdominal surgery. It showed that up to 33% of patients were readmitted to hospital, an average of 2.2 times during the following 10 years for a disorder directly or possibly related to adhesions or for surgery that could be complicated by adhesions. Economic modelling of the resulted data showed that the cost associated with adhesion-related readmissions following abdominal surgery in the UK over 10 years is over £500 million¹⁰.

The following similar study, SCAR-2 study¹¹ analysed the real-time burden of adhesion-related readmissions in three incident patient cohorts undergoing colorectal surgery in the financial years (April – March) 1996–97, 1997–98 and 1998–9. It was demonstrated that there was no change in the rate of readmissions during this period, despite advances in strategies for the prevention of adhesions prior to the study¹².

The third study in the series of epidemiological assessments defining the extent of adhesion-related readmissions in Scotland (SCAR-3), aimed to evaluate the adhesion-related

⁵ Menzies D, Ellis H. Intestinal obstruction from adhesions – how big is the problem? *Ann R Coll Surg Engl* 1990; 72: 60–3; Weibel MA, Majno G. Peritoneal adhesions and their relation to abdominal surgery. A post-mortem study. *Am J Surg* 1973; 126: 345–53

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⁹ Ellis H, Moran BJ, Thompson JN *et al.* Adhesion-related hospital readmissions after abdominal and pelvic surgery: a retrospective cohort study. *Lancet* 1999; 353: 1476–80; Parker MC, Ellis H, Moran BJ *et al.* Postoperative adhesions: ten-year follow-up of 12,584 patients undergoing lower abdominal surgery. *Dis Colon Rectum* 2001; 44: 822–9

¹⁰ Wilson MS, Menzies D, Knight A, Crowe AM. Demonstrating the clinical and cost effectiveness of adhesion reduction strategies. *Colorectal Dis* 2002; 4: 355–60

¹¹ Parker M, Wilson M, Menzies D *et al.* Colorectal surgery: the risk and burden of adhesion-related complications. *Colorectal Dis* 2004; 6: 506–11

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readmission risk directly associated with common abdominal and pelvic surgical procedures, the impact of patient surgical history, age, gender and concomitant disease being, also, assessed. Data from the Scottish National Health Service medical record linkage database were used in order to determine the risk of adhesion-related readmission secondary to open abdominal surgery, during April 1996-March 1997. Through this study it was demonstrated that the identification of high-risk patient subgroups may be of great help in effectively targeting adhesion-prevention strategies and preoperative advice- offering on adhesion risk.

The purpose of the present study, an epidemiological analysis, is to assess the adhesion-related readmission risk directly associated with common abdominal and pelvic surgical procedures and the influence of patient surgical history, age, gender and concomitant disease upon this risk, thus, providing a basis for the future studies regarding the new, targeted and efficient prevention methods.

MATERIAL AND METHODS

The present study used anonymised data from the medical record database of the General Surgery Department of “Sfântul Pantelimon” Emergency Hospital from Bucharest, Romania.

The resulted data were used in order to identify patients that underwent open abdominal or pelvic surgery throughout the calendar year of 2014, who had no record of such surgical interventions in the preceding 5 years, who had been followed up for until January 2018.

Using results provided by the analysis of the database, the risk of an adhesion-related readmission in the group of patients who underwent open abdominal or pelvic surgery in the calendar year January– December 2014 was analysed.

The population of the present study was defined using ROv1DRG surgical codes¹³ describing the surgical site, the type of procedure and the procedure subtype (e.g. total colectomy and ileo-rectal anastomosis). Demography and diagnostic disease code details according to the International Code of Diseases, Tenth Edition (ICD-10)¹⁴ were available for the study group.

A robust tracking of all hospital inpatient and day-case hospital admissions, excluding maternity and psychiatric admissions, within the hospital, from January 2014, until January 2018, was assessed, rigorously investigating and testing the data prior to deciding to employ this database. Adhesion-related readmissions and procedures that may be complicated by them were identified by ROv1DRG surgical or ICD-10 diagnostic codes using patient record linkage. Readmissions were classified as directly related to adhesions, possibly related to adhesions, or as procedures that may be complicated by adhesions. To minimize the uncertainty of patient risk, this report only details directly related readmissions. However, this approach will underestimate the actual risk of patient adhesion-related readmissions.

While this approach underestimates the total burden of adhesion-related readmission, the data can be easily compared with the risk associated with other types of surgery.

The influence of previous operations on adhesion-related readmission was determined for all surgical sites. Adhesion-related readmission rates were reported based on the site of the initial

¹³ ROv1DRG Classification. URL www.drg.ro/DocDRG

¹⁴ National Center for Health Statistics. (2004) *International Classification of Diseases, 10th revision (ICD-10)*. URL <http://www.cdc.gov/nchs/about/majordvscid10des.htm>

surgical procedure (appendix, lower gastrointestinal and abdominal wall) and then subdivided by recognized surgical procedures within each site and, where appropriate, by specific surgical code.

The impact of age at the time of the primary surgical intervention on the risk of adhesion-related readmission was assessed, the patients being categorized as aged ≤ 60 years or aged ≥ 60 years for all the procedures.

The effect of comorbidities on risk, including malignancy, peritonitis and inflammatory bowel disease, was assessed for each surgical procedure site.

The effect of gender on risk was also analysed.

The rate of adhesion-related admissions among the total number of admissions between January 2014 and January 2018 in the General Surgery Department of “Sfântul Pantelimon” Emergency Hospital from Bucharest, Romania, was, also, assessed.

Individual patient confidentiality was respected. Patients were treated, as well as written informed consent for each procedure adopted was collected, according to the usual clinical practice. The study protocol conforms to the ethical guidelines of the “World Medical Association (WMA) Declaration of Helsinki - Ethical Principles for Medical Research Involving Human Subjects” adopted by the 18th WMA General Assembly, Helsinki, Finland, June 1964 and amended by the 64th WMA General Assembly, Fortaleza, Brazil, October 2013. Approval by the institutional review committee was obtained, since this study retrospectively analyzed patients’ data.

Data were recorded regarding demographics, diagnosis, duration of hospital stay, complications and mortality. The analysis of the data was made using Microsoft Office Excel 2013 software.

RESULTS

A total of 1056 patients underwent open abdominal or pelvic surgical procedures in the calendar year of 2014 (excluding gynaecological interventions). Among the 1056 cases of open abdominal or pelvic interventions, 131 cases consisted of small bowel procedures, 568 cases of colo-rectal or abdominal wall surgical interventions and 357 appendectomies.

In this group as a whole, the risk of readmission directly related to adhesions within 3 years following surgery was 8,14% (11,87% excluding appendicectomy procedures-Table 1).

Table 1. The adhesion-related readmission risk in the study population

Surgical site	Total number of readmissions	Total number of procedures	Rate of readmission %
Small bowel surgery	30	131	22,9
Colo-rectal and abdominal wall surgery	53	568	9,33
Subtotal (excluding appendectomy)	83	699	11,87

Appendectomy	3	357	0,84
Total	86	1056	8,14

SMALL BOWEL PROCEDURES

An assessment of patients who underwent surgery on the small intestine showed that procedures on the duodenum and jejunum had a 22,9% risk of readmission directly related to adhesions (Table 1).

The readmission risk was lower in the subgroup of patients who underwent open duodenal ulcer repair compared with those who did not have ulcer repair (Table 2).

Surgical interventions on the ileum had an overall risk of readmission of 13,33%, with an increased risk of readmission of 33,33% in the subset of patients who underwent ileostomy surgery and decreased risk of 12,5% for those who had ileal excision. The risk of readmission was higher in the subgroup of patients with Crohn disease (Table 2).

Table 2. Directly adhesion-related readmission risk 3 years after small bowel surgical procedures.

Site and type of surgery	Total number of readmissions (nR)	Total number of procedures (nTP)	Rate of readmission % (nR/nTP)
Duodenum/ jejunum	4	16	25
Duodenal ulcer	4	34	11,76
Ileum	4	30	13,33
With Crohn disease	4	23	17,39
Without Crohn's	0	7	0
Ileal excision	6	48	12,5
With Crohn disease	4	23	17,39
Without Crohn's	2	25	8
Ileostomy surgery	1	3	33,33
Total	30	131	22,9

Age was found to be an important factor with impact upon the risk of readmission. Patients aged ≤ 60 years had a much greater risk than those aged ≥ 60 years (Table 3). This trend was supported by data on each individual site of surgery.

Table 3. Directly adhesion-related readmission risk 3 years after small bowel surgical procedures, influenced by age.

Site and type of surgery	≤ 60 yrs			> 60 yrs		
	nR	nTP	Readmission rate % (nR/ nTP)	nR	nTP	Readmission rate % (nR/ nTP)
Duodenum/jejunum	2	9	22,22 (2/9)	2	7	28,57 (2/7)
Duodenal ulcer	2	25	8 (2/25)	2	9	22,22 (2/9)
Ileum	4	27	14,8 (4/27)	0	3	0/3
With Crohn disease	4	22	18,18 (4/22)	0	1	0/1
Without Crohn disease	0	5	0/5	0	2	0/2
Ileal excision	3	20	15 (3/20)	3	28	10,71 (3/28)
With Crohn disease	3	18	16,66 (3/18)	1	5	20 (1/5)
Without Crohn disease	0	2	0/2	2	23	8,69 (2/23)
Ileostomy surgery	0	1	0/1	1	2	50 (1/2)

COLORECTAL AND ABDOMINAL WALL PROCEDURES

The overall readmission risk for procedures on the colon was higher than the risk for those on rectum, with 7,96% risk of readmission and 5,03% respectively (Table 4).

For surgical procedures on the colon, the highest risk of readmission occurred in the subgroups of patients who underwent total colectomy (33,33%).

The most common surgical intervention on the colon was hemicolectomy, with 98 cases out of 568, the total number of procedures on the colon (17,25%).

The risk of readmission ranged from 10,2% for a right-sided hemicolectomy to 1,35% for a sigmoid hemicolectomy. Colostomy procedures were associated with a risk of 3,22% of readmission.

A higher readmission rate was found for abdominal wall procedures (7,1%).

Table 4. Directly adhesion-related readmission risk 3 years after colorectal or abdominal wall surgical procedures.

Site and type of surgery	Total number of readmissions	Total number of procedures	Rate of readmission %
Colon	18	226	7,96
With cancer	9	201	4,47
Without cancer	9	25	36
With Diverticulitis	1	18	5,55
Without Diverticulitis	17	208	8,17
Panproctocolectomy	0	0	0
Total colectomy	1	3	33,33
Right hemicolectomy	10	98	10,2
Left hemicolectomy	1	53	1,88
Sigmoid hemicolectomy	1	74	1,35
Colostomy	1	31	3,22
Rectum	8	159	5,03
Excision of rectum	7	150	4,66
Rectal prolapse	1	9	11,11
Abdominal wall	13	183	7,1
Total	53	568	9,33

Age had an important impact in the readmission risk in the colorectal and abdominal wall surgery subgroup; overall patients aged ≤ 60 years had a lower risk than those aged ≥ 60 years (Table 5). This trend was supported by data on each individual site of surgery.

Table 5. Directly adhesion-related readmission risk 3 years after colorectal or abdominal wall surgical procedures, influenced by age.

Site and type of surgery	≤60 yrs			>60 yrs		
	nR	nTP	Readmission rate % (nR/ nTP)	nR	nTP	Readmission rate % (nR/nTP)
Colon	4	77	5,19	14	149	9,4 (14/149)
With cancer	2	71	2,81	7	130	5,4 (7/130)
Without cancer	2	6	33,33	7	19	36,84 (7/19)
With Diverticulitis	0	1	0/1	1	17	5,88 (1/17)
Without Diverticulitis	4	76	5,26	13	132	9,84 (13/132)
Panproctocolectomy	-	-		-	-	
Total colectomy	0	1	0/1	1	2	50 (1/2)
Right hemicolectomy	1	6	16,66	9	92	9,78 (9/92)
Left hemicolectomy	0	4	0/4	1	49	20,4 (1/49)
Sigmoid hemicolectomy	0	5	0/5	1	69	1,44 (1/69)
Colostomy	1	3	33,33	0	28	0/28
Rectum	3	26	11,53	5	133	3,75 (5/133)
Excision of rectum	3	25	12	4	125	3,2 (4/125)
Rectal prolapse	0	1	0/1	1	8	12,5 (1/8)
Abdominal wall	5	85	5,88	8	98	8,16 (8/98)

The large majority of rectal procedures were for excision of the rectum and had a readmission risk of 4.66%. In contrast, abdominal procedures for rectal prolapse carried a

readmission risk of 11.11%, but the data is not statistically significant because of the low number of cases of rectal prolapse included in the study (Table 4 and 5).

APPENDICECTOMY

Patients who underwent appendectomy had a comparatively low overall direct risk of readmission (0.84%; Table 6). However, this procedure accounted for approximately 33,80% of all abdominal procedures (357 out of 1056) and 3,4% of all patient readmissions during the 3 years following lower abdominal surgery (3 readmissions following appendectomy out of the total number of readmissions of 86- Table 1). Appendectomy therefore contributes significantly to the overall burden of adhesion-related readmissions.

Table 6. Directly adhesion-related readmission risk 3 years after appendectomy.

Site and type of surgery	Total number of readmissions	Total number of procedures	Rate of readmission %
Appendectomy	3	357	0,84
With peritonitis	2	214	1,61
Without peritonitis	1	143	0,69

Table 7. Directly adhesion-related readmission risk 3 years after appendectomy, influenced by age.

Site and type of surgery	≤60 yrs			>60 yrs		
	nR	nTP	Readmission rate % (nR/nTP)	nR	nTP	Readmission rate % (nR/nTP)
Appendectomy	2	283	0,7 (2/283)	1	74	1,35 (1/74)
With peritonitis	1	160	0,6 (1/160)	1	54	1,85 (1/54)
Without peritonitis	1	123	0,8 (1/123)	0	20	0/20

PATIENT AGE

It has been demonstrated that the age of the patient represents an important factor in readmission risk; overall patients aged >60 years had a greater risk than those aged ≤60 years. This trend was supported by data on each individual site of surgery.

The directly related risk of readmission for patients aged >60 years was 28,57% for those who underwent procedures on the duodenum/jejunum, 9,4% for those who underwent procedures on the colon, 3,75% for rectum procedure cases and 8,16% in those with abdominal wall surgery.

For patients aged ≤60 years, the risk of readmission was 22,22% after procedures on duodenum/jejunum, 5,19% after colonic surgery, 11,53% after rectal surgery and 5,88% secondary to abdominal wall surgery. The higher rates in the colon and rectum subgroups, that included patients ≤60 years, can be explained by the lower total number of procedures in this subgroups that limits the statistical significance of the research.

In this study population, the increment in risk was greatest in patients who underwent surgery on the duodenum/jejunum (≤ 60 years vs ≥ 60 years: 28,57% vs 22,22%) or abdominal wall surgery (8,16% vs 5,88%) (Figure 1).

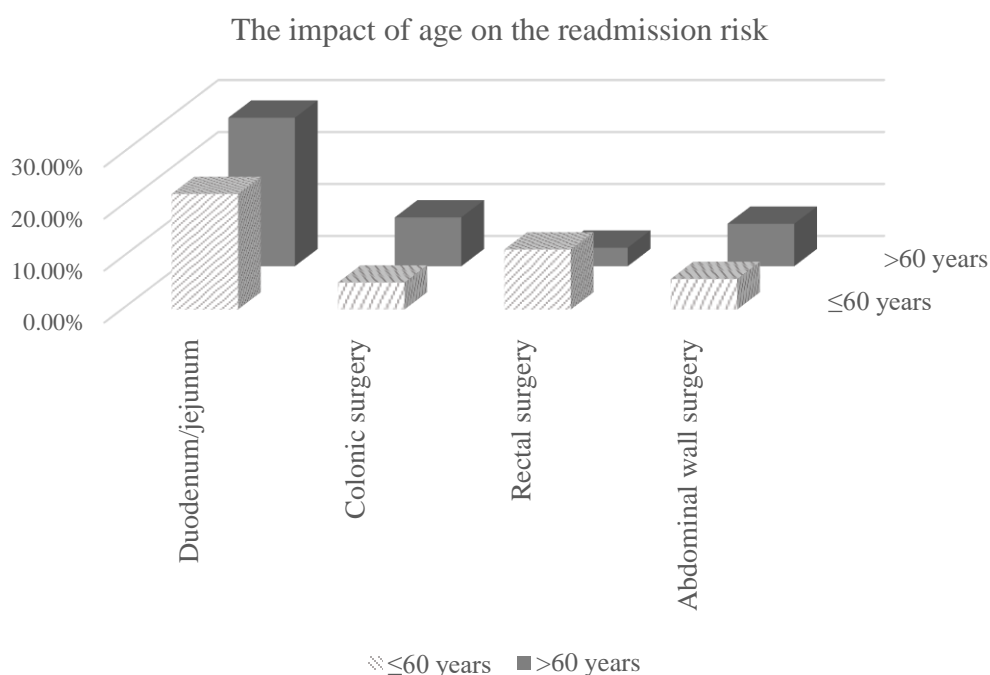


Figure 1. The impact of age on the readmission risk.

CONCOMITANT DISEASE

Crohn's disease recorded at the time of incident surgery increased the risk of readmission in patients who underwent procedures on the ileum or colon.

An analysis of the effect of peritonitis on readmission risk showed that patients who underwent surgery on the appendix had a higher risk of readmission if they were diagnosed with peritonitis compared with those who were not (Table 6).

The effect of diverticular disease (without peritonitis) on adhesion-related readmission risk in colon surgery was examined. The risk of readmission in patients with the disease (5,55%) was slightly lower than in those patients who did not have the disease (8,17%). However, the

percentage of patients diagnosed with diverticular disease was comparatively small (7,96% of colon procedures) (Table 4).

Readmission risk was assessed in patients diagnosed with colorectal cancer (CRC). Those patients with CRC who underwent procedures on the colon had a lower risk of readmission (4,47%) than those patients without cancer (36%).

The total mortality rate in the population study was 0,66% (7 cases out of 1056 patients included in the study), with a high mortality rate (1,05%) in the colo-rectal and abdominal wall surgery (Table 8).

Table 8. The mortality rate in the study population.

Surgical site	Total number of deaths	Total number of procedures	Rate of mortality%
Small bowel surgery	1	131	0,76
Colo-rectal and abdominal wall surgery	6	568	1,05
Appendectomy	0	357	0
Total	7	1056	0,66

DISCUSSION

The results of the study demonstrated a high burden of adhesion-related readmissions in patients undergoing open abdominal and pelvic surgery.

SCAR-3 study showed that there were no changes in the rate of adhesion-related readmissions following colorectal surgery in recent years¹⁵. Consequently, there appears to have been little change in the rate of adhesion-related readmissions despite advances in surgical technique. These readmissions determine a significant burden upon patients, surgeons and healthcare providers¹⁶. Thus, is important to admit that a greater awareness of the nature of postoperative peritoneal adhesions is needed. In this study, the aim was to identify procedures and patient subgroups associated with the highest risks of adhesion-related readmission.

An important factor that influences the results of the present study is represented by the fact that only readmissions directly related to adhesion formation have been reported, possibly related readmissions or procedures that may be complicated by adhesions not having been included. The risk of adhesion-related readmission should therefore be greater than reported by the results of the research.

¹⁵ Parker MC, Wilson MS, Menzies D, Sunderland G, Clark DN, Knight AD, Crowe AM; Surgical and Clinical Adhesions Research (SCAR) Group. The SCAR-3 study: 5-year adhesion-related readmission risk following lower abdominal surgical procedures. *Colorectal Dis.* 2005 Nov;7(6):551-8

¹⁶ Ray NF, Denton WG, Thamer M, Henderson SC, Perry S. Abdominal adhesiolysis: inpatient care and expenditures in the United States in 1994. *J Am Coll Surg* 1998; 186: 1-9

Through the results of the study, a greater purpose is aimed, that of allowing for targeted adhesion-prevention strategies, reducing, this way, the overall burden of adhesions and the individual risk to patients.

The patients undergoing open abdominal or pelvic surgery have a risk of readmission directly related to adhesions within 3 years following surgery of 8,14% (11,87% excluding appendectomy procedures-Table 1).

Total colectomy, right hemicolectomy and ileostomy/ ileal resection procedures were associated with the highest risk of an adhesion-related readmission.

A great burden of readmission occurred following excision of the rectum, which was one of the most common procedures (150 cases).

Appendectomy was associated with a low risk of readmission, but determined a high burden of adhesion-related readmissions.

Peritonitis at the time of the initial surgery increased the risk of adhesion-related readmission. The inflammatory response associated with Crohn disease or diverticular disease, and the extensive intraoperative dissection required in the management of the colo-rectal cancer, increase the risk of readmissions directly related to peritoneal adhesion syndrome.

The study demonstrated that there is a risk of readmission directly related to adhesions of approximately 8,14%. Therefore, it seems prudent to inform patients of the risk of adhesions as part of the consenting process prior to open abdominal or pelvic surgery.

Taking into account that a number of adhesion-prevention strategies are available, the failure to take precautions to prevent adhesion formation may have medico-legal consequences.

The present research made possible for the identification of patient subgroups associated with an increased risk of adhesion-related readmission, allowing surgeons to effectively offer information to patients regarding postoperative risks and to adopt targeted adhesion-prevention strategies.

There is no evidence regarding efficient and safe anti-adhesion agents capable of reducing adhesion-related complications and readmissions. The lack of conclusive data on the matter of peritoneal adhesion prevention methods can be explained by the fact that such studies require enormous numbers of patients, that imply considerable resource and ethical issues, thus making it difficult for the clinical research.

There is however, of great importance for surgeons to be aware of the consequences of adhesions in terms of complications for patients and of medico-legal considerations.

CONCLUSIONS

- Adhesion-related complications represent an important source of morbidity and mortality for patients undergoing open abdominal or pelvic surgery.
- In the present study, total colectomy, right hemicolectomy and ileostomy surgery appear to be associated with higher risk of adhesion-related readmission.
- Comorbidities, such as inflammatory bowel disease and peritonitis, at the moment of the initial surgery, were identified as risk factors in increasing the rate of adhesion-related complications and readmission.
- Patient age (> 60 years) has been demonstrated as being an important risk factor for adhesion-related readmission.

- The identification of high-risk patient subgroups may help in effectively targeting adhesion-prevention strategies, determining an improvement in patient outcomes and quality of life, as well as reduced surgical workloads.

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CLINICAL PRESENTATION, DIAGNOSTIC WORKUP AND THERAPEUTIC APPROACH FOR PANCREATIC CANCER IN A TERTIARY GASTROENTEROLOGY CENTER

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ABSTRACT

CANCER OF THE EXOCRINE PANCREAS IS A HIGHLY LETHAL MALIGNANCY. SURGICAL RESECTION IS THE ONLY POTENTIALLY CURATIVE TREATMENT. UNFORTUNATELY, BECAUSE OF THE LATE PRESENTATION, ONLY 15 TO 20 PERCENT OF PATIENTS ARE CANDIDATES FOR PANCREATECTOMY. THE AIM OF OUR STUDY WAS TO REVIEW THE RISK FACTORS, CLINICAL PRESENTATION, DIAGNOSTIC TOOLS AND THERAPEUTIC APPROACH OF PATIENTS WITH PANCREATIC CANCER, ADMITTED TO OUR CLINIC BETWEEN JANUARY 1ST AND DECEMBER 31ST OF 2016. WE ENROLLED TWO HUNDRED AND SIXTY EIGHT CONSECUTIVE PATIENTS. WE FOUND THAT MOST PATIENTS PRESENTED AT LEAST ONE RISK FACTOR FOR PANCREATIC NEOPLASIA, ESPECIALLY CIGARETTE SMOKING AND ALCOHOL DRINKING. MANY PATIENTS WERE DIAGNOSED IN ADVANCED STAGES OF THE DISEASE, WHEN THE TUMOR WAS LOCALLY INVASIVE OR HAD DISTANT METASTASES. THE MOST FREQUENT HISTOLOGICAL TYPE WAS ADENOCARCINOMA, FOLLOWED BY NEUROENDOCRINE TUMORS (13.36%). PATIENTS BENEFITED FROM SURGICAL, ONCOLOGICAL, AND/OR ENDOSCOPIC TREATMENT. THE MEDIAN SURVIVAL TIME WAS 8.83 MONTHS FOR ADENOCARCINOMA AND 66.34 MONTHS FOR NEUROENDOCRINE TUMORS. WE NOTED A LONGER MEDIAN SURVIVAL TIME FOR ADENOCARCINOMA THAN THE EUROPEAN AVERAGE OF 4.6 MONTHS, PROBABLY DUE TO THE FACT THAT PATIENTS WERE DIAGNOSED AND TREATED BY A MULTIDISCIPLINARY TEAM, IN A TERTIARY CARE FACILITY. HOWEVER WE NEED TO DO A BETTER JOB IN IDENTIFYING HIGH RISK INDIVIDUALS AND THEN OFFERING THEM A PERSONALISED SCREENING PROGRAM, IN ORDER TO DIAGNOSE MORE PATIENTS IN POTENTIALLY CURATIVE STAGES.

KEY WORDS: PANCREAS, CANCER, RISK, TREATMENT

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INTRODUCTION

Pancreatic cancer is the fourth leading cause of cancer-related death in the United States and second only to colorectal cancer as a cause of digestive cancer-related death. Surgical resection is the only potentially curative treatment. Unfortunately, because of the late presentation, only 15 to 20 percent of patients are candidates for pancreatectomy. Furthermore, prognosis is poor, even after a complete resection. Five-year survival after margin-negative (R0) pancreaticoduodenectomy is approximately 30 percent for node-negative and 10 percent for node-positive disease⁴.

The aim of our study is to investigate the risk factors, the presentation pattern, the diagnostic algorithm and the therapeutic strategy for pancreatic cancer patients in the Gastroenterology Department of the Fundeni Clinical Institute, a tertiary care center.

MAIN TEXT

A retrospective study of 443 consecutive patients with pancreatic cancer was performed. The patients were admitted to the Gastroenterology and Digestive Oncology Departments between January 1st 2015 and December 31st 2016. We analyzed data referring to risk factors, clinical presentation, diagnostic workup and therapeutic approach.

The major risk factors for pancreatic cancer are: cigarette smoking, high body mass and lack of physical activity, nonhereditary chronic pancreatitis and pancreatic cysts. Hereditary risk factors have also been described, such as hereditary pancreatitis, other highly penetrating conditions caused by germline mutations in known cancer-causing genes and familial pancreatic cancer, for which a specific genetic abnormality has not yet been identified. Other potential risk factors, with weaker association include: A blood group, recent onset diabetes mellitus, *Helicobacter pylori* infection, hepatitis B and C viral infection, alcohol consumption. Data regarding the impact of alcohol ingestion on the risk of pancreatic cancer have been conflicting. Two pooled analyses suggest if there is an effect of alcohol consumption, it is small and limited to heavy drinkers. The relationship between alcohol use and pancreatic cancer is confounded by cigarette smoking⁵.

We documented all the risk factors mentioned above. The mean age at diagnosis was 63.54 years, ranging between 32 and 89 years old. The male to female sex ratio was 1.31:1. Cigarette smokers represented 37.12% of all patients, alcohol consumption was found in 40.46% of all cases, diabetes mellitus in 30.26 % of subjects, frequently type 2 (98.81%). Fifteen per cent of individuals had evidence of present or past hepatitis B or C virus infection. A personal history of acute or chronic pancreatitis was noted in 7.19% of patients and a personal history of other neoplasia in 3.68%. A large number of patients presented with more than one risk factor: two factors – 23.18%, three risk factors – 10.94%, four risk factors – 1.83% and five risk factors – 0.52%. Cigarette smoking was frequently associated with alcohol consumption (66.54%). Average tobacco consumption was: 13.30% under 15 pacs/year, 46.27% between 16 and 30 pacs/year and 40.53% more than 30 pacs/year.

⁴ Allen PJ et al. Multi-institutional Validation Study of the American Joint Commission on Cancer (8th Edition) Changes for T and N Staging in Patients With Pancreatic Adenocarcinoma. *Ann Surg* 2017; 265:185.

⁵ Lowenfels AB, et al. Risk factors for cancer in hereditary pancreatitis. International Hereditary Pancreatitis Study Group. *Med Clin North Am* 2000; 84:565

Diabetes mellitus as a risk factor was found to be frequently type II, the average age at diagnosis being 65.86 years. The pancreatic neoplasia was diagnosed after an average duration of 4.73 years after the onset of diabetes mellitus. Computed tomography (CT) screening of all older subjects with new onset diabetes in order to discover a small number of pancreatic cancers is not feasible. Identification of those features that differentiate pancreatic cancer-associated diabetes from other cases with new-onset diabetes would help direct efforts to the subset of individuals who would most benefit from screening CT, but these factors have not yet been established. At present, screening is only carried out for high-risk individuals who have familial syndromes predisposing them to pancreatic cancer⁶.

The most common presenting symptoms in patients with exocrine pancreatic cancer are pain, jaundice, and weight loss. The initial presentation of pancreatic cancer varies according to tumor location. Compared with tumors in the body and tail of the gland, pancreatic head tumors more often present with jaundice, steatorrhea, and weight loss. The pain associated with pancreatic cancer is usually insidious in onset, and has been present for one to two months at the time of presentation. Jaundice, which is usually progressive, is most often due to obstruction of the common bile duct by a mass in the head of the pancreas, causing hyperbilirubinemia. It may be accompanied by pruritus, darkening of the urine, and pale stools. Jaundice is a relatively early sign in tumors arising from the pancreatic head, and pancreatic tumors that present with painless jaundice have been ascribed a relatively more favorable prognosis compared with those that present with pain and obstructive jaundice. Signs of metastatic disease may be present at presentation. Metastatic disease most commonly affects the liver, peritoneum, lungs, and less frequently, bone⁷.

Out of our patients, at presentation, 64.41% had abdominal pain or discomfort, lasting for an average of 5.3 months prior to hospital admission, 78.14% had weight loss - an average of 6.57 kg during the last 2.38 months. Jaundice was present initially in 50.22% of the patients with tumors located in the pancreatic head and in 44.71% patients with body or tail tumors. Other documented symptoms were: diarrhea (13.25%), fever (6.87%) and uncontrolled diabetes mellitus (5.73%). In 5.63% of cases the pancreatic cancer was an incidental finding, in asymptomatic individuals who underwent imaging of the abdomen for various indications.

Patients who present with jaundice or epigastric pain and weight loss often undergo right upper quadrant transabdominal ultrasound (US) initially to evaluate for dilated bile ducts or a pancreatic mass. While the reported sensitivity for US in diagnosing pancreatic cancer is 95 percent for tumors >3 cm, it is much less for smaller tumors. If a suspicion of pancreatic cancer is raised by the US, the next step is a CT or MRI for confirmation and staging. A mass within the pancreas is the most common CT finding of pancreatic cancer, although enlargement of the whole gland is sometimes seen. Sensitivity of CT for pancreatic cancer depends on technique and is highest (89 to 97 percent) with triple-phase, helical multidetector row CT⁸. Local unresectability is usually (but not always) due to vascular invasion. Endoscopic ultrasonography is another

⁶ Michaud DS et al. Dietary sugar, glycemic load, and pancreatic cancer risk in a prospective study. *J Natl Cancer Inst* 2002; 94:1293

⁷ Mujica VR, Barkin JS, Go VL. Acute pancreatitis secondary to pancreatic carcinoma. Study Group Participants. *Pancreas* 2000; 21:329

⁸ Bronstein YL et al. Detection of small pancreatic tumors with multiphasic helical CT. *AJR Am J Roentgenol* 2004; 182:619.

effective method to assess tumor extent and vascular invasion. Histologic confirmation is required to establish a diagnosis of pancreatic cancer. Biopsy of a pancreatic mass can be accomplished through percutaneous or endoscopic approaches.

All the patients in our study were investigated by abdominal CT or MRI and 31.08% had an endoscopic ultrasound (\pm fine needle aspiration). The TNM stage at presentation was: T1 – 5.61%, T2 – 22.09%, T3 – 29.96 % and T4 – 42.32; 56.92% of patients were N1 (nodes positive) and 51.31% already had distant metastases. The tumors were located at the level of the pancreatic head in 55.98% of patients, 24.74% in the body and 19.28% in the tail.

Resectable disease was established in 27.30% of cases, 21.39% of tumors were locally advanced and 51.31% were metastatic at diagnosis. The percentage of early stage, resectable tumors, is higher than the literature data (15-20%), probably due to the vast experience of our multidisciplinary team in investigating patients with pancreatic disorders.

Histology was available in 80.97% of cases and it was obtained through EUS in 38.72% of cases, surgical biopsy – 35.33% and percutaneous biopsy from liver metastases in 25.94% of patients. The histological types of cancer were: 82.94% adenocarcinomas, 13.36% neuroendocrine tumors (NETs), 1.38% gastrointestinal stromal tumors (GISTs), 0.92% mixed adeno-neuroendocrine carcinomas (MANECs), one pancreatic intraepithelial neoplasia (PanIN), one mucinous cystic neoplasm and one solid-pseudopapillary tumor.

In literature, ductal adenocarcinoma accounts for 85% of pancreatic exocrine neoplasms. Pancreatic intraepithelial neoplasia (PanIN) refers to a small (generally <5 mm) intraductal noninvasive lesion that is formed by metaplasia and proliferation of ductal epithelium. Most ductal adenocarcinomas are considered to arise from PanIN, presumably developing as a result of a series of genetic events. However, although PanIN is considered to represent a precursor lesion to invasive ductal adenocarcinoma, it appears that only a small fraction of low-grade PanIN progress to invasive cancer⁹.

Pancreatic NETs, also known as islet cell tumors, are rare neoplasms that arise in the endocrine tissues of the pancreas. They can secrete a variety of peptide hormones, including insulin, gastrin, glucagon, and vasoactive intestinal peptide (VIP), resulting in a variety of clinical syndromes. They account for 3% to 5% of pancreatic malignancies and overall have a better prognosis than the more common pancreatic exocrine tumors. Five-year survival is about 55% when the tumors are localized and resected but only about 15% when the tumors are not resectable. Overall 5-year survival rate is about 42%¹⁰.

Out of the 121 patients deemed resectable after initial staging, 105 turned out to be resectable during surgery: 77 had duodenopancreatectomy, 25 had distal pancreatectomy and 3 had total pancreatectomy. The remaining 322 patients were considered to be initially unresectable. However, 74 of them had palliative surgery: 41 had biliary bypass, 15 had enteral bypass, 10 had bilioenteral bypass and 8 had splenectomy as pain therapy.

For obstructive jaundice, 37 biliary stents were placed endoscopically (28 metal and 9 plastic). When endoscopic retrograde cholangiopancreatography was not technically feasible, external biliary drainage was performed, under CT guidance.

⁹ Hruban RH et al. An illustrated consensus on the classification of pancreatic intraepithelial neoplasia and intraductal papillary mucinous neoplasms. *Am J Surg Pathol* 2004; 28:977

¹⁰ Ries LAG et al. SEER Survival Monograph: Cancer Survival Among Adults: U. S. SEER Program, 1988-2001, Patient and Tumor Characteristics. Bethesda, MD: National Cancer Institute, 2007. *NIH Pub.* No. 07-6215

The available evidence from randomized trials suggests that systemic chemotherapy provides a significant survival benefit over best supportive care alone, both for first-line and second-line treatment.

In the adenocarcinoma group, 275 patients (68%) received chemotherapy, out of which 68% with palliative intent, 30% with adjuvant intent and 2% as neoadjuvant therapy. First line therapy was based on a gemcitabine containing regimen in 88.7% of cases, the remaining adenocarcinoma patients receiving FOLFIRINOX – 10.2% or other therapies – 3.1% (eg. Carboplatin). We were able to evaluate the best response to chemotherapy in 234 patients: 23.5% had complete response, 10.3% partial response, 23.9% stable disease and most (42.3%) had progressive disease.

Patients with metastatic pancreatic cancer should be offered aggressive treatment for pain and other symptoms related to the cancer. Patients with an Eastern Cooperative Oncology Group (ECOG) PS ≥ 3 or poorly controlled comorbid conditions should be offered systemic chemotherapy only on an individualized, case-by-case basis; supportive care should be emphasized¹¹.

Overall survival data was available for 264 patients with adenocarcinoma and 34 patients with neuroendocrine tumors. The median survival time was 8.83 months for adenocarcinoma and 66.34 months for neuroendocrine tumors.

The median survival time in our study was longer than the European average of 4.6 months, this being linked also with the fact that more patients were diagnosed in early stages, compared to literature data. We think that this positive outcome is due to the multidisciplinary treatment and large clinical expertise with pancreatic cancer patients in our clinic.

CONCLUSION

A large number of patients with pancreatic cancer present one or more of the well-studied risk-factors for the occurrence of the disease. However, a large proportion of patients are diagnosed in advanced stages, when curative treatment is no longer an option. We need to be able to identify high risk individuals and then offer them a personalized screening program.

¹¹ Sohal DP et al. Metastatic Pancreatic Cancer: American Society of Clinical Oncology Clinical Practice Guideline. *J Clin Oncol* 2016; 34:2784

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BLUNT ABDOMINAL TRAUMA AND PERITONEAL ADHESIONS

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ABSTRACT

INTRODUCTION. THE CONTINUALLY CHANGING OF THE MEDICAL FIELD AND ADVANCES IN DIAGNOSIS AND MANAGEMENT OF MULTIPLE TRAUMA PATIENTS HAVE, RECENTLY, DETERMINED A CONSERVATIVE APPROACH FOR MOST CASES OF BLUNT ABDOMINAL TRAUMA. THE PRESENT STUDY AIMS TO DETERMINE THE IMPACT OF BLUNT ABDOMINAL TRAUMA UPON THE PROCESS OF PERITONEAL ADHESION FORMATION.

MATERIAL AND METHOD. THE PURPOSE OF THIS RETROSPECTIVE STUDY IS TO EVALUATE THE PREVALENCE AND SEVERITY OF INTRAABDOMINAL ADHESIONS IN EMERGENCY LAPAROTOMY IN PATIENTS WHO HAD NOT BEEN OPERATED BEFORE AND HAD A HISTORY OF BLUNT ABDOMINAL TRAUMA. 10 PATIENTS WHO UNDERWENT EMERGENCY LAPAROTOMY IN THE SURGICAL DEPARTMENT OF "SFÂNTUL PANTELIMON" HOSPITAL FROM BUCHAREST, BETWEEN JANUARY 2015-DECEMBER 2016 WERE ENROLLED IN THE STUDY. THE SEVERITY OF INTRAABDOMINAL ADHESIONS WERE EVALUATED USING ZÜHLKE CLASSIFICATION. THE OVERALL ADHESION RATIO FOR THIS STUDY GROUP WAS FOUND TO BE 80%.

RESULTS AND CONCLUSIONS. THE MAIN CAUSE FOR BOWEL OBSTRUCTIONS SECONDARY TO INTRAABDOMINAL PERITONEAL ADHESIONS IS REPRESENTED BY PREVIOUS INTRAABDOMINAL SURGERY. IN PATIENTS WITH NO SURGICAL HISTORY, INTRAABDOMINAL ADHESIONS HAVE RARELY BEEN ATTRIBUTED TO BLUNT ABDOMINAL TRAUMA.

KEYWORDS: INTRAABDOMINAL ADHESIONS, BLUNT TRAUMA, COMPLICATIONS, PREVENTION.

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INTRODUCTION

Peritoneal adhesions after abdominal surgery or trauma, pathological bonds that abnormally join abdominopelvic organs to each other, or to the abdominal wall or diaphragm, still represent a major surgical dilemma.

Intra-abdominal adhesions represent an under-researched problem, the medical literature containing neither an official definition of adhesions nor a recognized standardized classification for clear assessment of their cause, extent and severity. Also, references related to peritoneal adhesions following penetrating or blunt abdominal trauma are scarce. One of the reasons for the little attention the peritoneal adhesions have been received in the medical literature, can be represented by the lack of effective prevention. 20 studies from the past 10 years regarding peritoneal adhesions after blunt or penetrating abdominal trauma were found using PubMed searching system.

A large autopsy series of abdominal adhesions, which included 752 subjects, showed that over 44% had adhesions, among which 67% had prior surgery, with 33% having no history of surgical interventions, possible causes mentioned being tuberculous peritonitis, intra-abdominal or pelvic inflammatory disease and trauma. A higher incidence of adhesions was noticed after multiple laparotomies⁷.

Against that backdrop, the aim of the present article is to increase the clinicians' awareness of adhesions and their consequences, offering an overview of the etiopathogenesis of adhesions in the actual context of the conservative management of blunt abdominal trauma.

The purpose of the retrospective study is to evaluate the prevalence and severity of intraabdominal adhesions in patients not operated before, with a history of blunt abdominal trauma.

MATERIAL AND METHOD

10 patients with surgical indication to laparotomy (trauma or surgical emergencies), admitted at the General Surgery Department of the "Sfântul Pantelimon" Emergency Clinical Hospital, an academic hospital of the University of Medicine and Pharmacy "Carol Davila" in Bucharest, Romania, were enrolled in this single-center, retrospective investigation, between January 1st 2015 and December 31st 2016, including a 3 months follow-up interval.

Inclusion criteria were: age over 18 and under 75 years old, no prior surgical intervention, personal history of blunt abdominal trauma treated using conservative methods and no peritoneal faecal contamination or sepsis at the moment of the surgical intervention.

Exclusion criteria were: patients under 18 or over 75 years old, requiring a simultaneous intervention, pregnancy or participation in other clinical investigations, peritonitis or sepsis, prior surgery and no history of blunt abdominal trauma.

The primary endpoint of the study is to estimate the prevalence of peritoneal adhesions after blunt abdominal trauma with evaluation of the extent, severity and treatment options.

Thus, we aimed to evaluate the prevalence and severity of intraabdominal adhesions in emergency laparotomy patients, not operated before and with a history of blunt abdominal trauma treated conservatively. The severity of intraabdominal adhesions were evaluated using Zühlke classification.

⁷ Weibel M-A, Majno G. Peritoneal adhesions and their relation to abdominal surgery. A postmortem study. *Am J Surg.* 1973;126:345-353

Patients were treated, as well as written informed consent for each procedure adopted was collected, according to the usual clinical practice. The study protocol conforms to the ethical guidelines of the “World Medical Association (WMA) Declaration of Helsinki - Ethical Principles for Medical Research Involving Human Subjects” adopted by the 18th WMA General Assembly, Helsinki, Finland, June 1964 and amended by the 64th WMA General Assembly, Fortaleza, Brazil, October 2013. Approval by the institutional review committee was obtained, since this study retrospectively analyzed patients’ data.

Data were recorded regarding demographics, diagnosis, duration of hospital stay, complications and mortality. The analysis of the data was made using Microsoft Office Excel 2013 software.

RESULTS

The distribution of urban/rural and male/female variables was similar within the study group, with a median age of 63 years old.

6 patients out of the study population had a history of grade I-III splenic trauma, 2 patients presented grade I-II hepatic trauma and 2 cases of zone 2 retroperitoneal hematoma, for whom non-operative management was the choice treatment (table 1).

Table 1. Types of traumatic lesions in the study population.

Traumatic lesions	Grade I-III splenic trauma	Grade I-II hepatic trauma	Retroperitoneal hematoma
Nº of patients	6	2	2

The moment of the traumatic injury can be referred within a large interval, from 20 years to 7 months prior to the admission in our surgical department.

Cases with history of peritonitis, sepsis or intra-abdominal inflammatory disease were excluded from the study.

The comorbid conditions existing in the study population were cardiovascular in 3 cases, 2 with hepatic comorbidity and 2 patients with type II diabetes (figure 1).

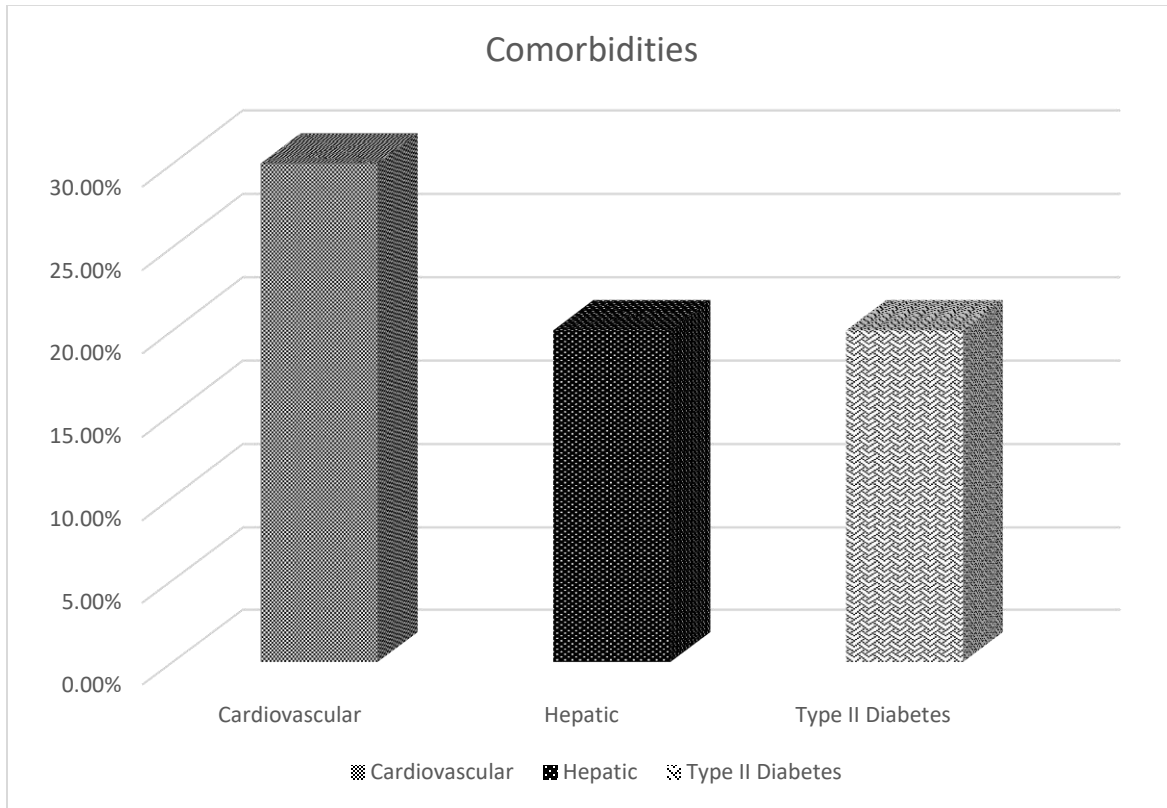


Figure 1. Comorbidities existing in the population of the study.

Regarding the surgical indication for laparotomy or laparoscopy, the present study included 5 patients with bowel obstruction (SBO) as a complication in the evolution of the peritoneal adhesion syndrome, 3 patients with acute cholecystitis and 2 cases of stage 0-III colorectal cancer (table 2).

Table 2. The surgical indications within the study group.

Surgical indication at admission	Small/ large bowel obstruction	Acute cholecystitis	Colorectal cancer
Nº of patients	5	3	2

7 out of 10 patients underwent laparotomy, with laparoscopy for the rest of the population (figure 2).

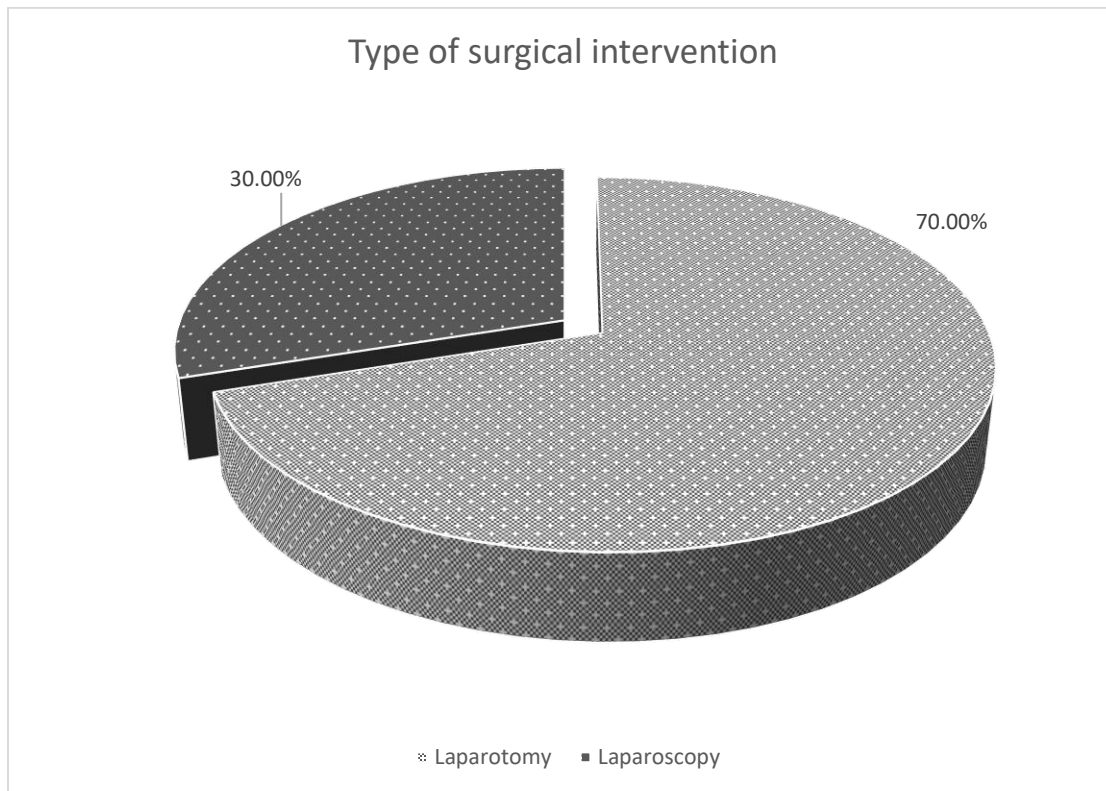


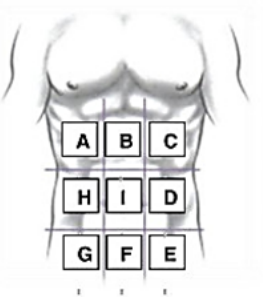
Figure 2. Type of surgical intervention within the study population.

The average duration of the surgical intervention was 2h 45 minutes.

At the time of the surgical intervention, aspects regarding severity, distribution and histopathology of the peritoneal adhesions were analyzed based on the scores proposed by Coccolini et al. in 2013 (figure 3. Peritoneal adhesion index), Mazuji and Zhülke (table 3 and 4)⁸.

⁸ Coccolini et al. Peritoneal adhesion index (PAI): proposal of a score for the “ignored iceberg” of medicine and surgery. *World Journal of Emergency Surgery* 2013, 8:6; Mazuji M., Fadhlih A. Peritoneal adhesions: prevention with povidone and dextran 75. *Arch Surg*, 1965, 91: 872-874

PERITONEAL ADHESION INDEX:



Regions:	Adheslon grade:	Adheslon grade score:
A Right upper	_____	0 No adhesions
B Epigastrium	_____	1 Filmy adhesions, blunt dissection
C Left upper	_____	2 Strong adhesions, sharp dissection
D Left flank	_____	3 Very strong vascularized adhesions, sharp
E Left lower	_____	dissection, damage hardly preventable
F Pelvis	_____	
G Right lower	_____	
H Right flank	_____	
I Central	_____	
L Bowel to bowel	_____	

PAI

Figure 3. Peritoneal adhesion index proposed by Coccolini et al.⁹.

Table 3. Mazuji macroscopic classification of adhesions¹⁰.

Mazuji classification	Description
Grade 0	No adhesions
Grade 1	Filmy adhesions: easy to separate by blunt dissection without hemorrhage

⁹ Coccolini et al. Peritoneal adhesion index (PAI): proposal of a score for the “ignored iceberg” of medicine and surgery. *World Journal of Emergency Surgery* 2013, 8:6

¹⁰ Mazuji M., Fadhlih A. Peritoneal adhesions: prevention with povidone and dextran 75. *Arch Surg*, 1965, 91: 872-874

Grade 2	Stronger adhesion: blunt dissection possible, at most 50% of adhesions require sharp dissection for separation; beginning of vascularization
Grade 3	Stronger adhesion: at least 50% of adhesions require sharp dissection for separation; clear vascularization.
Grade 4	Serosal injury
Grade 5	Full thickness injury

Table 4. Zuhlke histopathological classification of adhesions.

Zhülke classification	
Grade 1	Loose connective tissue, cell-rich, old and new fibrin, fine reticulin fibers
Grade 2	Connective tissue with cells and capillaries, few collagen fibers
Grade 3	Connective tissue firmer, fewer cells, more vessels, few elastic and smooth muscle fibers
Grade 4	Old firm granulation tissue, cell-poor, serosal layers hardly distinguishable

According to Coccolini and Mazuji scores, most of the patients included in the research presented grade 1-3 peritoneal adhesions located, predominately, in the supramesocolic compartment, 3 patients with no peritoneal adhesions at the moment of the surgical intervention (for a stage 1 colorectal cancer or during laparoscopic cholecystectomy), 4 patients having grade 1 adhesions, 2 cases with grade 3 and 1 cases with grade 4 (figure 4-6).

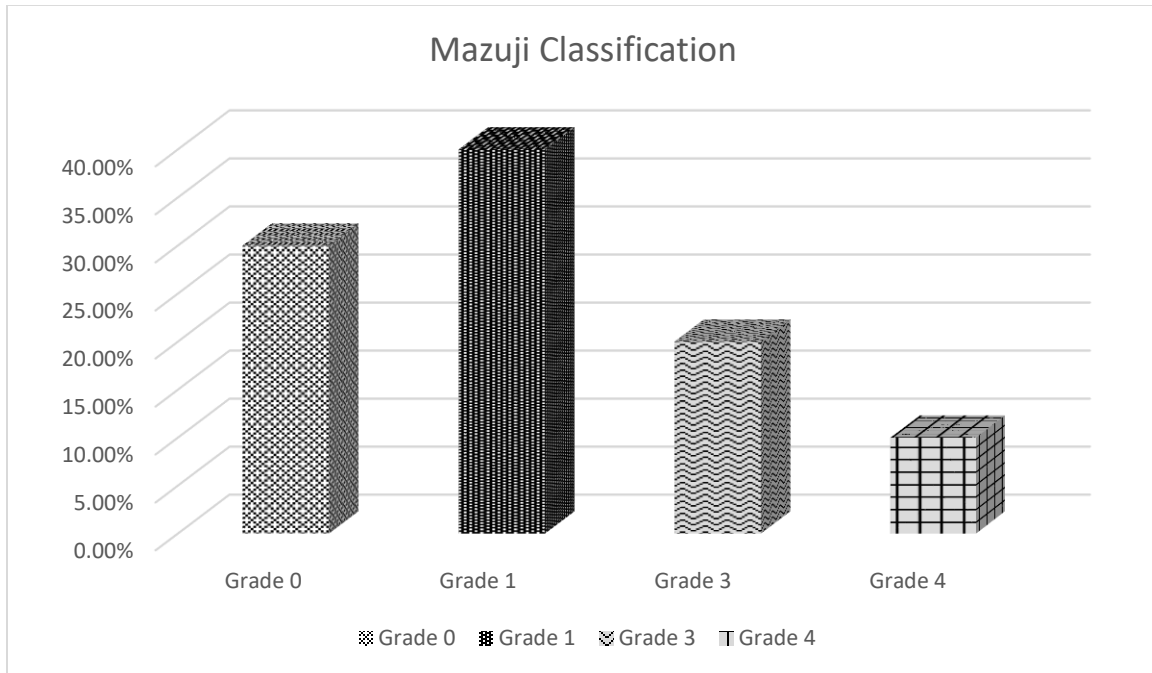


Figure 4. Classification of cases, according to the macroscopic aspect of the adhesions, using Mazuji score.

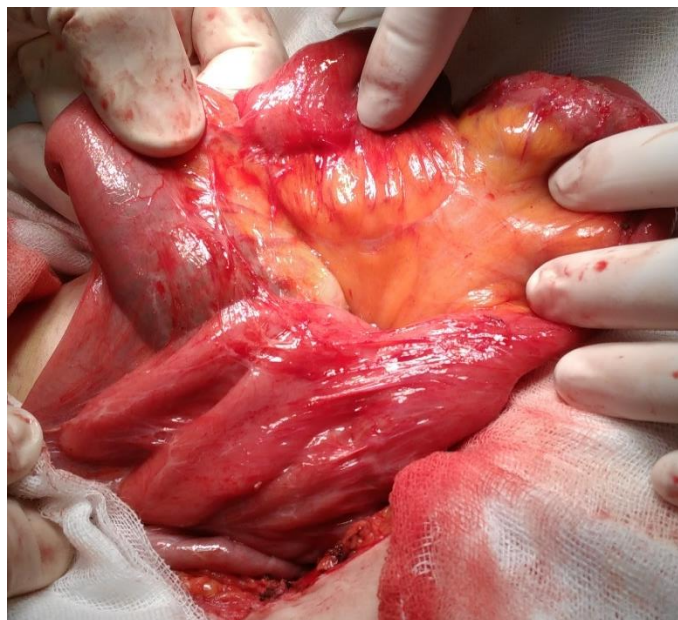


Figure 5. Macroscopic aspect of grade 4 adhesions during laparotomy for SBO (Mazuji score).

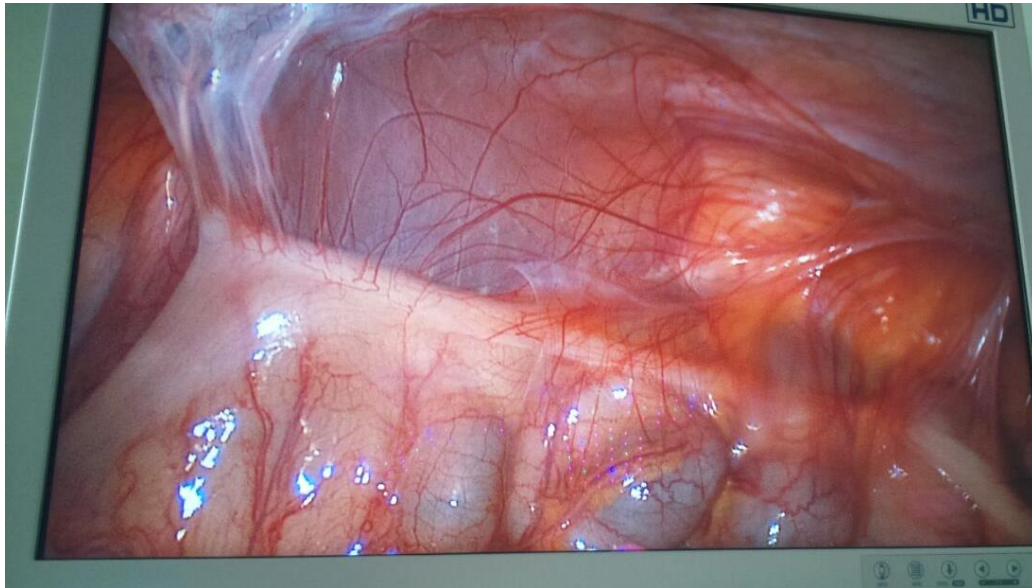


Figure 6. Macroscopic aspect of grade 2-3 adhesions during laparoscopic cholecystectomy (Mazuji score).

Judging by the results shown in the previous figure, it can be concluded that not all the patients with history of blunt abdominal trauma and no surgical interventions included in the study, presented peritoneal adhesions, 7 out of 10 cases presenting intra-abdominal adhesions.

Considering the results of the present case-series a starting point for future research, it can be estimated that the prevalence of peritoneal adhesions after blunt abdominal trauma managed non-operatively, on long and short term, can be approximated at 70%.

According to the histopathological analysis, 5 cases presented loose or firmer connective tissue, grade 1-3 according to Zuhlke scoring, and 2 cases with grade 4 adhesions, with old firm granulation tissue, cell-poor and hardly-distinguishable serosal layers (table 5).

Table 5. Classification of cases, according to the microscopic aspect of the adhesions, using Zuhlke score.

Zuhlke scoring system	Number of patients
Grade 1-3	5
Grade 4	2
Total	7

Blunt or sharp dissection was used for separation in all cases that presented peritoneal adhesions at the moment of the surgical intervention. All 5 cases of bowel obstruction secondary to peritoneal adhesion were treated using adhesiolysis. The 3 patients admitted for acute

cholecystitis, that were enrolled in the study, underwent laparoscopic cholecystectomy and for the 2 cases with colorectal cancer, Hartmann procedure was used, with no neoadjuvant therapy.

The immediate postoperative complications taken into consideration in the present study were: ileus, SBO, fever, intraabdominal hematoma or abscess, seroma at the surgical wound and sepsis.

In the study group, 2 patients suffered from prolonged ileus, 2 patients had fever for over 48h and one patient presented seroma.

The length of the hospital stay was an average of 13 days.

Late complications of the postoperative peritoneal adhesion syndrome are known to be infertility in women, chronic abdominal pain and intestinal obstruction. Among the patients included in the present study, 2 suffered from chronic abdominal pain, during the 3 months follow-up interval.

DISCUSSION

At least one of the following factors must exist before it can be considered that peritoneal adhesions, with ICD-10-AM code K66.0, K56.5, N73.6 or N99.4, are the cause for a fatal evolution of the patient: (a) intra-abdominal or pelvic surgery at least two days before the clinical onset of peritoneal adhesions; (b) peritonitis at least two days before the clinical onset of peritoneal adhesions; (c) a disease from the specified list of inflammatory diseases involving the peritoneum or peritoneal cavity at least two days before the clinical onset of peritoneal adhesions; (d) a perforation of the peritoneum at least two days before the clinical onset of peritoneal adhesions; (f) penetrating trauma to the peritoneum or major blunt trauma to the abdominopelvic region at least two days before the clinical onset of peritoneal adhesions; (g) a bacterial or fungal infection involving the peritoneal cavity at least two days before the clinical onset of peritoneal adhesions; (h) therapeutic radiation for cancer, where the abdominopelvic region was in the field of radiation, at least four weeks before the clinical onset of peritoneal adhesions; (i) having received a cumulative equivalent dose of at least 20 Sieverts of ionising radiation to the abdominopelvic region at least four weeks before the clinical onset of peritoneal adhesions; (j) intraperitoneal chemotherapy or intraperitoneal dialysis at least two days before the clinical onset of peritoneal adhesions; (k) a primary or secondary malignant neoplasm involving the peritoneum at least two days before the clinical onset of peritoneal adhesions;¹¹ inability to obtain appropriate clinical management for peritoneal adhesions¹².

Pathophysiological causes of bowel obstruction are represented by peritoneal adhesions, bowel perforation, mesenteric defect, intramural hemorrhage, and localized ischemia¹³.

As the result of the lack of an effective prevention method, the adhesion formation have traditionally received little attention in the literature, even though they are frequent after open general and gynecologic procedures. In the largest autopsy series of abdominal adhesions, which included 752 subjects, over 44% presented peritoneal adhesions, among which 67% with prior

¹¹ Weibel M-A, Majno G. Peritoneal adhesions and their relation to abdominal surgery. A postmortem study. *Am J Surg.* 1973;126:345-353

¹² Federal Register of Legislative Instruments F2016L00006; Statement of Principles concerning Peritoneal Adhesions (Balance of Probabilities) (No. 4 of 2016) Veterans' Entitlements Act 1986

¹³ Kaban G., Somani R., Carter J. Delayed presentation of small bowel injury after blunt abdominal trauma: a case report, *J. Trauma* 56 (2004) 1144e1145

surgery, and 33% with no surgery, after multiple laparotomies, the incidence of adhesions being even higher than 90%¹⁴.

Intestinal obstruction or chronic pain, as complications of the peritoneal adhesion syndrome after trauma is rare, with only few reported cases¹⁵. Symptoms of peritoneal adhesions can occur years after a trauma event. Such scenarios have been observed in patients with intestinal stenosis where localized ischemia after blunt abdominal trauma determined a fibrotic healing of the peritoneum¹⁶. Intraabdominal bleeding was, also, considered an important factor for intestinal obstruction after blunt abdominal trauma¹⁷.

One of the issues regarding peritoneal adhesions after surgical intervention or abdominal trauma, that remains unsolved, is represented by the length of time needed to form a fibrous band capable of increasing the morbidity. The postoperative adhesions are, usually, expected to appear after 2 or 3 weeks, the formation of adhesions after trauma not being clearly estimated, since there is not enough research on this matter. One possible reason for the unclear data regarding peritoneal adhesions after blunt abdominal trauma is represented by the fact that underdiagnosed traumatic events account for a major portion of unexplained adhesional obstructions, highlighting the importance of a proper assessment of the personal medical history of the patients. Enhanced CT is known to have high sensitivity in diagnosing hemorrhaging, perforations, and organ damage. However, missed injuries do occur, as findings can be nonspecific and subtle¹⁸.

Hefny et al. described adhesive intestinal obstruction in a patient with no former abdominal surgery seven weeks after blunt abdominal trauma¹⁹.

There is not enough data regarding the prevalence of adhesions after blunt abdominal trauma, even though peritoneal adhesion syndrome is still a problem for all physicians who perform abdominal or pelvic operations. Unfortunately, much of the research conducted in each discipline occurs independently and is not well disseminated.

The present study, a case-series research that included 10 patients with history of abdominal trauma and no surgical intervention, demonstrated that 7 out of the total population presented high grade adhesions, according to Mazuji and Zhülke scores, a high rate, taking into account the limited time interval of research and follow-up, determining the authors of the article to continue the research in this field.

Although the present study is limited by its nature, having only 10 patients included in the research, with a high probability of not including cases with missed diagnosis of blunt abdominal trauma, it has the potential of raising awareness and triggering future studies with the purpose of

¹⁴ Ellis H, Moran BJ, Thompson JN, et al. Adhesion-related hospital readmissions after abdominal and pelvic surgery: a retrospective cohort study. *Lancet*. 1999;353:1476-1480; Parker MC, Ellis H, Moran BJ, et al. Postoperative adhesions: Ten-year follow-up of 12,584 patients undergoing lower abdominal surgery. *Dis Colon Rectum*. 2001;44:822-830

¹⁵ Gray J., Garstin I., Intestinal obstruction following blunt abdominal trauma, *Ulst. Med. J.* 71 (2002) 139e141

¹⁶ Gray J., Garstin I., Intestinal obstruction following blunt abdominal trauma, *Ulst. Med. J.* 71 (2002) 139e141

¹⁷ Lampert E.G., Goodfellow J.G., Wachowski T.J., Traumatic subserosal hemorrhage causing small bowel obstruction, *Ann. Surg.* 140 (5) (1954) 768-770

¹⁸ Maciver A.H., MacCall M., Shapiro A.M.J., Intraabdominal adhesions: cellular mechanisms and strategies for prevention, *Int. J Trauma* 9 (2011) 589e594; Hefny A.F., Lunsjo K., Joshi S., Abu-Zidan F.M., Adhesive intestinal obstruction following blunt abdominal trauma, *Saudi Med. J.* 26 (2005) 1464e1467

¹⁹ A.F. Hefny, K. Lunsjo, S. Joshi, F.M. Abu-Zidan, Adhesive intestinal obstruction following blunt abdominal trauma, *Saudi Med. J.* 26 (2005) 1464e1467

determining the prevalence of peritoneal adhesions after abdominal trauma and of developing adequate guidelines and follow-up programs for trauma patients.

CONCLUSIONS

- A high prevalence of peritoneal adhesions after blunt abdominal trauma resulted from the analysis of the data of the present study.
- The incidence and prevalence of peritoneal adhesions after surgical procedures has been studied, in contrast with the references related to peritoneal adhesions following penetrating or blunt abdominal trauma that are scarce.
- Taking into account the increasing adaptability to non-operative management in abdominal trauma, a high index of suspicion of intestinal obstruction secondary to peritoneal adhesion syndrome is needed in patients with history of blunt abdominal trauma.
- Awareness of a patient's surgical history and appropriate monitoring for early and late complications is important, a specific approach being highly recommended for those with history of abdominal trauma.
- Posttraumatic peritoneal adhesion syndrome is an entity, frequently underdiagnosed, thus, patients complaining of chronic abdominal pain, with no prior abdominal surgery and with a suspicion of partial small bowel obstruction, should be specifically questioned about previous blunt trauma.
- Complications of peritoneal adhesions can occur years after a trauma event, raising awareness and triggering future studies regarding the developing of adequate guidelines and follow-up programs for trauma patients.
- There is a lack of clinically oriented guidelines for the diagnosis, treatment and options for reduction of adhesions, the severe consequences of intra-abdominal adhesions for patients, physicians, and healthcare systems standing in stark contrast to the low level of awareness and knowledge, a phenomena caused by the lack of standardization.

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THE NEW SELF-GRIPPING MESH AND IT'S BENEFITS IN INGUINAL HERNIA REPAIR – REVIEW OF THE LITERATURE

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ABSTRACT

THERE IS A CONTINUOUS DEBATE ABOUT WHAT TYPE OF MESHES ARE MORE SUITABLE TO BE USED IN INGUINAL HERNIA REPAIR. RECENTLY WAS INTRODUCED INTO CLINICAL PRACTICE A SELF - GRIPPING MESH WHO DOESN'T NEED ADDITIONAL FIXATION.

THE AIM OF THIS REVIEW IS TO EVALUATE THE FEATURES OF THIS SELF-GRIPPING MESH IN TERMS OF RECURRENCE RATE, DECREASED POSTOPERATIVE COMPLICATIONS AND IMPROVED QUALITY OF LIFE.

RANDOMIZED TRIALS, PROSPECTIVE AND RETROSPECTIVE STUDIES, REVIEWS AND GUIDELINES PUBLISHED BETWEEN 2006 AND 2017 WERE ANALYZED IN TERMS OF RECURRENCE RATE, DECREASED POSTOPERATIVE COMPLICATIONS AND IMPROVED QUALITY OF LIFE.

THE USE OF SELF-GRIPPING MESH IN INGUINAL HERNIA REPAIR, BOTH OPEN AND LAPAROSCOPIC TECHNIQUE, IS RAPID, SAFE, SIMPLE AND COST - EFFECTIVE, PROVIDING LOW OR NO RECURRENCE, LOW CHRONIC PAIN AND IMPROVED QUALITY OF LIFE⁸.

KEY WORDS: SELF-GRIPPING MESH, INGUINAL HERNIA REPAIR, RECURRENCE RATE, POSTOPERATIVE COMPLICATIONS

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⁸ Mahmoud Abo Amra, “Outcome of Lichtenstein inguinal hernioplasty with self gripping polyester mesh”, *International Journal of Multidisciplinary Research and Development* , 2017; 4(8):50-57

INTRODUCTION

Inguinal hernia is the most common surgical pathology whose treatment consists in reduction and resection of the hernia sac and rearing the abdominal wall. From the end of 16th century till the end of 19th century the repair of the abdominal wall was done by closing the inguinal canal with different types of suture that joined the muscle and fascia components.

Afterwards the additional reinforcement of the posterior wall with different types of mesh started. Initially meshes were biological (autologous and heterologous) and metal thread. Due to development of biochemical and biotechnological industries, the meshes based on polymers were introduced into practice.

Nowadays, there is a continuous debate about what type of meshes are more suitable to be used in repairing the inguinal defect.

Recently was introduced into practice a self-gripping mesh for repairing inguinal hernia defect that doesn't need additional fixation.

The aim of this review is to evaluate the features of this self-gripping mesh in terms of recurrence rate, decreased postoperative complications and improved quality of life.

MATERIAL AND METHOD

Two randomized trials, two guidelines, one consensus development conference, four reviews, six prospective and seven retrospective studies, published between 2006 and 2017, were analyzed in terms of recurrence rate, postoperative complications and quality of life.

RESULTS AND DISCUSSIONS

There are many studies comparing different types of meshes used in open or laparoscopic inguinal hernia repair. The new self-gripping mesh introduced into clinical practice was evaluated in literature in terms of recurrence rate, decreased chronic pain and improved quality of life.

Self – gripping mesh

In 2008 Covidien launched ProGrip™ mesh, a self-adhesive prosthetic material used in repairing inguinal hernia both open and laparoscopic technique.

It is made of polyethylene terephthalate and has absorbable micro-grips made of monofilament polylactic acid. It is lightweight, isoelastic, macroporous knitted monofilament polypropylene mesh, hydrophilic, with absorbable micro-grips that provide self – adhesive fixation during the first months after implantation.

The weight of the mesh before the absorption of the micro-grips is 82 g/m² and after the absorption is 49 g/m². The pore size is 1.8 x 1.8 mm. There are 36 micro-grips per cm, cub-shaped 1 mm atraumatic prominences, with an absorption time more than 18 months⁹.

The mesh is for left or right side, flat, plug or anatomical, and has different dimensions and shapes.

The laparoscopic self – gripping mesh has a fast absorbing film on the posterior side made of 70% collagen and 30% glycerol, and the time of dissolution is less than one day.

⁹ Value analysis Committee 2013 - Product information kit of COVIDIEN - "ProGrip™ Laparoscopic Self- Fixating Mesh", www.Covidien.com/Hernia

Recurrence rate

ProGrip™ mesh is a new device that combines mesh and fixation device, which eliminates the need for additional glue, tacks or sutures.

The gold standard treatment for inguinal hernias is tension – free repair because of lower recurrence rates and improved quality of life¹⁰. The introduction of meshes decrease recurrence rate of less than 5%¹¹. So, the rate of recurrence using self – gripping mesh was questionable.

Among the factors that influence the recurrence rate of inguinal hernia are type of mesh used, mesh location and migration, extent of mesh overlap, fixation devices and failure to close the parietal defect, as seen in an article published in 2015¹². Also, the pore size is another factor that may affect the recurrence rate, because larger pore allow a greater ingrowth, increase the pliability and functionality of the mesh¹³.

Thanks to thousands of absorbable micro-grips that adhere immediate to entire environment tissue about 0.5 mm below the lower rim of the mesh¹⁴ and provide strong fixation and strength incorporation at five days after implantation, there is no need for additional fixation with glue, tacks or suture¹⁵ comparing with other unfixed meshes.

For a low recurrence rate the features of the mesh used in laparoscopic inguinal hernia repair, according to the recommendations from the International Hernia Society and the European Association for Endoscopic Surgery, must be: monofilament, minimum dimensions of 10x15 cm, minimum pore size of 1.0 – 1.5 mm and minimum tensile strength in all directions more than 16 N/cm².¹⁶, conditions respected by the ProGrip™ mesh.

Postoperative complications

The rate of chronic groin pain after inguinal hernia repair ranges from 11% to 40%¹⁷. Although pain may be eliminated by identification and preservation of inguinal groin nerves, other

¹⁰ Amid PK, Shalman AG, Lichtenstein IL., “ Open “tension-free”repair of inguinal hernias: the Lichtenstein technique.” *Eur J Surg.*1996;162:447–453

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authors have studied the meshes¹⁸. The use of lightweight polypropylene mesh is associated with less postoperative pain¹⁹ and low foreign body sensation.

The fixation devices lead to many postoperative complications, including vascular injury, nerve damage, seroma, hematoma, testicular problems, urinary retention, wound infection and chronic groin pain. The self - gripping mesh eliminates the complication risk, increased operation time and expense and low rates of recurrence²⁰.

ProGrip™ mesh provides a modern alternative to mesh fixation complications in both open and laparoscopic inguinal hernia treatment. Its features eliminate possible fixation devices complications with no increase in recurrence rate²¹.

Due to absorption of 40% of the mesh weight, the sensation of foreign body decrease²².

According to the guidelines of the European Hernia Society, the fixation devices like tacks, sutures and staples must be used with caution because these cause local trauma that may result in nerve injury and chronic pain²³.

Thanks to its features, the micro-grips of the ProGrip™ mesh provides an uniform atraumatic fixation on the entire surface and can decrease the recurrence rate and chronic pain²⁴. Once the micro-grips are absorbed, only the macroporous part, made of polyester, remains at the site, having strong incorporation to environment tissue.

Koch et al. reported that self-gripping mesh was not associated with an increased recurrence rate, postoperative complications or increased cost, but with an improved quality of life with low chronic pain²⁵.

An article published in 2012 sponsored by Covidien, a retrospective study on 169 patients with inguinal hernia treated laparoscopic with ProGrip™ mesh, reported that the mesh is safe and cost - effective, with a recurrence rate of 1.78% , 98.8% of patients had no or low to mild pain and less complication than traditional meshes as seen in table 1²⁶.

¹⁸ Mahmoud Abo Amra, "Outcome of Lichtenstein inguinal hernioplasty with self gripping polyester mesh", *International Journal of Multidisciplinary Research and Development* , 2017; 4(8):50-57

¹⁹ O'Dwyer PJ, Kingsnorth AN, Molloy RG, Small PK, Lammers B, Horeysek G. "Randomized clinical trial assessing impact of a lightweight or heavyweight mesh on chronic pain after inguinal hernia repair.", *Br J Surg.*, 2005; 92:166-70

²⁰ Alicia Mangram, MD, Olakunle F. Oguntodu, MD, MS, Francisco Rodriguez, MD, Roozbeh Rassadi, MD, Michael Haley, MD, Cynthia J. Shively, FNP-BC, RNFA, CNOR, James K. Dzandu, PhD, BSc, "Preperitoneal Surgery Using a Self-Adhesive Mesh for Inguinal Hernia Repair", *JSLs*, 2014; 18(4): 1-7

²¹ Koch CA, Greenlee SM, Larson DR, Harrington JR. " Randomizedprospective study of totally extraperitoneal inguinal hernia repair: fixation versus no fixation of mesh. ", *JSLs*. 2006;10:457-460

²² Covidien Internal Test Report TEX033-a. Data on File (October 2012), www.Covidien.com/Hernia

²³ Miserez M. et all, "Update with level 1 studies of the European Hernia Society guidelines on the treatment of inguinal hernia in adult patients", *Hernia*, 2014; 18: 151-163

²⁴ Mahmoud Abo Amra, "Outcome of Lichtenstein inguinal hernioplasty with self gripping polyester mesh", *International Journal of Multidisciplinary Research and Development* , 2017; 4(8):50-57

²⁵ Koch CA, Greenlee SM, Larson DR, Harrington JR. " Randomizedprospective study of totally extraperitoneal inguinal hernia repair: fixation versus no fixation of mesh. ", *JSLs*. 2006;10:457-460

²⁶ Birk, D. " Self-gripping mesh in laparoscopic inguinal hernia repair. Technique and clinical outcome of 96 operations.", *HIS* , 2012 P-1654. Covidien sponsored study; Lissidini, G , Piccini, G, et al., "No tacks, no glue, no frustration during TAPP groin hernia repair with ProGrip™ and V-Loc™ 180.", *HIS* , 2012 FP-1740

Table 1 – Postoperative complications and recurrence rate in laparoscopic inguinal hernia repair with ProGrip™

Postoperative complications	Results
Trials / Patients	3 / 130
Follow – up (months)	6.2 – 24 (mean 20.8)
Wound infection (%)	0
Seroma (%)	3.9 (0 – 6.7)
Hematoma (%)	2.1 (0 – 3.3)
Chronic pain (%)	0
Testicular problems (%)	0
Urinary retention (%)	2.3 (0 – 16.7)
Recurrence rate (%)	1.3

In a comparative randomized study that evaluates the advantages of ProGrip™ mesh, published by Kingsnorth A. et al in 2010, the preliminary results were reduced operating time low postoperative pain and improved quality of life. The conclusion was that this device makes the inguinal hernia repair simple, fast and economical²⁷.

In an article comparing self-gripping mesh and staple fixation, a prospective study on 96 patients treated laparoscopic for inguinal hernia, from which 49 patients with ProGrip™ mesh and 46 patients with mesh and staple fixation, the authors reported that the use of mesh with atraumatic fixation may be associated with reduced risk of vascular and nerve injury or chronic pain and improved quality of life. Also the procedure decrease tissue trauma and its cost are relatively low²⁸.

Another article published in 2015 that followed at least one year 91 patients with inguinal hernia treated laparoscopic with ProGrip™ mesh concluded that this type of mesh can be safely used, with no recurrence, no chronic pain and improved quality of life²⁹.

²⁷ Kingsnorth A., Nienhuijs S., Schule S., et al., “ Preliminary Results of a Comparative Randomized Study: Benefit of Self – Gripping Parietex ProGrip™ Mesh in Open Inguinal Hernia Repair”, *Hernia*, 2010; vol 14 Supplement

²⁸ Fumagalli Romario U., Puccetti F., Elmore U., Massaron S., Rosati R., “ Self-gripping mesh versus staple fixation in laparoscopic inguinal hernia repair: a prospective comparision”, *Surg. Endosc.*, 2013; 27: 1798-1802

²⁹ Bresnahan E., Bates A., Wu A., Reiner M. ans Jacob B “ The use of self – gripping (ProGrip™) mesh during laparoscopic total extraperitoneal (TEP) inguinal hernia repair: a prospective feasibility and long-term outcomes study”, *Surg. Endosc.*, 2015; 29: 2690-2696

CONCLUSIONS

Thanks to its features, ProGrip™ mesh: provide a low or no chronic pain comparing the fixation with tacks, glue or sutures³⁰; has a recurrence rate decreased or similar to other prosthetic materials; provide a good preservation of cord and nerve structures³¹; is faster than other fixation devices³²; is easy to applied; reduce the costs associated with other fixation devices, pain therapy and operation time³³.

The use of ProGrip™ self-gripping mesh in inguinal hernia repair, both open and laparoscopic technique, is rapid, safe, simple and cost-effective, providing low or no recurrence, low or no chronic pain and improved quality of life³⁴.

³⁰ Birk, D. "Self-gripping mesh in laparoscopic inguinal hernia repair. Technique and clinical outcome of 96 operations.", *HIS*, 2012 P-1654. Covidien sponsored study; Laxa, B, Jacob, B., "An ongoing prospective study evaluating self-gripping mesh (Parietex ProGrip™) without additional fixation during laparoscopic total extraperitoneal (TEP) inguinal hernia repair: initial analysis.", *HIS*, 2012 P1620. Covidien sponsored study

³¹ Kolbe, T, Hollinsky, C, Walter, I, Joachim, A, R · ickel T., "Influence of a new self-gripping hernia mesh on male fertility in a rat model.", *Surgical Endoscopy*, 2010; 24: 455-461

³² Lissidini, G, Piccini, G, et al., "No tacks, no glue, no frustration during TAPP groin hernia repair with ProGrip™ and V-Loc™ 180.", *HIS*, 2012 FP-1740

³³ Edwards, C. "Self-fixating mesh is safe and feasible for laparoscopic inguinal hernia repair.", *Surgical Endoscopy and Other Interventional Techniques. Conference: 2011 Scientific Session of the Society of American Gastrointestinal and Endoscopic Surgeons, SAGES San Antonio, TX United States, (30.03.2011 – 02.04.2011)*. 25: S324

³⁴ Mahmoud Abo Amra, "Outcome of Lichtenstein inguinal hernioplasty with self gripping polyester mesh", *International Journal of Multidisciplinary Research and Development*, 2017; 4(8):50-57

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