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The Integration of Classic Cars as an Alternative Investment in Wealth Management Environments and the Possible Influence of Behavioral Finance

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Abstract

Investing in classic cars can be a supplement to traditional investments for private clients in wealth management. However, the special features of this exotic asset class have to be taken into account. In the case of an investment, risk factors such as ongoing costs, market transparency and liquidity have to be considered. In contrast, opportunities arise from potential portfolio optimization as well as of the realization of an "emotional return". General return forecasts can only be made to a limited extent. Rather, it requires an individual yield calculation, taking the circumstances and intentions of the investor into account. The Classic Car Banking Concept, which is presented in this paper, demonstrates the ability to integrate the investment in classic cars into an existing wealth management structure. Thereby, the further diversification of an investor's portfolio by adding classic cars offers an interesting earning potential in the current situation of historically low interest rates in many parts of the world. Moreover, Classic Car Banking as a segment of wealth management in general has the potential to use the conceivable emotional involvement of investors in order to intensify the relationship between clients and consultants. Nevertheless, selected concepts of behavioral finance are able to explain the downside of potentially emotional investments. Concepts such as Anchoring, the Endowment Effect, Mental Accounting and Overconfidence are related to insufficient decision making which, in the case of investments, leads to inadequate monetary returns.

Keywords: Wealth Management, Classic Cars, Behavioral Economics, Behavioral Finance

1. Introduction

The current market environment for capital investments is shaped by the persistently low interest rate environment. Against this background, it is understandable that investors of all kind, for example private investors and professionals from capital investment services, are looking for new investment opportunities with above-average returns (Sauren, 2015). Investing in classic cars thereby is an option in the area of alternative or exotic asset classes. In the meantime, this investment is no longer treated only in automotive-specific journals, but is increasingly also the subject of a scientific debate. However, the investment in the so-called "garage gold" has been considered rather isolated until now. This paper aims to provide possibilities, on how to integrate the investment in classic cars into an existing service portfolio of wealth management as a so called Classic Car Banking.

An analysis of the asset class classic cars will be provided in the following. This includes an insight on the technical terms, an overview of the market participants, the intentions of classic car acquisition as well as factors of measurable value development. On this basis, different possible types of investments in the asset class will be presented, with due regard to specific opportunities and risks. Subsequently conclusions can be drawn on how the investment in classic cars can be operationalized in an existing wealth management structure. For this purpose, a model is presented, which reflects the customers' needs around the investment in classic cars. The model implies, which need can be covered by the core competencies of wealth management and where additional consulting is needed.

II. Classic Cars as an Asset Class

The analysis of the classic car asset class is in the following limited to passenger cars. Historic motorcycles as well as historical agricultural machines are, although fundamentally also conceivable as investment objects, not the subject of the further consideration in this paper.

The recognition of a vehicle as a classic car depends on the definition. In Germany for example, the recognition is regulated by law (§ 23 Straßenverkehrs-Zulassungs-Ordnung - StVZO). According to the relevant regulation, the vehicle must be assessed by an officially recognized expert or examiner. There are four basic requirements which are regularly needed for a recognition as a classic car. The vehicle must be at least 30 years of age, the originality of all assemblies has been retained, the condition can be considered worth preserving and modifications to the vehicle have been made only to a limited extent (TÜV Süd Autoservice GmbH, 2012). In particular, the originality of a vehicle as well as the condition worthy of preservation are the keys to a future increase in value. The fulfillment of the criteria mentioned before, leads to road traffic law recognition as a classic car in Germany. The latter allows approval as a historic vehicle (H-approval with specific license plate). There are some advantages and possibilities associated with this, such as a flat-rate motor vehicle tax or the unrestricted travel in environmental zones (GTÜ Gesellschaft für technische Überwachung mbH, 2016). In addition, this classification allows insurance in special vintage tariffs with extended insurance benefits (Anastassiou, 2013).

The possible intentions for investing in a vintage car are almost always individual, but the majority of motives can be aggregated to two main intentions. On the one hand, these are emotional intentions and, on the other hand, rational expectations of a monetary return. In practice, a combination of both intentions with corresponding emphasis will often be encountered.

Literature suggests, that the investment in classic cars can be referred to as a so-called passion investment. In addition to classic cars, this asset class includes works of art, jewelry or wine (Kräussl, 2015). This list already shows the character of an emotional investment. These are haptic objects, to which a clear individual preference of the owner can be assumed regularly. For example, the owner of a classic car can experience emotionally positive moments by using the vehicle. This incorporates the realization of a so-called *emotional return*, for example by continuous caretaking of the automobile or by opposing appreciation when participating in classic car events (Merten, 2015).

The second purpose of classic car acquisition is the intention of yielding. As early as 2012, 23.0 % of classic car owners in Germany viewed their vehicle primarily as an investment (bbg Betriebsberatungs GmbH, 2012). Particularly in the years following the financial crisis, investment flows have increasingly shifted to tangible assets and thus to the classic car market as well. Private investors apparently perceive the investment in classic cars as a way out of low interest rates and inflationary fear (Euler, 2014). Moreover, a growing popularity of the investment class with yield investors is encouraged by high-profile auctions with record sums (Jahnstone, 2014).

In terms of the performance of classic cars, there are special features to be considered that distinguish this asset class from almost all others. In the following, the three significant factors (extreme) rarity, condition and origin of the vehicle will be further examined (Barzilay, 2009).

Initially, classic cars are a type of commodity which are not reproduced in its specification under usual circumstances. Nevertheless, there are differences in the impact of this fact. As in all markets, supply and demand determine the price. Vehicles that have been produced in larger quantities and have a correspondingly large supply will tend to participate less in value increases. When choosing an investment object, one should therefore pay attention to the rarity of a vehicle. Extremely rare vehicles are considered those, which have been produced only in small series or even as individual pieces. Although enormous increases in value are possible here, the highly limited supply of spare parts should also be considered (Barzilay, 2009).

The second factor of performance considers the condition of the vehicle. It should be noted that, for example by restoring, significant increases in value can be observed. This is a decisive unique feature of the asset class classic cars. By the owners' own intervention, a significant increase in value is possible. This is almost impossible with traditional investments, such as stocks or bonds, and is also limited in other exotic investments such as art and wine (Thaddeus, 2012).

A third factor that can significantly add value to a vehicle is its history. In addition to the performance of a single vehicle, this can sometimes also impact complete series or brands. For example, a Porsche 911 S from 1971 was sold at an auction

in 2011 at \$ 1,375,000, which was about six to eight times the value of comparable vehicles. Obviously, the cause was a prominent previous owner: Steve McQueen (Rotz, 2012). Moreover, the performance of a brand in terms on value-adding can be influenced by the use of the vehicles in films as well as by celebrity use (Kräussl, 2015a). Furthermore, the so-called racing history occupies a special position with regard to the value-adding potential. For example, vehicles of the Ferrari brand that are used in motorsport events such as the Le Mans race are particularly expensive (Brückner, 2013).

Only a few years ago, mainly technically experienced people, who could do repairs themselves, owned vintage cars. However, the group of those who mainly enjoy the possession and the movement of the vehicle, but have no technical expertise, grows (Trockner, 2011). Besides the purely quantitative expansion of the market for classic cars, also a broadening of interests as far as the buyers are concerned can be observed. Based on the various investment opportunities, the classic car market will be examined in more detail below.

Basically, there are three ways to acquire a classic car. A survey among classic car owners in 2012 revealed that the majority of respondents purchased their car in a private sale. Thereby, upfront research on the internet also played a key role. In total, more than 25 % of the vehicles were finally purchased on the Internet (bbg Betriebsberatungs GmbH, 2012). Moreover, for higher-priced vehicles, the purchase at auctions was observable (Phillip, 2014).

Another possibility of classic car acquisition is the purchase from commercial classic car dealers. Here, a distinction must be made between independent dealers and those of the original manufacturers. Independent classic car dealers sell vehicles of various brands. However, in recent years, manufacturers are increasingly utilizing the potential of their own historic vehicles. For example, Mercedes-Benz maintains its own classic car dealership, which is affiliated with the Mercedes-Benz Museum (Mercedes-Benz Museum GmbH, 2016). Furthermore, BMW offers access to its Classic Parts Shop over the Internet, through which almost all replacement parts can be ordered for historic BMW vehicles. Moreover, purchase requests for classic BMW cars can be made there (BMW AG, 2016). Finally, the Porsche Classic Shop has a similar offer regarding spare parts and also offers factory restorations (Dr. Ing. h.c. Porsche AG, 2016). The described activities of car dealers show, how profitable the classic car business really is.

III. Investing in Classic Cars

Investing in classic Cars comes with special characteristics of this investment class, that have to be taken into account. Historic vehicles are almost unique and hard to replace. Also, the pricing is, apart from auctions for high-priced vehicles, mostly non-transparent (Firlus, 2011). Comparative values can sometimes not be determined consistently as the market for a number of vehicles is subject to intrinsic illiquidity (Lipinski, 2014). In the following, investment forms in the classic car market are described under the outlined conditions as well as with regard to the potential chances and risks.

Generally, direct investments in classic cars and the derivative investments via funds or certificates can be differentiated. As with almost all investment decisions, the factors risk, return and liquidity should be weighted according to the investors' preferences (Benicke, 2006). In the following, it is shown that due to the specificity of the asset class classic cars, there are differences in the two investment forms mentioned beforehand. As it will be shown, seeking the advice of experts and establishing a Classic Car Banking in an existing wealth management structure can be gainful for both, customers and consultants.

The direct investment in classic cars offers not only the chance of a quantifiable return, for example a sales revenue. Considerably more, the investor has the opportunity to realize an emotional return. Only very few asset classes have this feature. Literature suggests, in addition to classic car investments the investment in art in this context (González / Weis, 2000). However, the direct investment in classic cars does not only address a visual-aesthetic level of perception. In the use of the historic vehicle, enjoyment can be perceived in all senses. If the investor has a corresponding affinity, the individual emotional return can therefore play a central role in the investment decision (Merten, 2009).

In addition to the factors emotional return and the influenceability of value described before, tax benefits can arise from the direct investment in classic cars, depending on the individual legal position. In Germany for example, in addition to the reduced motor vehicle tax, the possibility of tax-free profits from private sale transactions after a one-year holding period has to be considered. The direct investment can subsequently lead to a tax optimization for the overall portfolio of private investors (§ 23 (1) S. 1 Nr. 2 S. 1 read in conjunction with S. 3 Einkommensteuergesetz – EStG)

Due to the already outlined growing attractiveness of the asset class classic cars and the current market environment, several providers have tried to come up with derivative investments in this asset class, such as funds and certificates. The basic idea lies in the diversification in a portfolio of multiple classic cars, in which the investor participates from profits of resale. However, not all providers could survive on the market. One example is the Classic Cars GmbH & Co. KG Fonds Nr. 1 KG, which predicted a payout of 210 % after eleven and a half years but had to conclude operations after about three years (Classic Dream Lease GmbH & Co. Verwaltungs KG, 2010 & Justizministerium NRW, 2014).

A still active provider in the market of indirect investments in the field of classic cars is the Custozza Family Office. This Zurich-based company offers two forms of participation under the umbrella of The Classic Car Fund for participation in the vintage car market. The two variants differ mainly in the minimum investment. In the product version Class P, an investment is already possible from 10,000 Euros upwards, whereas in Class I only from 200,000 Euros upwards. According to the Family Office, individual vehicles were sold with more than 25 % profit after just more than a few months period (Custozza Family Office Ltd., 2016). Noteworthy about this fund is the legal construction. The Classic Car Fund has been formed by The Classic Car Fund Limited, an investment company registered on the island state of Saint Vincent and the Grenadines (The Classic Car Fund Ltd., 2012).

When examining opportunities and risks of the classic car class asset class, it is expedient to take the already discussed intentions of the acquirers of classic cars into account. For example, investors who are more focused on emotional returns or on enjoyment (A) are less likely to highly appreciate a selling price that is rising as fast as possible than mainly yield-oriented investors (B). Thus, for example, a low selling price (market price risk) for (B) would be perceived as a much greater risk than for (A). In a certain sense, the investor's intentions determine the risk assessment as well as the expected returns on a case-by-case basis.

The potential monetary return of a classic car greatly depends on the individual vehicle. However, on an aggregated level, classic cars indices are available. One example is the DOX – Deutscher Oldtimer Index, which was developed by the German Association of the Automotive Industry in 1999. The DOX tracks and aggregates the performance of 88 vehicles, just as the Dow Jones tracks the performance of the 30 largest corporations in the US. The DOX index was set at 1000 points in the year of its implementation.

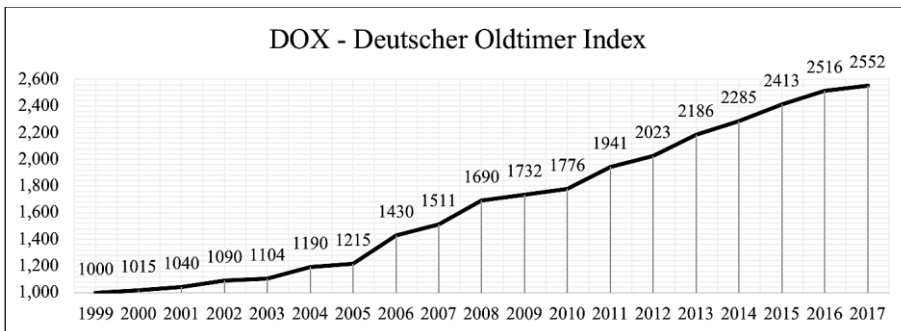


Figure 1 Deutscher Oldtimerindex (DOX) – logarithmic. Figure by author, data from (Verband der Automobilindustrie e.V., 2016).

The optical analysis of the DOX shows a permanently positive development, a feature which cannot be observed in almost any other index. The economic and financial crisis did not dampen the development either. Rather, it turns out that the curve becomes steeper from 2005 on and continues to increase even more.

In addition to the isolated consideration of the classic car as an investment object, the question of portfolio optimization arises in connection with the expected return of the asset class classic cars. In an analysis by Daxhammer and Klein, the correlation between the DOX and the DAX (Deutscher Aktienindex) revealed almost no correlation between the both indices ($r = -0.02$). In the study, this result was included in the further calculation to develop an optimal portfolio. One of the key findings is, that classic cars are overall able to reduce the risk of a given portfolio (Daxhammer & Klein, 2016).

However, the assessment and interpretation of the DOX should be viewed critically. Firstly, the underlying vehicle prices are average values. Nonetheless, individual price deviations are possible in significant magnitudes. Secondly, only observable transactions are included in the evaluation, but many purchases are made privately. A third point of criticism lies in the fact that ongoing costs of classic car owners such as wearing parts, repairs and storage are not taken into account (Brückner, 2010). Even though these costs might consume a significant portion of the return. Finally, the already described emotional return is almost unquantifiable and therefore does not enter the performance of the DOX. Consequently, it can be assumed that there may be significant deviations in terms of return as well as the risk minimizing effect of the classic car investment depending on each individual case.

As already described, the classic car asset class has a number of special features compared to conventional asset classes. In the following, the three specific risks: maintenance costs, market (in)transparency and liquidity will be examined more closely.

The running costs for the preservation of the vehicle consist of various components. In addition to predictable expenses for taxes, insurance or storage, which are necessary to keep the vehicle in working order and thus stable in value, unpredictable costs are a crucial risk. This includes expenses for spare and wear parts as well as expenditures for damages caused by accidents. Due to the age of the vehicles, the search for adequate spare parts is a challenge that in itself binds time and financial resources. The relationship between yield opportunity and maintenance costs is cited in the literature as a central area of tension for this asset class. Since the maintenance costs for higher-priced vehicles are lower in percentage terms, it is noted that, especially in low-cost vehicle categories up to 25,000 Euros, the potential return is usually already eroded by the maintenance costs (Daxhammer & Klein, 2015). Real chances of a positive net yield are mainly attributed to vehicles from 100,000 Euros upwards (Bender & Schmidt, 2010).

The market transparency of the classic car market is limited and can lead to a vehicle being acquired at a significantly higher price than a short or medium-term resale would cash out. Moreover, due to the increased activity of speculators on the classic car market, critical deviations for sustainable price formations are observable (Bilanz Deutschland Wirtschaftsmagazin, 2014).

In contrast to the limited ability to already achieve a return with a historic vehicle during the holding period, ultimately only a sale offers the opportunity to realize profit. However, since the investments described are necessary during the holding period to ensure value preservation, this may result in a liquidity risk for the investor. This is worsened if the corresponding market is also characterized by illiquidity and therefore no short sales are possible (Brückner, 2010).

IV. Classic Car Banking in Wealth Management Environments

There are already first providers of wealth management services in the field of classic cars. However, the topic tends to be considered isolated and focuses primarily on the provision of services to a corresponding customer request for an above-average return (UniCredit Bank AG, 2016). However, when investing in a historic vehicle, in addition to an ex ante hard-to-estimate monetary return, the focus is on the emotional return. This circumstance opens up opportunities for wealth management, which is strongly influenced by personal interactions with the customer. Therefore, the approach outlined in the following builds up on the core competence of wealth management: an intensive and holistic relationship management.

The investment strategy for clients in wealth management shows a high degree of individuality. As part of a holistic consultation, tailor-made solutions are developed for the customer (Rizk-Antoniou, 2002). In this context, the question of optimizing the portfolio by adding the exotic asset class classic cars may arise. Given certain parameters such as risk appetite, disposable cash, etc., the investment on the market for classic cars can take place. Like any decision in an investment strategy, the investment in classic cars should be regularly reviewed to ultimately ensure customer satisfaction as a critical factor of success in the advisory relationship between customer and wealth management consultant.



Figure 2 Process of consulting in wealth management with emotional return. Figure by author.

The integration of classic car banking in an existing wealth management structure can be described as a three-step approach. The first level is the core competency of wealth management. This core is formed by classic car-related banking services as well as non-bank classic car related services that can be operated as a brokerage business. The core competence of wealth management focuses on the constant portfolio optimization for clients through an intensive relationship management (Häger & Raffelsberger, 2005). Moreover, high-quality and exclusive events for customers round off the core competences of wealth management.

Around the described core competencies of wealth management, a comprehensive solution package for the classic car investment should be offered as classic car related banking services. These include offers for financing or leasing historic vehicles. The latter might be worthwhile for tax purposes in certain circumstances (Trockner, 2011). Moreover, an adequate insurance of the vehicle can be provided as a banking / insurance service by consulting experts. The value of the historic vehicle usually increases while the value of a new vehicle decreases. In order to reflect these increases in value and avoid underinsurance, regular valuations are required, which can be forwarded to an insurance company. In this area, there seems to be an even greater need for advice, as insurance coverage of historic vehicles often does not correspond with the value or condition of the vehicle adequately (bbg Betriebsberatungs GmbH, 2015).

As already mentioned above, investing in classic cars comes with additional questions that go far beyond traditional investments. Since competences for technical issues cannot be provided in wealth management or a bank generally, it makes sense to set up a network of experts. The wealth management consultants as the central and single point of contact can fall back on those experts if customers require a special service for their classic cars. The network should cover as many possible issues that could arise in the investment process. This ranges from technically-competent purchase advice to professional storage and transport through recommendations for specialist workshops and support at auctions (Kammerer, 2016). This support by experts is essential for the technical layman to create the conditions for a profitable investment.

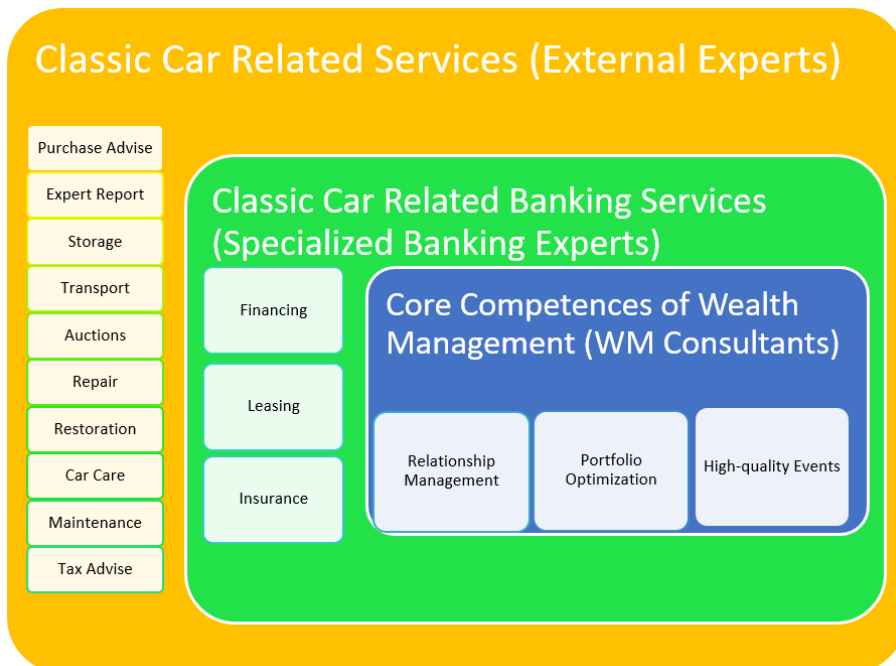


Figure 3 Classic Car Banking in an existing wealth management environment. Figure by author.

V. Behavioral Finance and Classic Cars

Behavioral finance as a subcategory of behavioral economics has been a field of distinct research over the last decades. Contrary to the neoclassic concept of Homo Oeconomicus, behavioral finance suggests, that human rationality is contradicted by cognitive biases and heuristics and therefore susceptible for irrational and inconsistent decisions (Tversky & Kahneman, 1979). As this paper already proposed, the individual emotional return plays a central role in the investment decision for classic cars. Therefore, this investment decisions are even more prone to inefficiency than other financial decisions without such an emotional component. In the following, four different concepts of behavioral finance will be presented and applied to classic car investments.

Firstly, anchoring as a concept of behavioral finance refers to the observation, that individuals exposed to any kind of information, whether it is related to the matter of decision making or not, are influenced in their decisions, simply because the exposure leads to insufficient adjustments (Tversky & Kahneman, 1974). By taking the given non-transparency of the classic car market into account, it is likely, that individuals who are about to purchase a vehicle are highly influenced by the sellers offers during negotiations, just because the market does not provide a price assessment for every car in every condition. Subsequently, higher and even out of the market prices might occur, which again makes it harder for investors to benefit financially from the investment.

Secondly, the endowment effect describes the tendency of people to ascribe value to an object mainly because they own it and not because of its special features or actual worth (Kahneman et. al. 1990). In terms of classic cars, this could be especially unfavorable when it comes to reselling the classic car. This particular bias corresponds with the classic car market attribution to be illiquid. Sellers might have a hard time to actually sell their vehicles for a (perceived) convenient price after all the time they owned it and spend additional money for maintenance and other additional costs.

Thirdly, people have a variety of mental accounts that they use to organize, evaluate and keep track of financial issues. The human tendency is, to apply different rules on different mental accounts, whereas costs in the same account are considered less upsetting (Thaler, 1985). Subsequently, this concept of behavioral finance might also explain why people attribute to much value to their classic car and ignore the fact that besides all those follow-up investments, that were necessary to obtain the value of the vehicle, also some follow-up investments clearly have to be considered as sunk costs. The latter most likely won't be recouped in case of a resale. Another aspect of mental accounting in terms of an asset allocation is, that probably the emotional involvement in the classic car leads to insufficient adjustments as far as other asset classes in a given portfolio are concerned. However, this hypothesis needs to undergo further research.

Finally, overconfidence has the potential to withhold financial gain from the classic car investor. Overconfidence actually consist of the three subcategories overprecision, overplacement and overestimation (Moore & Healy, 2008). In terms of classic car investments, overplacement seems to be one of the most obvious biases that might explain the negative interference of the emotional commitment of an investor with the ambition to realize profit. One example would be an investor, who does not follow the consultants advise to sell the vehicle at a certain point in time, because the investor thinks he knows better when the right time has come. Moreover, a situation is conceivable in which the investor is sure that there is the possibility of an outstanding good purchase ahead, whereas such an assessment can't be made properly due to the non-transparent market and the market illiquidity. If the investor still buys the car, the price payed might be way out of the market.

VI. Conclusion and Outlook

An end to the low-interest rate situation in Europe and beyond is currently only partially in sight and even in the case of slightly rising interest rates, the question of alternative investment options will continue. Against this background, investing in classic cars represents an alternative investment opportunity for wealth management clients. However, the investor and the consultant should be aware that this can be a highly emotional investment. The latter can give the investor a lot of pleasure and, at a later stage, a sales profit after deduction of all costs. The consultant in contrast has the opportunity to advise clients on a completely new topic and with it, in a different emotional intensity.

However, the investment is not recommended for individuals who have limited loss readiness or who rely on liquidity from a sale in the short and medium term. Ultimately, in the worst case, the emotional return realized over a period of time may be the only return left to the investor. In order to be able to successfully accompany an investment in classic cars, expert

knowledge is required which the wealth management consultant usually cannot provide in full. Therefore, the involvement of more qualified professionals and experts is required.

Furthermore, due to the possibly highly emotional matter of classic cars, the investor is prone to make common investment mistakes that are known in behavioral finance research. In order to avoid these mistakes, the wealth management consultant should be aware of them and provide objective consulting, even if this might be hard sometimes. The latter can apply to both, the investor and the consultant. The investor might be too attached to the emotional return of the classic car, whereas the consultant might fear to argue controversial with a valued customer.

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Government's Deficiency of Communication and the Impact on Stakeholder's (Case of Yellow Waste WtE in Albania)

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Abstract

This study discusses how waste management and especially Waste-to-Energy (WtE) is an unfamiliar and non-accepted treatment process to citizens and key actors in Albania. The research aim to find out how the government at all levels have approached the communication of this sector, with the scope to increase awareness, disseminate information and build trust among stakeholders and mainly to citizens as the key stakeholder as the government decisions affect their daily lives. The research will intention to identify, explore and analyse the standings and reactions of key stakeholders in WtE process and to witness the impact of government communication policies and practices in the stakeholder's opposes, actions and resistance. Main challenges of central and local governmental communication on raising awareness and acceptance on WtE and stakeholders' participation and social movements will be identified under the loop of some engaged theories on this paper

Keywords: Waste-To-Energy, government communication, stakeholders, misperception, resistance, social movements, waste management, Albania

Introduction

Environment is not only the complex interrelating reality surrounding us; it includes us (Caldwell 1963). Environment in Albania have been considered for many decades (during and after the communist regime) as the "property of nobody". But during the recent decade citizens, media and other stakeholders have begun to understand its real importance. As researches and articles report municipal solid waste management (MSWM) has become a challenging environmental problem. Worldwide in both urban and rural areas have come across problems with disposal and treatment facilities that are inadequate to deal with the rapid increasing volume of solid waste.

Waste management is considered an important industrial sector in developed countries in Europe, while in Albania, yet on the stage of an emerging economy, it can't be considered an industrial sector yet. Thus far in Albania waste management is simply about waste disposal, and not yet waste is documented to be engaged as a valuable resource and be used effectively to preserve natural resources. The country is experiencing during the last 2 decades a critical situation with the waste management. The National Strategy of Waste Management (NSWM) and National Plan were adopted and approved by law in 2011. Central government is claiming that the total costs of integrated management of waste are around 200 million euro, which means a total clean-up of the environment, while the rehabilitation of the environmental hotspots in country around 500 million euro. Recently in country, government at all levels is facing the objections from the community and other actors involved, due to concerns about waste management practices proposed, specifically landfills and WtE plants.

(Galnoor 1979) proposes that secrecy interferes with the "people's right to know" and this seem to be an everlasting fight in the last 2 decades in country. Coming from a 45 year communist regime, citizens during 1990- 2000 generally did not showed interest on their right to know or be involved on policy making and decision. But after 2000, living behind a decade of transition, and where in the country were present various private media outlets, such as journals, radios and televisions,

citizens begun to change their state of mind and became eager to have and share information that affected directly their daily lives.

Nowadays in the e-era, the awareness on participation and the right to know, resistance and social movements has enormously increased. ITU¹ (2016) reports that Albania have the most significant progress in Internet uptake and in the growth of households with a computer, the latter having risen from just 4.9% in 2006 to 25.7% in 2015. The fixed-broadband penetration rate for Albania increased slightly from 6.5% in 2014 to 7.6% in 2015. While 62.84% of the population is reported as internet users for December 2017².

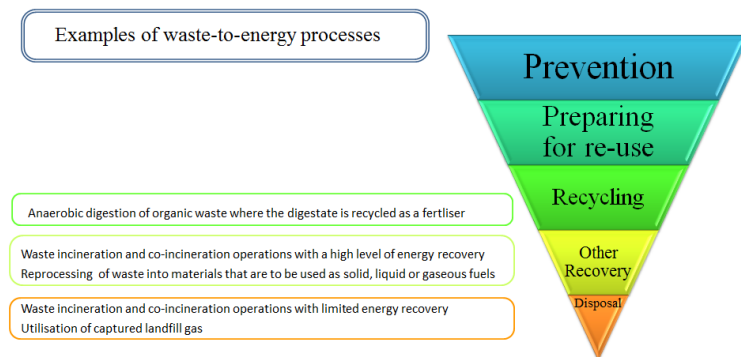
This study will aim to consider two perspectives E-waste as an economical potential and the opposing of the citizens to this treatment. The research will explore and try to find out if the objections and resistance of citizens and other stakeholders comes from low public awareness, poor stakeholder's participation or the governance "arrogance" to provide transparency and inclusiveness.

European affinities on waste management

"The recovery of energy from waste in the EU supports the objectives of the circular economy action plan and is firmly guided by the EU waste hierarchy" European Commission, 2017³

On their research Gawlik et al. (2018) suggest that Europe has an important role in the mitigation of the threats to the planet. Each city and municipality must recognize its own input to the harms even as assuming an accountability to encourage a more sustainable global environment. European Union perspective is positioning itself as *the global front-runner* in waste management⁴. The most recent developments and commitments of EU are aiming, that waste be considered as a valuable source by states. The waste management sector pursue a generally accepted hierarchy in Europe where prevention is positioned at the top as the most favored treatment and landfill disposal at the bottom as the less preferred process (see Figure 1, below). This hierarchy is advocated by the European Commission, as well as many governments in the Western Balkans, including Albania that has adapted by 2011 in the National Strategy of Waste Management

Figure 1: Waste Management Hierarchy



Source: European Commission⁵

¹ www.itu.int

² <https://www.internetworldstats.com/europa2.htm>. Accessed April 2018

³ <http://ec.europa.eu/environment/waste/waste-to-energy.pdf>

⁴ European Commission release February 2018

⁵ <http://ec.europa.eu/environment/waste/waste-to-energy.pdf>

In the European legislation¹ the phrasing is:

- a) The prevention of waste;
- b) Preparing for re-use;
- c) Recycling;
- d) Other recovery, for example by energy recovery; and
- e) Disposal

The European Commission adopted a striving Circular Economy Package (2015), aiming to revise the legislative proposals on waste and setting ambitious key actions, to reach the boosting of global competitiveness, fostering sustainable economic growth and generate new jobs. As per this package, the EU-28 countries are taking measurements as to ban landfilling of separately collected waste; reduce landfill to 10% of municipal waste by 2030; or to increase recycling of municipal waste to +65% by 2030. The "three R's" of waste management (Reduce, Re-use, and Recycle) is considered as main objective for creating a sustainable life. The Eurostat statistics show that top leading countries in Europe for recycling are also the ones with higher incineration with energy recovery. European countries show progress and a serious commitment of states for the wellbeing of their citizens and statistics offer a clear picture on this serious engagement. Eurostat (2018) reports that comparing year 2016 vs year 2000 municipal waste has decreased by 60% in land filling, has increased by 93% in incineration, and increased by 168% in recycling.

There are reported around 2000 WTE plants at global level. 431 WTE plants are installed in Europe and +30 WTE plants are under construction (Eurostat, 2015). Germany attributes the greenhouse gas reducing effects (a key component of climate change effects) to recycling and the harvesting of energy from waste². Although the strategies and means varied, the goals of waste management proved to be resistant to change over time.

Waste Management in Albania; simply waste disposal

Waste management in country is not a recent concept, but to the attention and concern of public and media have come only recently. The central government is in charge for the policies and strategies of WM at national level, while the 61 Municipalities in country, are obliged by law to manage the waste. The National Strategy and National Plan on Waste Management were both approved in 2011. This strategic documents cover a 15 years period 2010-2025, and address the economic, environmental, social, legal and organizational challenges in establishing a modern waste sustainable management system. Some of the main goals set in these documents clearly show that country is in poor levels, to reach targets and objectives set. Some of the main goals as following:

- By 2015 separate collections must be set up for at least; paper, metal, plastic and glass; 2017 situation: the findings suggest that citizens do not separate the waste at home so far;
- By 2020 to stop growth of municipal waste produced, 2017 situation: there is not identified so far, any action plan or roadmap how the municipalities will prevent this;
- By 2015 to achieve 25% recycling and composting rate of municipal waste (by 2020: 55%); 2017 situation - INSTAT reports that 25.3% was recycled by 2015 and an meaningful drop in 17.2% of recycling by 2016, showing that there is not a sustainability in the system or policies followed.
- Recover energy from 15% of municipal waste; 2017 situation - INSTAT reports that only 0.69% is recovered by 2016 (all household wasting), the findings of this study will show that the actual government actions might reach and exceed target by 2025.

¹ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste, Article 4 Waste Hierarchy

² Federal Ministry for Environment, Nature Conservation and Nuclear Safety 2016

https://www.bmu.de/fileadmin/Daten_BMU/Pods/Broschueren/abfallwirtschaft_2016_en_bf.pdf

- Reduce landfilling of municipal waste from around present 90% to around 30% ; 2017 situation - INSTAT reports that 77.7% of the waste is disposed in landfills in 2016, whereas European Commission in the Albania 2018 Report, recommends that over 300 non-compliant landfills need to close.

The reports (Europe Commission, World Bank, GIZ Office Albania) recommend that waste management in Albania is at poor levels and the institutional capacity to manage waste still remains weak at all levels; while waste disposal (landfilling) remains largely noncompliant with environmental protection standards. Recycling in country is reported as a largely informal sector. MSW uncontrolled dumpsites cause serious environmental impact on human health firstly, because of leachate formation (the polluted effect of which lasts up to 300 years in MSW landfills [11], and, secondly, because of the biogas generated during decomposition of organic waste (Alcani & Dori 2013). According to the Albanian Association of Recycling Industry (AARI) there are around 60 recycling companies, which collect and process different types of waste; metal scrap, paper, plastic, textiles; electronics and used tires. It is estimated that there are around 35,000 individual collectors in the entire country, but 30,000 of these waste pickers work in black (informal). Most of waste pickers is described to come from Roma and Egypt communities that live in country (UNDP Albania) and there are children under 14 used as a work force. The informal individual collectors play a significant role for recycling waste collection as the main source for recycling industry in country. GIZ (2017) reports that these people tend to be unequipped, untrained, and without formal agreements with the buyers. The individual collectors and informal collection businesses are serious subject to risks to human health and accidents due to poor working conditions and seem vulnerable to market failure or price drops.

The Republic of Albania Constitution present that the republic must maintain a healthy and ecologically suitable environment for the present and future generations. Natural resources are to be rationally exploited consistent with the sustainable development principle.

While INSTAT¹ reports that Albanians pay around 300 million euros, as 2.77% of GDP, in the format of environmental taxes, yet the country is reported, as the most contaminated from urban waste and with the worst waste management system in the old continent (Reporter.al)². In EU-28 the environmental taxes reach an average 2.4% of GDP of states³.

World Bank (2016) recognizes that improving solid waste management, especially in the rapidly growing cities of low income countries, is becoming a more and more urgent issue. GIZ Albania (2017) identifies that even though there are no official data (statistical data), a major part of collection points run informally as well, and some of them are part of the collection networks controlled by recycling companies. Yet, the informal sector plays a significant role in waste management, especially through informal waste collection and recycling of recycled waste. The International Solid Waste Association - ISWA (2012) reports that in Albania it is recognized that very limited recycling takes place, but as no accurate data exists the actual amount is unknown.

While education and raise awareness is one of the 4 main pillars of the NSWM of Albania, yet they are reported to be at poor levels. 95% of Q1 respondents in this study consider waste management at poor level and 90% of Q1 perceive waste management as the process of throw waste in bin and be collected by the Municipality. 100% of Q1 responded they awareness to waste management process is poor or very poor. 100% of Q1 acknowledged that never not in a single case separated the waste at their home, while 45% of them responded that in outdoor areas (roads, commercial centers, public spaces they accurate to through waste as per the indicated bins). 55% of Q1 respondents acknowledged that do not understand what the recycling process is. 100% of Q1 were well educated 100% had a bachelor degree, 55% of them were holding a master degree, 100% living in urban area of capital city, Tirana.

Empowering recycling from the separate waste at home, Albania is reported to have failed up to date, but studies suggest that people are motivated to recycle by pressure that they receive from the surrounding environment, family and friends

¹ The Institute of Statistics, Republic of Albania, Data for 2017 year http://www.instat.gov.al/media/1444/taksat_e_mjedisit_2008-2015.pdf

² http://www.instat.gov.al/media/1444/taksat_e_mjedisit_2008-2015.pdf

³ http://ec.europa.eu/eurostat/statistics-explained/index.php/Environmental_tax_statistics

(Bilz and Nadler, 2014) and the more people see recycling as effective, the more likely they are to participate (Bezzina and Dimech, 2011).

Table 1: The recycling industry in Albania

Year	No of companies registered in AARI	Workers	Capacity of production (Ton/month)	Value of market million / €
2015	38	2,073	41,540 ¹	243.2

(Source: The Albanian Association of Recycling Industry-AARI)

The capacity of these companies is around 498,480 ton/year, which is considered to be exhausting to treat all recyclable generated waste in country, if theoretically we will suppose that it will be realized in a very high percentage

INSTAT (2016) reports that in Albania are recycled around 224,115 ton/year², or 17 % of the urban solid waste (including non urban waste which accompany the SMW). As AARI claims for the lack of the raw material, this industry has engaged only 26.8 % of the production capacity or 133,592 ton/year. Some of the companies are reported to have reduced their size capacity, some of them to be closed and others to move in other countries in region.

Table 2: Comparative data on recycling, Republic of Albania

Year	Source	Recycled waste (ton/year)	% versus the total os urban solid waste
2016	INSTAT	224,592	17%
2016	AARI	133,592	10%

Yellow waste in the emerging economy of Albania

Waste is a complex issue and WtE or yellow waste is yet a non-wide accepted process. Yet the global WtE market is forecasted to grow 37.64 billion Usd by 2020, up from 25.3 billion Usd in 2013. Brunner et al. (2015) reports in his study that in modern countries, energy in MSW and other wastes amounts to around 5% of the total energy demand.

The most common form of recovering energy from waste or Waste-To-Energy (WtE) is incineration. Trash is burned, creating steam to rotate turbines and provide electricity and heating. From the reviewed literature, it is clear that WtE in developed countries and specifically in Europe have been developed to a large scale. However, not all environmental issues have been dealt with. The most important issue in the global knowledge system is that these technologies are privatized and, even between developed countries, information technologies is not shared in the interest of environmental problems or public health worries generated by inefficient SWM systems.

In developing countries and mostly low and middle low economies the scenario is offered worse. Collection, transportation and disposal of solid waste are the current challenges. Whereas developing countries produce environmental goods for free, developed countries produce knowledge which is put up for sale to both developed and developing countries. Technologies of WtE-s in developing countries need to be implemented in order to maximize the environmental goods in the world, reduce poverty and increase energy production from waste. In Albania as researchers (Diego Moya et al.) (2017) report that in the context of developing countries, there is a lack of the use of these techniques. IFC (2011) suggests WtE can be a feasible component of Integrated Solid Waste Management programs in large cities, where space for landfills may be limited and the choice of location may be politically complicated. Studies propose that a WtE facility can also act as a lack of encouragement to other, more economically and environmentally sound, waste disposal options. Moreover,

¹ Duke përjashtuar impiantet për procesimin e drurit me kapacitet rreth 8000 ton/muaj

² INSTAT, Urban Solid Waste in Albania; Tirane, 21 September 2017

municipal waste in Eastern Europe and Albania is typically moist, due to a high proportion of biodegradable organics and is, therefore, barely autogenic (i.e., with a sufficiently high heating value to burn without a supplementary source). The reports show that in Albania at national level 47.36% of SMW are organic waste¹

Despite these inherent limitations, however, researchers and practices suggest that WtE may have an important role to play in waste management in major contributions in Eastern Europe in the future and they appeals much interest in view of possibilities to minimize landfilling need and to convert waste into a resource.

Researchers propose that since the willingness to pay for waste management ranges between 0.2% and 0.4% of GDP (Brunner and Fellner, 2007), and incineration costs are around 100 US\$ per ton of MSW, WtE it is out of the reach of countries with a per capita GDP of 300–3000 US\$. Albania for 2017 have a forecast per capita GDP of USD 4,470.5 by International Monetary Fund². Even though energy recovery from waste have been part of NSWM Albania since 2011, it have not been experienced up to 2017. The first WtE Plant started to operate in Albania from April 2017 in Elbasan District. The WtE plant of Elbasan District recover waste to energy and produce energy for heating, electric power and industrial steam.

In country has lack of knowledge and expertise for such treatment processes in technologies and engineering construction, the WtE plant of Elbasan was managed and supervised by western countries experts, whom also lead the managing process of the facility.

Table 3: Main indicators in districts of WtE plants, Albania

Districts	Population	Urban Waste generated 2016 /ton	WtE capacity ton/day	Type of Contract	Actual Status
Elbasan	287,606	105,834	120-140	PPP - concession agreement	At Work: April 2017
Fier	305,108	162,564	180-200	PPP - concession agreement	Under construction
Tirana	842,981	509,103	550-800	Private Investment - concession agreement	Under procedures, contract signed August 2017

Source: INSTAT, ATRAKO

While WtE is a reality in country; strong opposes have come for this treatment process from different stakeholders, claiming the government hidden agenda. In Albania the import of waste, including the green waste list of EU, is prohibited by law (September 2013). Civil society and academics claim that the capacities of these WtE plants are larger than the waste generated (even though data offer a different interpretation) and they calculate that these 3 plants are projected to treat 44% of the waste at national level, which will limit and not encourage the recycling in country. Given this fact they claim that the government is tending to allow the import of waste, to “feed” these facilities with raw material. Wiedemann and Femers (1993) propose that the hidden agenda of the government can create conflict. In an effort to appease the general public without really including public interest groups in a evocative way, bureaucrats may offer citizens a token role in the decision-making process to give the appearance of public participation. WtE in Albania is identified in this study to be an unfamiliar concept to media and citizens up to 201. Journalists would not clearly identify the difference between disposal and recovery, while acknowledge that they have faced the e-waste concept during the procedures for WtE plants of Elbasan. 100% of Q1 respond that the 1st time they heard about WtE is only in 2015. In Albania there are not identified local experts in WtE segment, as part of the waste management hierarchy and international expertise is demanded.

Government perspective on yellow waste – outside the framework of papers

¹ INPAEL & Co-PLAN’s Survey, in the framework of National Waste Management Plan, 2009

² <https://www.imf.org/external/pubs/ft/weo/2016/02/weodata/index.aspx>

Countries are taking commitment and actions for the wellbeing of their citizens. Albania and around 200 countries signed Paris Agreement, COP21 and have committed to Agenda 2030 and the Sustainable Development Goals (SDGs). Humanity's entire life support system relies on well-being of environment in 360 degrees. For the past thirty years waste and its management has been in the center of EU environmental policy and the legislation and directives have changed dramatically and the green economy is in the heart of the sustainable economic development. As ISWA suggests waste authorities in developing countries seek know-how on the potential to implement WtE profitably. The authorities often seem to face many confusing and sometimes misleading information about technologies. Boudewijn, Bob (2015) suggests that for countries with emerging economies on recovery stage of waste hierarchy in WtE's should consider it as a strategic option missing business case and expertise, even though there are obstacles as air pollution control. In Albania the environmentalists in their resistance and objection on WtE treatment have identified the missing methods of government at all levels for the control of the air pollution from these plants, and consider this a key limitation to make WtE process trustable for public. Diego et al. (2017) suggested that these technologies in developing countries need to be implemented in order to maximize the environmental goods in the world, reduce poverty and increase energy production from waste. On the other hand studies report that states should consider that if incineration is not cost competitive, market penetration will be difficult and this is presented as a challenge for emerging economies (Brunner 2015), as energy plants propose high costs high costs.

Caldwell (1963) identifies the concern for the environment is the business of almost no one in our public life. "In Albania during the last decades the environment was considered as the less important issue for the public opinion, behaving with nature and what surrounds us, as it is the property of nobody, meantime we should be aware that environment it is our common treasure and be the priority of a society" Lefter, Koka, former Minister of Environment 2014.¹

The NSWM and NPSM documents (2010-2025) are in a process of revising (since October 2017), by central government, as the institutional efforts to find the right economic instruments to promote recycling and prevent waste generation remain yet limited and are reported to have failed. Albanian central government have not adapted yet a tool to forecast waste production scenarios in years, which would help to predict waste, as an economic potential and also a clear picture of WtE facility's needs. Local government as directly in charge for SWM is facing an acute situation on the sector and citizens complain on merely get this service. As World Bank suggest for most low- and middle-income countries, waste collection rates are low and formal service does not extend to all communities. In Albania, waste management tariff is included in the invoice of the drinkable water, therefore local government claim that they can't offer quality and service, if citizens are not paying. As per the data of ERRU (Albanian Water Regulatory Authority) (2018) at the national level the cashing rate is showing decreasing. "Water with no incomes" remains yet at high rates with 65% by 2017.²

Experiences in EU states prove that managing waste properly is essential for building sustainable and livable cities. Effective waste management is expensive, often comprising 20%–50% of municipal budgets as data reports. Operating this essential municipal service requires integrated systems that are efficient, sustainable, and socially supported. While in Albania 65% of citizens do not pay, as they are not invoiced and 16% of citizens that are invoiced refuse to pay (ERRU, 2018). Local government have no capacities yet to change the situation and no budgeting enough for waste management, even though INSTAT (2017) reports that the waste management community service are offered to 68.7% of the population.

The PPP concession agreements of Elbasan and Fieri Districts to build WtE facilities are considered by municipalities (that are experiencing or expect to experience this process), as best solution to raise awareness to the citizens on waste as a precious resource and to solve the emergency of the environmental situation.

Governments at all levels engage stakeholders through public hearings, public discussion or other form of awareness, but Albania outside the legal framework and commitment in papers offers another scenario. Not any awareness campaign at national level is done for waste management, for the time period 2012 – 2017. Few campaigns for dissemination of information and public awareness are identified, as isolated cases done to specific targets and community at local level, as

¹ Lefter Koka, OP-ED, Former Minister of Environment [Accessed March 2018 <http://gazeta-shqip.com/lajme/2014/04/10/mjedisi-gender-te-opinionit-publik/>]

² "Water with no incomes" is the indicator of water quantity, which is not invoiced to citizens/business/others even though, they get the service of water. ERRU explanation

part of project of the international donors. Studies in country (REC 2015; Guri 2016) suggest, that the information and awareness the citizens have on environment and waste management is generally low and poor.

Scholars suggest that factual public participation in policy-making can't be considered just a consultation and it requires transparent democratic processes, forums for deliberation and authentic participation of different stakeholders. There were not found evidences that Albanian government at all levels applied this practice properly. The construction of the incinerator facility in Elbasan (2017) didn't opposed the citizen's resistance, but civil society and media were positioned clearly against it. While the facility of Fieri (under construction) is facing a 2 year ongoing resistance and movements of the citizens through protests, claiming that their awareness and participation have not been acted properly. Even though the 3 main actors on WtE reality in Albania; citizens, media and civil society are ceaselessly opposing incineration with energy recover in District of Fier, the government yet suggest it as a good strategy and economical benefit for the district, but not being able to offer clear proofs on willingness to communicate and transparency. Brunner (2015) recognizes that main purpose of waste management is to protect men and the environment. In many countries, modern waste management fulfills this purpose so well that it has almost faded from the public attention and have found large support and level of acceptance by society.

Literature review

As this research is having a many-sided scenario and various stakeholders are involved, it will attempt to explain the standings and engagement of some main actors under the loop of several theories, suggested by researchers on environmental issues. Tansey & O'Riordan 1999 suggest that *culture theory* can help to identify the various strands of interest, to explain how values and outlooks are shaped and connected, and enable facilitation of thought so that new frameworks of trust are built. Various scholars propose that possible applications of cultural theory for health risk management. Cultural theory has evolved over the past 30 years, to become an important framework for understanding how groups in society interpret risk and build trust or disbelieve in institutions creating and regulating risk. Cultural theory is a way of interpreting how and why individuals form judgements about danger, pollution and threat. In this theory hence to answer the question "How safe is safe enough?" there can be no satisfactory answer. While several researchers ask instead "How fair is safe enough." The awareness and education programs on waste are insufficient to respond to actual situation and challenges. *Theory of Communicative Action*. Habermas (1981) expanded upon the theory of communicative action by using it as the basis of his theory of morality, democracy, and law. The communicative rationality has a deep-seated interest in understanding social interaction (Khisty and Leleur 2010). When communication is free and open and the political culture is egalitarian, the normative grounds that are generated in such processes should guide the political decision-making process (Flynn 2004). The *protection motivation theory* (PMT), first introduced by Rogers et al (1975). proposes an extended theory (Rogers, 1983) to a conceptual a persuasive communication, which stress on cognitive processes arbitrating behavioral change. It offers a structure to explain factors forecasting risk preventative behaviors. PMT assumes that individuals' decision to participate in risk preventative behaviors is made based on their motivation to protect themselves from threats such as natural disasters, global climate change, and nuclear explosion. People pose different risks and potential benefits. Researches worldwide have been highly appealed to study *social movement theory* in different perspectives Morris (1994). Pinard's (2011) with *collective behavior theory* helps to better understand the core motivational factors of conceptualization: framing activities and collective identity. Collective identity is important for social movements, since it has a strong influence on collective action. Collective identity is related to cultural dimensions such as ideology and solidarity, and studies show that enaagement can be motivated by an interest in socializing with people with similar interests (Bruyere and Rappe, 2007). Most of studies of social movements in Albania are mainly focused in political context. Few studies and researches are identified in environmental context. Inaltekin (2016) proposes that the Albanian environmental movements be best described by "resource mobilization" theory and new social movements. Kekezi and Kruja (2013) studied consumer movements in Albania in the framework of the new social movement theories and suggest that the nature of goal for these movements was both tacit and explicit

II. Methodology and Limitation

Interpretative research with a variety of interpretive methods lead this research, and elements of exploring research and empirical research are comprehended. Both primary and secondary data were important to lead this study. Main challenges and limitation of this study is the limited secondary data on waste management in country and especially waste-to-energy in Albania; limitation on researches of public perception and movements on environment risks

Primary tools engaged for this study

Identification	Tools	Participants	Profile	Descriptions
Q1	Electronic Questionnaire	Citizens	Living in Tirana, urban area	290 respondents
Q2	Semi Structured Interviews	3 Lecturers in Universities of Tirana Waste management Expert		Jamarber Malltezi, Diana Mile, anonymous Vladimir Bezhani
Q3	Phone Interviews	Local government	Municipalities of Elbasan, Fieri, Tirana	5 Officials
Q4	Phone Interviews	2 citizens/local community actively engaged against Fieri WTE	Citizens profiling: Born and living in Verria Married with kids	Living in Verria, Fier
Q5	Direct, Phone, electronic Interviews	central government	Ministry of Energy and Infrastructure, Ministry of Tourism and Environment	4 Civil Servants Officials
Q6	Semi structured Interviews, along with mapping actions in media	Environmental activists	Activists profiling: Live in Tirana 25-31 years old Years of activation: 5-7 years Engaged in a min. 20 environmental movements/each	3 activists
Q7	Semi structured interviews, Phone interviews	Journalists/Reporters	Television and investigative online media outlets	8 respondents
Q8	Semi structured Interviews	The business corporate representatives of WTE Plants	Elbasan, Fieri, Tirana	Elbasan, Fieri, Tirana
O1	Observation on sites	Waste Pickers WTE plant Landfills and legal and illegal dumpsites	Tirana Elbasan Districts Tirana, Durrës, Elbasan	10 sites in urban area & Sharra landfill 1 WTE site 20 sites

<i>Netnography</i>	<i>Stories</i>	<i>Stakeholders</i>
Content, Photo & Video Analyses	65 stories	Citizens resistance/movement
	30 stories	Fieri citizens resistance and protests against WTE Plant
	25 statements	Civil Society on WTE
	40 statements/mentions /stories	Local Government (Elbasan, Tirana, Fier) – WTEs
	35 statements/stories	Central Government

Televisions/webpages	New portals/webpages	Social platforms/Civil Society	Network
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Top Channel	reporter.al	Facebook page- Nisma Thurrje
Report TV1	fax web.al	Facebook page – Verria
OraNews TV	hashtag.al	Facebook page- AKIP
News24	panorama.com.al	
TV Klan	exit.al	

III. Awareness deficiency of stakeholders

According to Alain Touraine (Lim and Kann, 2008), “the state (strict state control), the market (very large corporations), and the domain of communications and media (advance in communications technology) are gradually diminishing the liberty of the individual, failing to guarantee individual freedom, equality and fraternity” in post- modern society. Caldwell (1963) recommends that environment as a focus for public policy has thus grown out of past experience, but its major development extends into the future. MSW is proposed as a valuable renewable energy resource and as worldwide opportunity of energy recovery (Diego Moya et al. 2017). The risk for decision-making is that in a *post-factual world*, if scientific truth is not reaching society, society creates its own truth based on perception and fascinatingly emotions (Higgins 2016). On his study Higgins proposes that this understanding is near to sustainability subjects such as waste which become more socially relevant the closer they appear to human habitats. Aside from suitable policy, strong technical support and sufficient funding, public awareness is an important component in WM program. Everyone needs to have a proper understanding of waste management issues.

Public participation

Scholars suggest that residents in developing countries, especially the urban poor, are more severely impacted by unsustainably managed waste. There is a rising body of literature on public participation in environmental valuation and decision-making, which several authors (e.g. Antunes et al., 2009; NRC, 2008) have proposed a set of critical issues to be considered in the setup, design and management of participatory processes. Within the broad scope of public participation activities, stakeholder engagement represents a concerted effort to involve the people who have a bet in the result of the decision being made (Soma and Vatn, 2014).

Toumela (2002) argues that there is much communication (e.g., dialogue) that is best understood as joint or collective cooperative activity requiring orientation to collective intentionality for its clarification. Toumela considers communication as a primarily tool, often central, for mediators to achieve their extra linguistic goals and to satisfy their extra linguistic needs and interests. Forced pressures from activists and legislators are reported to contribute to companies’ decisions to take on practices that increase their legitimacy by making them come into sight greener (Hoffman and Ventresca 2002; Milstein, Hart, and York 2002). Other scholars argue that environmental civil society organizations are key stakeholders that, under certain circumstances, may influence companies to improve their environmental performance (Hendry 2006; Lenox and Easley 2009). Power involves the relative ability of an actor or group of actors to change the behavior of others Hancock and Vivoda (2014). Some groups hold greater capacity for shaping social action as compared to others (Stirling 2014) as in “power over” others (Boonstra 2016). This understanding of power reflects that of Max Weber who sight power in terms of the possibility for an actor to state their will in the face of resistance, through whatever means available. As Lakioti et al. (2017) recommend in their research the active involvement of society appears to be a key factor in improving understanding of people’s behavior and establishing a high degree of confidence on SWM. Kekezi and Kruja (2013) suggest that Albanian activists believe in change, as core element of a social movement is the goal (Touraine 1981). In Albania access to information and inclusiveness remain yet a major challenge. Stakeholders¹ have pointed out as major issue the restrictions for the Albanian citizens and civil society to access the information about sensitive cases.

¹ Reffer to Mr. Mihallaq Qirjo, Director of Regional Environmental Center in Albania <http://eurokonventa.al/en/aarhus-convention-and-the-situation-in-albania/>

Government: (non) Inclusiveness and (non)communication

Environment is becoming lately the focus of consideration to policies and commitments of Albania, due to huge shock of deforestation; ground pollution and air water; climate change; wildlife and biodiversity loss. As Wiedemann and Femers (1993) suggest Albanian government at all levels should view public participation as means, and not as goal. Caldwell (1963) present the perspective that no massive research is required to document the inadequacy of our environmental decision making. Governance of the megalopolis presents a host of problems nowhere adequately solved and, in many cases, not yet sufficiently defined. According to Habermas, human beings possess two fundamental cognitive interests: a technical (or instrumental) interest and a communicative (or practical) interest, dependent on work and interaction (Khisty and Leleur 2010). The new Law to Public Information in Albania¹ (Law No. 119/2014, Republic of Albania) obliges all national, regional and local government entities to offer any information of public interest to any individual that necessitates for it, implement and manage websites for the dissemination of information of public interest. Government at all levels in Albania claim to have made the decision for WtE treatment, based to the objectives of the strategies, but also as the feasibility offered were correctly assessed (ISWA). The country have committed the SDGs Global Agenda 2030 and has signed the Paris Agreement, COP 21 and WtE is a tool that will support this pledge.

On the other hand is reported that citizens in country have poor information, awareness and understanding on waste management. Recycling is yet on the conceptual phase on citizens. Facing a situation of many illegal dumpsites and many landfills out of EU standards, the government is facing also the pressure of losing land considering the high level of disposal in country. The full rehabilitation and closing of 300 dumpsites identified require heavy financial costs.

Researchers identify that the information effect has a higher impact when focusing on future environmental risks (Hill and Daniel, 2007), and particularly on risks related to human health (Madajewicz et al., 2007; Orset et al., 2015). Government approach to stakeholders for WtE facilities in Albania suggest not to tend a communicative action as Habermas (1985) proposes. "Consent and influence are—at least from the perspective of the actor—mutually exclusive mechanisms for coordinating actions. Communication processes cannot be undertaken with the intention of reaching understanding [consensus] with a participant in interaction and simultaneously influencing him, that is having a causal effect on him" (Habermas 1985, pp. 153)

ISWA (2017) recommends all that the technical aspects in a feasibility study (waste availability and quality, technology choice) are crucial for decision making, and Albanian government claim that feasibility studies have been a key component on their decision for the procedures of 3 WtE facilities in country. Even though government claim that all proceedings have follow strictly the involvement of public participation, civil society and academics are claiming that secrecy and missing transparency of government in this aspect make the process not reliable.

ISWA remarks that WtE is most often more expensive than controlled landfilling. While landfilling in Albania is suggested to be out of standards and a real health risk to citizens, government claim that WtE plants are more profitable to the economy, with lower risk of pollution of environment and to human health and more free land

Table 4: Comparison of indicators WtE vs Landfill Costs in Albania

Treatment	Longevity	Benefiting	Total Cost (million euro)
Landfill (Vlore)	20 years	N/A	24
WtE Facility (Elbasan)	50 years	Energy	28

Source: Ministry of Environment, Ministry of Infrastructure and Energy (2017)

Researchers (Alcani & Dori 2013) call further studies related with the attitude of the public and leaders of local authorities related to waste management in Albania. (Slushaj & Arapi 2012) findings suggest that the public is rarely involved in consultations and its opinion in drafting the legal and policy framework is not taken into consideration, which has hindered

¹ Entered in force in September 2014

the implementation of policies and legislation. "Local government obliged by law to raise awareness and include citizens on WTE plants have failed to do so" state Sazan Guri, 2017 Associated Professor and environmentalist.

Citizens in developed country enjoy the right to information, participation, and, in the event that a citizen is party to proceedings, legal recourse against the granting of an approval. While in Albania researchers suggest that a multi-stakeholders' approach is important in defining rules of the games in order all involved and impacted by these processes, could have a say at the early stage (Bagaviki, Elda 2018 pp. 61)

Gutberlet (2008) suggest that collaborative forms of local policy shaping enhance the decentralization of processes and devolve decision-making power and responsibility to the local levels of government. As a consequence, the governing body is closer to the people, and power is returned to the local level. Active participation of the involved stakeholders is essential to adequate resource management, and to deliberative democracy. Cultural theorists argue that social debates about risks cannot be reduced to concerns about safety and demonstrate instead how they are inseparable from issues relating to power, justice and legitimacy. What cultural theory does do is to criticize the apparent depoliticisation of risk issues—the subtle process of taking for granted the link between hazard identification and the normative choices that follow. With an emphasis on fairness, Renn, Ortwin (1995) looked at how democratic procedures should be based in terms of building trust, including representativeness, generating non-distorting communication, and reaching open consensus; through key issues as *inclusiveness* and *consensus building*. McCarthy (2004) suggests that western experiences and case study as AEB in Holland have allowed sufficient time for the community relations programme. He emphasizes the importance to start early enough to allow plenty of time for all involved to digest and discuss the information received. 82% of the respondents of Q1. show no trust on any good purpose of government initiative on WTE. While 100% of respondents of Q2, Q6 and Q7 are doubtful for government practices and initiatives on WTE plants.

The outsiders – citizens resistance

The WTE plant of Elbasan, the 1st one in Albania didn't face any citizen's resistance or movements, possibly given the fact that Elbasan have been considered in many decades as one of the most polluted city in country and any investment of any form was identified by citizens as a solution. The opening of WTE facility had large coverage in all media outlets in country, where the active opponent voice was the civil society.

Gutberlet (2008) consider social movements as crucial to promise participation and bring various stakeholders into the arena. In many instances they are the motors to ensure a fair and equitable government and function as barometers to monitor impact and progress. World Bank defines citizen engagement as a behavior change and public participation key to a functional waste system.

Professional and academic interest in understanding what drives citizens to engage in community groups and self-mobilization activities has led to a wide range of studies in different research disciplines, focusing on both established social movements and more spontaneous forms of citizen mobilization. Researchers (Schmitter 1991; Arnstein 1969) suggest that greater levels of citizen participation, such as direct citizen offer stronger models of democracy, while the identified group of citizens against WTE plant in Fieri, were a small group of citizens, who represents 50 families that live in Verria, Fieri (village where WTE plant is located). Studies show citizens' self-mobilization (as defined by Pretty, 1995) and local community groups are recently acknowledged as playing an important role in the making and implementation of present and future environmental use policies and researchers suggest that community groups and citizens' self-mobilization seem in many cases to be organized by a minor group of citizens who are highly engaged in community matters (e.g., Campbell, 2013; Applegate, 1998). The villagers of Verria claim that they were excluded/not informed for participation by the public hearings and consultations. 87.2% of the respondents of Q1 and 100% of Q7 think government is not willing to access participation of citizens. 10 out of 10 in Q7 think that government mis-target actors involved on porpoise and not because of lack of capacities. In Albania there are reported successful approaches on this direction, the roadmap of Trans Adriatic Pipeline – TAP Albania as a corporate business

Agovino et al. (2018) propose that the waste management process is optimized when citizens and local government jointly adopt appropriate behavior. McCarthy (2004) suggests that WTE plant can be accepted by citizens if information, transparency, real involvement and proper communication in understandable language is done. Habermass suggest citizens to mobilize and increase the communicative power of public debate until it could surpass or at least equal the extent to which money and administrative power coordinate action 'behind their backs'. (Flynn 2004). 63% of the respondents of

Q1 on this paper suggested that they are against WTE plants in Albania, and 47% responded they do not have an opinion. 100% of respondents they have no knowledge at all on WTE process.

Constant protests (case of WTE plant, Fieri District)

"We do not trust the promises of the Prefect. He didn't even accepted to make them public in media – citizens of Verria, one of the protest against WTE Plant (Fier, 21/11/2016)"¹

Wiedemann and Femers (1993) propose that public participation procedures do not necessarily improve conflict resolution, or lead to better, more widely accepted decisions. On the contrary, in many cases the participation procedures themselves created new conflicts.

Protests against WTE Plant in Fieri begun during November 2016 and are yet active (20 April 2018)². There have been arrested protesters, by policy of state several times. They do consider the government as their main enemy, but not the same approach for the company of WTE plant.

They report that several times discussed with the company of WTE Plant, without municipality presence. They perceive media as their main ally to their cause and civil society as a supporter and facilitator. Not involving the families where the facility have begun to be constructed in any of public hearings or consultations, is the key driver to them suspecting that the plant will cause cancer and will poison their lands.

In Albania there are reported several movements in sensitive cases where citizens; media and civil society have moved the same direction for the same environmental cause, but also there are reported cases where citizens have been against civil society and media, reported in media (2016) as "Divjaka against Divjaka" case ³(in the public hearing the citizens opposed the civil society which was opposing the construction of a touristic resort as a strategic investment in Divjaka-Karavasta National Park). 93% of the respondents of Q1 would join with in such a cause as Fieri case, but in Tirana is not yet reported or identified any opposing (even sporadic ones) from citizens on the WTE plant project.

Civil Society – a shadowy road

Civil society in decades have showed to be extremely effective in highlighting inequalities in who bears environmental burdens and who gets the welfares of environmental investments.

While the articles and reports (Gemille and Bamidelle)⁴ suggest that the Aarhus Convention envisions a process by which NGOs could seek judicial remedy against other parties, such as national governments or private sector entities, for environmental harms or crimes. Researchers in UK (2004) report that risks to human health from incineration are small in comparison with other known risks. Decision-makers acknowledge the role of incineration with energy recovery as a sustainable waste management option although the priority must be waste minimization, reuse and recycling. The western countries in their waste management strategies suggest prevention and WTE treatment are not contradictory, but rather complement each other. CEWEP⁵ suggests that WTE does not compete with recycling – it goes hand in hand with and supports high quality recycling. Civil society in western countries show resistance being doubtful on environmental impact the WTE plants have.

Civil society in Albania have been opposing WTE treatment since government proposed the first facility in country. Activists of civil society consider this process led by government as suspicious and corruptive and define the 3 facilities in Albania as a big risk to citizen's health and as huge polluters for the environment. Even though not any examination or evidence is proofed civil society claim that the people living next to it are complaining from bad odor. They do claim also that WTE will close the door for good to recycling process in Albania.

While in Albania civil society and environmentalists argue that incineration is a serious risk to health of citizens, they have not been identified to "fight" against disposal without standards in country. Lack of government's transparency at any level,

¹ <https://hashtag.al/index.php/2016/11/21/banoret-e-mbrostarit-vazhdojne-rezistencen-nuk-i-zeme-bese-qeverise/>

² <https://www.reporter.al/banoret-e-fierit-protestojne-kunder-impianit-te-djegies-se-plehrave/>

³ <https://www.reporter.al/divjaka-kunder-divjakes-banoret-brohorasin-projektin-betonizues-te-behjet-pacollit/>

⁴ <https://environment.yale.edu/publication-series/documents/downloads/a-g/gemmill.pdf>

⁵ CEWEP | Confederation of European Waste-to-Energy Plants www.cewep.eu/

the secrecy and hidden agenda is suggested as a key driver to civil society to strongly believe that the WTE plants in Albania are out of EU standards. "AKIP" and "NismaThurrie" as the most well-known movements against WTE plants are "opposed" by several media outlets. Media representatives are doubtful that this activism of CSO's is covering a hidden agenda and maybe they are financed by unknown source. Citizens in Albania show to be dubious about the civil society activity. On 88% of Q1 in this research didn't identified themselves represented by civil society causes. 95% of them responded that they never have been involved directly or indirectly in any civil society cause.

Even though is a 2 year ongoing protests in Fieri against WTE plant, Environmental Justice Atlas is not offering any conflict related to incineration in Albania, while there are identified several other past or ongoing environmental conflicts in country. (Inaltekini 2016) suggest that in Albania the movements have grown simultaneously, as civil society grew, while he suggest that a stable environmental movement still is not established in country. Civil society in Albania attributes the raising sensitivity towards environmental issues to the rise of civil society (after 2000) (3 out of 3, Respondents of Q6), while they claim that academics silence is not good for the society.

One of the most active eco NGOs in Albania "Let's Do it Albania" states (December 2015)¹ "local authorities are now more open to collaboration and have started to pay more attention to protection of the environment and waste management. But more needs to be done".

Media: the key ally of citizens

In 2012, in Albania was reported the biggest movement ever in country. About 60.000 citizens signed proposing a referendum to oppose the law allowing the waste import. Media was identified to be the key role player that through raising awareness of the case made possible 60.000 thousand signatures.

Recently media in Albania have put permanent focus to poor waste management in the country. The reporting many times is mapped as a contradictory; but yet in this research it is identified that that talking about waste helps raising awareness of public. J. BOssio et al. (2012) investigated access to public participation and transparency suggest that working with the media is also of utmost importance. Access to government information provides important opportunities for investigative journalism, and for reporting and monitoring the management of public resources. Bossio argues that the state, civil society organizations and academia should focus their efforts on strengthening the capacities for research and analysis of data by journalists. Media in country began its extended increasing attention on waste management, due to fact that were evident and visible impacts of environmental degradation.

In this study is mapped that media reports in the headlines to terminologies "Waste" and "Garbage/Trash". On articles/chronicles which report a story /statements of government or donors, the term waste is generally used. While on the reporting of the protest or resistance of citizens, and investigations done by media outlets "trash" and "garbage" are the most used terms. As IREX (2017) suggest in Albania most of journalist do not go beyond press announcements of public sector entities, many times they even do not write their name on the article or chronicle. News people in country are overloaded with information and not that much time to edit news, to confront statements and positioning of government or other stakeholder in different period for the same issue. All respondents of Q7 recognize that this leads to missing accuracy and is a big risk to lose the public trust. For the Fieri WTE plant case, Panorama, the biggest newspaper in country in its web portal reports in the headline "The protests against landfill in Mbrostar..."²

10 out of 10 respondents of Q7 acknowledge that they have poor information and knowhow to waste management hierarchy as a whole process due to lack of proper communication from government. They identify as a concern that 2 of the main stakeholders: the academics and the WTE plants companies reject to be involved in the media discussions on WTE treatment. On the other hand they claim that government refuses to give full access on information, claiming that confidentiality in the PPP agreements have strong provision. Media claim that academics "frighten" their position, and they do not will to oppose the government policies. The lack of experts in the sector of waste-to-energy brings also an enormous gap. No matter any hidden agenda of the civil society in Albania media see as priority to give enough space and make civil society's voice clear. The 3 companies on WTE plants in Albania are reported to refuse the direct contact and communication

¹ <https://www.letsdoitworld.org/2015/12/albania-creating-social-and-cultural-change-through-massive-waste-clean-ups/>

² <http://www.panorama.com.al/protestat-kunder-landfillit-ne-mbrostar-ndalohet-nje-person-dy-ne-kerkim/>

with media representatives. They prefer to use better the electronic or direct mail communication. 100% of the respondents of Q1, trust more media than civil society, academics and government.

Media as a key ally to social movements in country claim that citizens need to heard and is government duty to inform and engage them properly.

Academics and researchers (non)participation

The relationship between science and policy is an old one, and often closely related to the world of culture, which in turn serves as a neutral element capable of reinforcing coalition.

Higgings (2016) suggests that scientists and philosophers should be shocked by the idea of post truth, and they should speak up when scientific findings are ignored by those in power or treated as mere matters of faith. While in waste management sector occasionally was identified any academics or scientist on waste management or environmental issues (January 2017- March 2018. Differently on what researchers suggest academics in Albania do not involve on public for environmental causes. Maybe one of few academics in country (Associate Professor Sazan Guri) who involves actively in media for environmental issues, represent himself as an environmental activists and he has an immense active role in the environmental movements. (85% of the respondents of Q1 have no knowledge that Sazan Guri, is an experienced of Assoc. Prof Lecturer)

"The academics in Albania do not want to go out their frames, they tend "to sleep" better than inform public what science suggest on what is right and what is wrong, what is safe and what is harmful" - a well-known investigative journalist responded for this study. Academics on other environmental cases are confronted with civil society claiming on a hidden agenda, serving to entities who involves them in research or projects. Yet the academics acknowledge that WIE is a better option than disposal but they show skepticism if this will "put in sleep" the government not focus on a sustainable waste management having focus the 3R process.

"In my whole 20 years of experience on waste management, based on different studies and Ph.D. thesis done for this purpose from a colleague of mine, the technology of landfilling with recycling result a lower cost process and more acceptable for the actual conditions of our country and the psychology of the citizens" - states Sazan Guri, Associated Professor, University¹. Scientist and academics in waste management are less involved in WIE considerations in Albania by government at all levels. They do evaluate incineration as not a favorable option in Albania due to cost benefit analyses. They suggest during public consultations or hearings the government at all levels should target carefully and correctly the interest groups. EU-28 states through Circular Package economy aim to promote the economic instruments to discourage landfilling, while in Albania academics propose landfilling with recycling as a best option for country at this stage (Sazan Guri, 2017).

IV. Yellow waste acceptance; communication perspective as transparent and proactive approach

World Bank (2012) reports that most low- and middle-income countries, the reliability of solid waste data is further compromised, therefore Albania should focus and find proper tools to generate real statistics. Europe Commission (2017) on their communication ensure that the recovery of energy from waste in the EU supports the objectives of the circular economy action plan and is firmly guided by the EU waste hierarchy. The EU-28 countries have defined how the role of waste-to-energy processes can be optimized to play a part in meeting the objectives set out, while in Albania no such defining is set yet. Waste-to-Energy is widely accepted as renewable energy source. Most countries with very high recycling rates - such as Austria, Belgium, Germany and the Netherlands, also have high rates of Waste-to-Energy as a sink for pollutants and thereby have reduced landfill to almost zero. Szeman and Diamanti (2017) suggest that the social, political, economic and cultural context that energy systems are made to serve will largely determine the degree to which distributed renewable energy systems can be made democratic. Burke, J.C. Stephens (2018) put focus on the democratic potential of the entirety of renewable energy systems over time also requires a careful appraisal. The studies suggest that the energy democracy movement represents a contemporary expression of ongoing struggles for social and environmental justice through engagement with technological systems. (M.J. Burke, J.C. Stephens (2018) argue that as a democratic development model, renewable energy transitions require an accelerated reduction in the use of fossil fuels for social,

¹ <http://www.standard.al/2017/09/12/flet-ambientalisti-sazan-guri-teknologjia-me-landfill-me-riciklim-ka-kosto-me-te-ulet-dhe-rreziqe-te-medha>

ecological and political reasons, but do not necessarily entail an immediate ramping of renewable energy infrastructures. Becidan et al. (2015) in their research find that Norwegian government led to a significant increase in the building of new WTE plants with energy recovery and many studies show that Norwegian society evaluate positively the proposed the unique advantages offered by WTE.

Climate protection and commitments to 2030 Agenda are recognized as heavy costs to Albanian government. Efficient WTE reduce both methane emissions (a potent greenhouse gas that has 25 times greater impact to climate than carbon dioxide CO₂) from landfilling and CO₂emissions that would have been produced if the amount of energy was generated in conventional power plants, impacting so directly to reduce climate change. The Intergovernmental Panel on Climate Change (IPCC). Nations report that Waste-to-energy facilities are economically sound investments that provide multiple financial and environmental benefits to the communities that utilize them. Today, the majority of the nation's waste-to energy facilities are owned by local governments and that have invested in this critical municipal infrastructure to achieve long-term solid waste management solutions. These facilities produce clean, renewable energy while reducing waste volume by 90 %, making them a good option for communities seeking the most advanced technology to manage their waste.

As shown in this study, when properly managed, waste-to-energy facilities offer a multitude of benefits to the communities that utilize them. They generate revenue through the sale of electricity, tipping fees, and profits from the sale of recovered metals, which allows for the repayment of their municipal bonds, as well as financing of other important aspects of MSW management, such as extensive recycling programs. The economic success of waste-to-energy for several decades throughout the country should provide confidence to other communities considering this economically and environmentally sound technology. Social impacts in developing countries improving the life standards of citizens and also with a direct impact on the local community life. New sources of jobs, potential to work in formal sector.

Poorly managed waste has an enormous impact on people's health, the environment, but also at the national economies. Improperly managed waste often results in higher costs for governments, contributes to climate change in the form of greenhouse-gas emissions, and has serious short- and long-term health impacts, due to that this study recommends to consider WTE as a potential good perspective for the country on the economic aspect.

The public and private sector together will need to assume much more responsibility for waste generation and disposal, specifically for product design and waste separation. Formalizing these responsibilities through well-structured PPPs can result in significant improvements in efficiency and quality of solid waste management, as developed economies have succeeded

The efficient use of limited fossil resources (e.g. crude oil, natural gas, coal) in WTE's is indispensable in any sustainable economy and waste management system. (Guri, 2016 pp 222) suggest the cost of the waste to energy are financial, social and environmental while the incomes are provided from incomes (selling of the energy), social-economical profitability (avoiding the social and environmental damages). As World Bank reports that in low and middle income countries even in Albania the method of calculation waste quantities is the ones arriving at disposal site, and is not taken in consideration the large fraction of recyclables taken away by the informal sector. The implementation of a proper methodology will help the economy to potentially make good profit and accurate forecasts from waste.

The yellow waste incineration from import mainly, have positioned Sweden as a leading country in WTE, where driving forces and business incentives for waste management. It looks like dirty business in the Albanian context, but articles suggest that in Sweden this is viewed as one of the country's great green achievements.

While waste-to-energy incinerators remain a controversial topic among environmentalists and a not desirable option from citizens in Albania, there's been little such debate in Sweden or Amsterdam (McCarthy 2014) they are facing incineration without any public opposition and with support from non-governmental organizations (NGOs).

Studies suggest that because incinerators have been in the focus of public attention for a long time, they are very well investigated facilities with little unknowns in developing countries.

However, similarly to other topics in energy, its economics that are at play. As far as it will be considered cheaper to truck waste to landfills, use fossil fuels for electricity and heating and enough land in the a country of 28.748 km².

To make WTE profitable and wide accepted by general public, Albanian government at all levels should deliver a clear communication and proactive approach to stakeholders and with main focus the community. World Bank (2006)

recommends empowering citizens comes through publicly accessible data on pollution concentration levels enable citizens to take preventive measures to reduce their personal risk of exposure and pressure governments to enforce existing emission standards. When prices rise however, our trash may become energy treasure.

V: Conclusions, recommendations and contribute

M. Agovino et al. (2018) argue integrated waste management is only achieved through the joint action of citizens and institutions (central and local). J. BOssio et al. (2012) findings consider as the main challenge for citizen participation is to develop citizen-appropriate tools, not only to access, but to use public information effectively.

Researches argue that if key external stakeholders will work for same purpose citizen's resistance will be supported by a large number, this may change government standings and attitude. Most studies of social movement conclusions show that movements persuade the adoption of public policies directly, by engaging in lobbying and protest activities (Cress and Snow 2000; McCammon et al. 2001; Soule et al. 1999; Soule and Olzak 2004), and indirectly, by changing public opinion (Burstein 1999; Burstein and Linton 2002).

The findings of this study bring evidences that in developing countries (Albania) government at all levels, tend to limit access in information and participation of stakeholders on hot environmental issues. Communication strategies to raise awareness are part of legal and paper framework and do not go beyond them.

This study opposes scholars finding that argue that environmental organizations are key stakeholders that, under certain circumstances, may influence companies to improve their environmental performance (Hendry 2006; Lenox and Eesley 2009). In Albania, civil society proof a weak bond with citizens and the COSs "reputation" and agenda it's vague for other participants on the cause.

This research was limited on the private business perspective as a stakeholders, as no clear evidence could be identified, considering that WTE treatment is yet in early stage (1 year only). The study bring evidences that oppose the suggestions (ISWA) that waste to energy should be considered better in mature economies or a better choice in high density districts; as in Albania disposal in landfilling is found as a more expensive process in long-term. In Albania there is the opportunity that WTE plants may solve the local government's lack of capacities to manage waste and lack of knowhow, through the private sector engagement; as a better costing option than disposal, though risking the recycling process.

A policy focus on environment in its fullest practicable sense would make more likely the consideration of all the major elements relevant to an environment-affecting decision (Caldwell 1963). This study suggest that the government or the hired consultants when deciding on long-term strategies should take in consideration all components and set logical possible objectives. This research that citizens in developing countries are willing to have a clean environment, but with poor knowledge on waste management and unwilling to pay the service

Kekezi and Kruja (2013) found that Albanian activists believe in change as core element of a social movement is the goal (Touraine 1981), same findings are proposed in this study that activists and citizens against WTE of Fieri believe that their resistance will bring a positive change.

Researches and articles worldwide show that even in most developed countries public perception in WTEs remain yet a challenge. They do suggest that WTE plants must be able to explain and defend their roles both in responsible waste management and energy production systems. In Albania companies have not exposed themselves in public, they have preferred better to work with the local community directly, considering other stakeholders as "tricky influencers".

At this stage Albanian government is recommended to take in consideration Wiedemann and Femers (1993) finding that the conflict management is possible approach for improving public participation. Stakeholders should consider the strengthening of media research and analysis to reach a better access and understanding in environmental issues as important

Albania is yet an emerging economy suffering from not implementing and little knowledge on waste management but in a near future the country should understand that a stronger role in material recycling and considering waste as a valuable source may well ensure its central place in a circular, renewable and sustainable economy.

The findings of this study on waste management opposes the findings of REC "Public Perception on Environment (September 2015) which give a positive correlation between citizen's level of education and their information and

acknowledgment of environmental matters. The conclusions of research tools with citizens, media representatives, and CSOs representatives found not positive correlation between their level of education and their information and acknowledgment of waste management matters.

M. Agovino et al. (2018) suggests that in particular, the latter spoke of "crisis of democracy"

in the waste management process that generated conflict between citizens and government. A thoroughly communication to reach at right levels public awareness and information dissemination should be developed and implemented properly, by government before decision making

Integrated waste management in a sustainable path in Albania will be only achieved through the joint action of citizens and institutions (central and local), and can't be a reality without a proper communication strategy and plan at national level

Albania is yet an emerging economy suffering from not implementing and little knowledge on waste management but in a near future the country should understand that a stronger role in material recycling and considering waste as a valuable source may well ensure its central place in a circular, renewable and sustainable economy.

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Children and Cinema: Moving Images of Childhood

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Abstract

The idea of childhood has been part of the moving images experience since the appearance of cinema. Through the lenses of cinema, childhood is deconstructed as presenting branching pathways, underlining its complexity and the mysteriousness of it. The ongoing experience of childhood on screen serves as a tool to reflect on the anatomy and contour of cinema, as well as its understanding. On the other hand, cinema has been used as a tool to reflect on the notion of childhood and as an apparatus that challenges the power relations that exist between adults and children. The aim of this paper is to present an overview of how the institution of cinema contributes or opposes the notion of naturalness of childhood imposed by adults or the normative perception of what a child should be. In a lot of movies the child is "othered" leaving as a result an ambiguous space between the child and cinema, where childhood is not anymore strictly defined.

Keywords: childhood, cinema, power relations, otherness, normativity

Introduction

In the recent decades there is an immense interest in the field of childhood studies and media anthropology in deconstructing the ideology that stands behind the notion of *childhood* and its representations. Childhood constitutes an important structural component of our society. According to Ariès (1962), childhood is a socially constructed concept and it is relatively modern. Cinema, as well as childhood, can be considered as an institution of the

modern culture that uses the image of the child, and therefore represents the social construction of childhood.

The mechanisms of cinema have been able to somehow challenge the representations and visions of childhood through fluctuating in time, space and narrative. The figure of the child has been used everywhere on our screens and therefore turning cinema "into a valuable

– in fact, potentially overwhelming – resource for reflecting on the cultural histories of childhood in the twentieth century" (Lebeau, 2008:12). Throughout the 19th century, the child was watched, written about and wanted. Animated versions of "Ginx Baby" and "Child Pictures" were one of the first confrontation between childhood and cinema (Lebeau, 2005:10). In the early 1900s, the figure of the child and infant was proliferated in moving pictures such as "Child life", one of the first genres of Victorian film and one of the first contributions of the ongoing project of visualizing childhood, of giving image to the child (Lebeau, 2005:8). The myth of childhood shapes our epoch and ways of thinking on many levels. Cinema itself transfers and brings into life the dimensions of the myth, and our modern commitments to the idea of the child are indivisible from its representation or portrayal in visual form. (Lebeau, 2005:10)

The social construction of naturalness of childhood in cinema

Cinema has put the child in the landscape of vision and it can be a powerful instrument to reflect and know the child. From its early encounters with cinema many of the common tropes of childhood are children who need to be protected, who are innocent, immature etc. Many of these characteristics given by adult pre-conceptions about what childhood is or should be construct the notion of "normative childhood". Baudrillard (1994) talks about the notion of *simulacra* which refers to a world of images and signs that refer to other images and signs which have no reference in the real world. Many notions related to childhood are therefore constructed through images and signs. Cinema is also part of it. For example, childhood has often been depicted, even in cinema, as presenting a futuristic adult project or in a state of becoming, rather than being. Olson & Scahill (2012: 9) note that the images of "normative childhood" creates a tale that is often characterised or haunted by the spectre of its own failure.

Lee (2001:9) illustrates that “adulthood, with all its connotations of stability and completeness, has operated as a kind of standard model of a person, which stands ready to be used to measure children’s incompleteness.” This process enables the ability of adults to inflict power on children and determine “the naturalness of childhood”. As a result, children who don’t fit to the normative perception of childhood are automatically considered as the “deviant other”, who don’t fit to the norms prescribed from the adult perception. Many adult constructions such as the question of innocence of childhood, who appears as a predominant fantasy, it is in part responsible for the state of given disempowerment of the child, the child appears as lost and lacks control (Wilson, 2005:331). As a result of the argument of innocence, the distance and dichotomy between adults and children is seen as inevitable and stronger. The two worlds of adulthood and childhood appear as two separate entities not sharing any “spaces”.

Pictures and images of childhood in cinema have been constructed by the adult perception, who has in part in a way monopolized the ability to define childhood. The “powerful adult” has delineated the behaviours which are appropriate for children according to the age and development. Visual representations such as cinema, videos, TV programs and other media are deeply affected from values and by the discourses and pedagogies of home and school (Luke, 1994:289). All these conceptualizations and discourses contribute to the construction of cultural and social meanings to ideas such as “childhood”, “family”, “parenting” etc.

Foucault (1972) explains the way how the common sense and familiar ideas are constructed historically in a defined context through discourses. Many of the cultural meanings and ideas on childhood are being transferred through the social interactions and the denomination of image. Foucault (1972/1981) also mentions that the discourse itself is a way of transmitting and producing power relations. The idea of childhood and also other ideas for example motherhood or being a woman are constructed through these discourses produced from the power and dominance of disciplinary fields such as sociology, psychology, philosophy etc. According to feminist theories such as de Beauvoir (1953), many of these discourses have been produced historically from patriarchal dominant structures. These power relations define and put childhood as a state of inferiority, immaturity, innocence etc.

always in need to be defined from the adult. “The questioning of what the figure of the child means to adult, has been an interrogation of, and distancing from, questions of childhood innocence: innocence emerges as the dominant fantasy in whose terms children have been variously represented, protected and desired.”(Wilson, 2005:331) Such discourses circulate everywhere in a given society and cinema is also part of it, as an institution where social interactions take place or are created. According to Olson & Scahill (2012: 10) the idea of the innocent or lost child appears in many movies such as *Alice in Wonderland* (1931), *Wizard of Oz* (1939), etc.

The trope of the innocent child comforts the idea that children cannot be naturally evil, which goes back to the theory of Rousseau (1948). The idea of innocence in cinema is also many times accompanied from a *naïveté* that sets often the child in a position of always requiring the adult supervision or assistance. Many times children appear as misunderstanding the obvious or having to learn how to be empathetic or not to self-centred and obedient. On the opposite, we find other conceptions of childhood such as the evil or creepy child which usually evokes fears and anxieties. The devil or creepy children might not be dangerous but the fact that they are not conform the presumed naturalness of childhood, evokes feelings of rejection. Children are patented as being deficient and deviant “as an affront to how ‘decent’ and ‘normal’ children ought to behave. This points the bipolar manner in which we perceive of childhood: a period of innocence but also a period of possible immorality”. (Jones, Holmes & Powell, 2005: 155) In opposition, movies such as “*Raise Ravens*” (1976), or “*Tideland*” (2005) challenge cultural notions and explore the dark side and creativity of childhood.



Fig.1. "Raise Ravens" (1976)

Luke (1994:291) also explains how the construction of naturalness of childhood in in many movies serves as a tool to produce consumer goods. Usually the jump from narrative to commodities such as buying character toys from the movies or other sorts of material goods, as Luke (1994) explains, is constructed in a way to seem natural. After watching a Disney movie, buying into the system "means buying into a particular ideological narratives of social structure, gender roles, power relations and into a social construction of reality" (pp. 291) Moreover Disney, although marked as not representing the reality, indirectly it rises the curiosity of the spectator to search for the Disney features in real life or connections with reality in Disney movies.

The "othered" child in moving images and screens

In cinema images of childhood who are not strictly obeying to the natural constructed image of childhood often fall under the notion of "otherness" or identified as "other". "The Othered child has occupied the interstice within an identity that is constructed for them via adults, and when such children strain against adult constructions, they become marginalized, outside the idealized notions of what children should be." (Olson & Scahill, 2012: 10) According to the authors the 'othered' child in cinema "protests" against deeply held principles of naturalness of childhood designated such as being "dependent", "innocent" etc. Figures of 'othered' childhoods are troublesome and especially they are troublesome to the boundaries of childhood itself (Olson & Scahill, 2012: 11). Lebeau (2008) places "*The Enigma of Kaspar Hauser*" (1974) alongside Francois Truffaut's classic "*The Wild Child*" (1970), through exploring the work of *infants* across the field of vision, its elusive ties to an *otherness* within central to modern constructions of children and childhoods.



Fig. 2. "The wild Child" (1970)

In cinema the figure of the "othered" child is omnipresent. For example, in the movie "*Birds*" (1963) by A. Hitchcock, children are represented in a state of innocence that was never there. The constructed myth of the Child is symbolized by carrying the blindfold. "When Cathy puts on the blindfold she becomes like the adults who do not see, do not perceive the real state of the children or the birds" (Olson & Scahill, 2012: 298). The scene where the birds attack a "blind" child is a visible representation of the need to "remove-attack-the blindness that expectations of the Child myth and its accompanying innocence create" (Olson & Scahill, 2012: 298). Similar, could be noted also the film "*Fanny and Alexander*" (1982) or "*The White Ribbon*" (2009). Haneke depicts in "*The White Ribbon*" (2009) for example the space between

childhood and adulthood, and specifically the “otherness” that characterizes the children of the village, but also the myth of the innocence. The film “extends the acts of disobedience by those disturbed children like Georg who, with their occasionally monstrous behaviour, are struggling to find a voice with which to refuse the warped moral system into which they have been born”. (Williams, 2010:55)



Fig.3 Rituals of obedience and shame. “*The White Ribbon*” (2009)

Bühler-Niederberger & van Kriken (2008) note that the concept of childhood can be seen as a social structural character similar to class, race or gender. This social order organizes the world of children in a systematic way as Alanen (1994:37) would put it. The concept of generational order demonstrates that ‘otherness’ or “other-ing” of children is part of the social order and describes the hierarchy between adults and children, as a form of social arrangement between the two identities (see Bühler-Niederberger 2005). For example, in the movie “*East is East*” (1999), the relationship of the children with their father is constructed in

a strange way and positioned as a “dual identity struggle”. In this movie the notions of “othering”, gender roles and social order are central. The father is designed as applying his patriarchal powers but at the same time he is “disempowered by his minoritized racial status” (Jones, Holmes & Powell, 2005: 158). Many stereotypes are used to construct the idea of “the other”. The same idea of constructing the other is also applied in “*Johnny Mad Dog*” (2008) but this time way stronger. The depiction of children “is guilty of the stereotypical Western portrayal of African child soldiers as the brutalized and unemotional Other”. (Olson & Scahill, 2012: 156).

A very interesting case of “otherness” is the depicted childhood in “*Gummo*” (1997) that confounds and also scatters the adult construction of childhood. The children in the movie represent “poor white trash” and they do not fit the utopian concept of childhood innocence. The film transgresses boundaries between “purity and impurity, morality and immorality, cleanliness and dirt” and also “non-normative genders, sexualities, classes and races are written onto the body of the child and threaten the myth of childhood” (Olson & Scahill, 2012:113/114). The identities of children are trapped in a liminal space of in-betweenness. In critical whiteness studies the questioning of dominant power structures is central. Whiteness, as a constructed cultural construction is also related to constructions of class, sexuality and gender and as well connected to the concept of childhood as it appears in the film “*Gummo*” (1997).

Conclusion

The two institutions of modern culture childhood and cinema are deeply connected and co-construct one another. Children are usually portrayed as a category or social structure being in significant contrast with the adult world. This occurs in the world of cinema too. Many images of childhood still reflect and continue to support a normative childhood image according to a very westernized model. Adults continue to see children as being “other” from being an adult which leads to strict and difficult to escape categories of childhood. These social categories, constructed also from the notion of generational order, construct a generalised perception of childhood.

Recently starting the 21st century, through the increased appearance of the notion of children’s rights in many social contexts, childhood has been to focus to a much greater extent than before. This has brought reflection on the power relation

between children and adults and how this is reflected in cinema. The process of decortication of power structures that reside between children and adults appears of relevant importance in reconstructing otherness and finding solutions that increase the representation, participation and agency of children in cinema, but also in real life.

Although many moving images tend to represent known and commercial models of childhood there are many directors who play with such representations by trying to deteriorate images of normative childhood through showing different perceptions about childhood. Wilson (2005:331) argues that contemporary filmmakers have tried to undermine and somehow distort through cinema the power relations existing between adults and children. "Countering the tradition identified by Holland, contemporary films seek to open up the representations of children, strategically denying the distinct division between adults and children, provoking a seizure of emotive response, where adults suddenly feel like children" (Wilson, 2005: 331) The author also offers two examples of movies who try to offer new representations of child identities. (Wilson, 2005: 332)

Lukas Moodysson and Sandrine Veysset. *Lilya 4-ever* (2003) and *Martha ... Martha* (2001) are representative of a current trend in European cinema, but beyond this Moodysson and Veysset are not connected.¹⁵ Their films coincide, however, in their attempts to offer new representations of a child's subjectivity, new filmic apprehensions, or imprints, of child identities. In their move to mould the medium to child perceptions, they each independently make use of certain tropes and devices which can be isolated and latterly associated with child subjectivity, and they each in turn attempt to shock the (adult) viewer emotively, to break down the division between the viewer and the children viewed, to bring the viewer up close to the image, disallowing distance. Both directors, avoiding the pictorialization of the child, make use of cinema's potential to evoke touch, the tactile, the haptic, drawing attention thus to space, its navigation and inhabitation, kinesthesia and containment, cocooning.

Fig. 4. "Lilya 4-ever" (2003) and "Martha...Martha" (2001) (Wilson, 2005: 331)

Issues connected to the notion of childhood such as gender, human & social rights, intelligence, ethnicity etc. are being represented and challenged in cinema. Many directors also use childhood as a way to reflect on such notions. Therefore, cinema can be used as a tool to reflect and promote the social agency of children and increase the active position of children in society by challenging pre-constructed ideas of what does it mean to be a child and act as a child or even an adult. Hultqvist and Dahlberg (2001) argue that "there is no natural or evolutionary child, only the historically produced discourses and power relations that constitute the child as an object and subject of knowledge, practice and political intervention". (pp.2)

Cinema plays a unique role in deconstructing the visible and the presence of life. Children have been part of cinema since its early stages, but the reality is that they are infrequently part of the theoretical scenery of film study. Therefore, the need to explore the children's own cultural lives appears as necessary. Increasing children's agency in their own representation and construction of what childhood means to the adult and to cinema in general is central. Rethinking the social construction and images of normative childhood in cinema is necessary, in order to remediate the shoring up of divisions and power relations between adults and children and in order to open up to new ways of exploring cinematic tools that challenge social representations.

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Panch Kanyā: An Evolving Civilization's Codified Nature Worship

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Abstract

Nature worship has been integral to most civilizations. The roots of Vedic nature worship and its mythification can be traced right from the Ṛgveda up-till the Itihāsas. However the manifestation is vastly different, it is more embroiled; not through the simplistic forms of pure nature worship but through archaic human symbolism encasing it. The most evolved stage of this symbolism is through women characters famously referred to as 'Panch Kanyā' in the oral tradition. Among several female characters of rich attributes and engaging story and moralistic lines that appear in the Itihāsas, the following five have been singled out, encased in a 'shlok' and have divinity attached to them. अहिल्या द्रौपदी सीता तारा मंदोदरी तथा | पंचकन् नाम स्मरे नित्यं महापातक नाशनाम् || The invocation of afore-mentioned five names will wash away all the sins of the invocator. This shlok is recited in 2 variants in the sub-continent. In the variant Sitā's name is replaced by Kuntī. All the five (six) women mentioned above have been heralded as women of great power and deeply enigmatic natures. However their exclusive selection may have arisen from the vital connection of their mystical feminine with the forces of nature linked to their birth. A study of their characters render an understanding that their life and choices are governed by the nature of the elements that they are born from. By looking at literary sources regarding the Panch Kanyā; the purpose here is to understand the codified link between ancient nature worship and its more modern version through creation of, especially female characters; that can be easily transmitted through oral tradition and help maintain a link to the primary attempts at understanding the notion of divinity.

Keywords: Nature worship (5 natural elements), Vedas, Purānas, Panch Kanyā and mythification

1. Introduction

Nature worship has been integral to most ancient civilizations. It is possible to trace deification of such forces of nature as were a source of life and also unfathomable for man. One can see an organic development of nature deities which are then further codified in forms of myths, rituals and cultural practices. The interesting aspect of this kind of codification is that it can be seen evolving over time as well as the level and range of development (geographic as well as socio-cultural and economic) of a said civilization.

The scope of this paper is to understand the nature worship from Vedic times till Purānic times and how a holistic development of the Saravati (Hindu) civilization must have affected its codification and its rising complexity.

This paper will help researchers to study the rise of the Hindu civilization and how it could remain relevant through all times with the use of effective codification and making certain cultural beliefs a part of social and personal reality from Vedic to Purānic times.

1.2. Objectives

- 1) To understand the nature of Vedic Nature Worship
- 2) To study the journey of Nature Deities from Vedic to Purānic Times
- 3) To trace codification of deities done through myths and their increasing complexity as well as social need of the evolving civilization to do so

1.3. Literature review

Hillebrandt (1990): the two volumes discuss the mythology in Vedas and deification of natural elements in the Vedic times. The author also studies the evolution of nature worship and how with changing social and physical realities the form of worship and the objects of worship have changed. He also justifies the need that contemporary people must have felt to worship those specific natural elements.

Rajwade (2010): the article discusses the importance of Agni for Vedic people and its possible causes. He also discusses its further codification and mythification. How agni worship is still prevalent in covert (myths) and overt (rituals) forms has been discussed.

Bhattacharya (2001): discusses the concept of Panch Kanya and its evolution and significance. He studies these women in depth and states the possible causes for their popularity in Purānic as well as current times.

Karve (1968): discusses the characters from the Itihāsas and does a critical analysis of Purānic period's life style, socio-political realities and how it affected their process and ideas of mythification.

1.4 Discussion

Every early civilization has identified varied natural forces that they have in their independent fashion prayed to. The R̥gveda makes references to several Gods who can be easily identified and directly seen to be natural elements, reference to Agni (fire), Sūrya (sun), Varuna (alternatively understood as God of water and later as God of Ocean), Uṣas (dawn), Nishā (night) are common, their relationship with one another keeps varying. E.g. in some places Uṣas is Sūrya's mother and in some wife. Such alternating can be found in mentions of these deities in R̥gveda and other Vedic texts (1). It is interesting to observe however the life cycles of nature Gods. We see them assume varied forms, their roles morph, and change and in some cases become more integrative and/or specific over time. E.g. Varuna earlier regarded as God of water and ocean was later regarded specifically as the God of ocean. (2) On the other hand Indra finds an extended role from God of thunder and rains to King of Gods. This change can be understood by studying the social evolution of Sarasvatī river valley peoples. One can see that some Gods seem to go out of vogue. Several things can be a reason for the same. E.g. Uṣas who is a popular Vedic goddess has almost disappeared by Puranic times, at the same time Vac (speech) who is another significant Vedic goddess and one who co-exists with Sarasvatī (Goddess of knowledge) in R̥gvedic period seems to have a separate entity later only in Upanishads and doesn't have a separate place in Puranas, she is amalgamated into Sarawati in Puranic texts. These can serve as some representative examples of change in Gods and their statuses with changing needs of the society in which they were formed and the change can be correlated to development and growth of these clans. We can see that as Vedic society moved from simplistic agrarian civilization to a more complex and developed one; the amount of complex codification of their Gods increased as well. This codification can be seen in non-deified elements as well. A great example of the same can be Apsarā (celestial dancers in the court of Indra the King of Gods). Apsarā were known for their beauty, grace and above all as tools Indra used to spoil the 'tapasyā' (austerity) of sages and at times demons who threatened his supremacy as King of Gods. The Apsarā with their charm and beauty would entice the sages and thus make their austerity fruitless where-by securing Indra's position. The example of Menakā (an apsarā) and Visvamitr (sage) is quite well known and representative. This clan of celestial dancers was hence quite controversial for contemporary society; however they were understood to be far away and disparate from human realm and those who only entered it for special and specific purposes. This definition of the term Apsara and all imagery attached to it is from the post Vedic period. The word Apsara originates from the word Aṣas. Aṣas originally meant 'River/water body'. Eventually it came to mean 'Apsaras' (water nymphs) and finally evolved to be called apsarā and understood in their current context. Though at first glance one can see transformation of water body to a woman, one can at closer inspection find that apsarā retained most qualities in codified form of the natural element they originally meant. A river has many curves in her flow (which is the way apsarā is described 'curvaceous like a river'), is a life giver but doesn't belong to any specific person (an apsarā too is employed by Indra but they do not have permanent marital/societal relations with anybody) and both have fluid and detached nature that allows them to remain among disparate beings and yet separate from them. As a river was to the civilization's economy; later an apsarā was to their myths and stories.

While there are many Vedic Gods and Goddesses who's codification and evolutionary journey can be thus traced, one can see that with changes in social realities of Vedic people they felt a need to bring about changes to their Gods as well which would increase the functionality of their Gods. V.K.Rajwade in his research article on Agni talks at length about the primary reason for which Agni became a tremendously important deity in the Hindu pantheon and how till date, though the immediate and essential requirement of Agni for day to day living is long gone, he has become a part of the social DNA

and hence irreplaceable. The importance of Yajñā (sacrificial fire) and rituals and ceremonies related to it (and centred on it) played a significant role in further spreading and establishing the importance of Agni in Vedic society. However, the reduction of his practical usage has led to deep codification of Agni's presence in daily life and hence has been more ritualized and limited only for extremely important and socially significant purposes, e.g. a Hindu wedding is not sanctified till the bride and groom take seven vital vows around Agni and the dead are still burned so that Agni can help the ascension of their souls to heaven. (3) Though there are several such Gods whose traverses can be discussed I will limit my analysis to the Panch Mahā Bhūtas. The Panch Mahā Bhūtas are Prithvi (earth), Apas (water), Agni (fire), Vāyu (air) and Akash (sky/cosmic space). These five elements hold high significance in all aspects of Hindu life. They held an important place in Vedic ritual, Upanishadic philosophy and Yoga traditions. A large part of cosmology and mystic beliefs also revolve around them, stories about them are available a-plenty. However the most interesting presence of theirs can be found in codified forms in the Itihāsas and the Purānic Literature.

It is in this context that this paper will take a look at the Panch Kanya; five Godly women who are revered till date.

अहिल्या द्रौपदी सीता तारा मंदोदरी तथा |

पंचकन् नाम स्मरे नित्यं महापातक नाशनाम् ||

Ahilyā Draupadi Sītā Tārā Mandodari tathā |

panchkan-nām smre nityam mahā pātaka nāshnām ||

It means: Ahilyā Draupadi Sītā Tārā and Mandodari, any person who remembers and reveres these ladies daily shall have all his sins washed away/destroyed.

All the five ladies mentioned above are extremely unique and special, their story is central in the Itihāsas: Rāmāyana and Mahābhārata. They are also (in some cases) controversial women, their lives unique, and their approach to it equally difficult for a commoner to understand. They also have another common thread, they are all 'ayonijas' (not born from a woman's womb). Ahilyā was created by Brahma using the loveliest elements in all nature. Draupadi/ Yadnyaseni, is born from sacrificial fire. Sītā is a child found in untilled land in a chest and hence is referred to as Earth's daughter. Mandodari was given birth to by a frog and Tara is said to have been born from the churning of the ocean. A comprehensive look at each of these women shall be essential to understand codification.

Ahilyā was created by Brahma Dev to teach a vain aparā a lesson that she was not the most beautiful being in the universe and hence he took the finest things from nature and created Ahilyā. Once the purpose of her birth was served, her father handed her over to an old sage Gautama, who raised her in his āshrama and returned her to her father once she reached puberty. Impressed by his stoic commitment to the task and for not falling in love with the most beautiful being in the universe, Brahma gave her away to Gautama as his wife. This angered Indra who always imagined that she shall be his wife because he was the King of Gods and only he should have had the right to possess the most beautiful woman. He lusted for her and made furtive plans to claim her. Ahilyā's reaction to being given away as a wife to a man she once revered as a father figure is not mentioned in the Puranas. They had a fulfilling married life. Once Indra seduced her by assuming the form of Gautama Rishi, not ready to believe her innocence Gautama cursed her and Indra and turned her into a stone. Though later versions of this story claim that Ahilyā was unaware of Indra's true identity, Vālmiki Rāmāyan states that she was well aware of who he was and after their coitus she addressed him as 'Dev Rāj' and urged him to leave before her husband returned.(4) This clearly indicates that Ahilyā made a conscious yet bold choice to have coitus with a man who was not her husband. The way her character is built till that point in time, it is clear that she is a woman of piety and of deeply moral values, she is idealised in every way, this behaviour of hers hence comes as quite a surprise. Her polarised behaviour which in one place is the peak of socially idolized behaviour and on the other hand that of conscious and self-willed choices makes her like nature from which she had been created. All beautiful elements of nature that were used to create her have this trait, on most days they are tameable, useful, and glorified however they can be equally unpredictable and can make sudden situations/behaviours that are outside of the scope of human understanding and that disturb the human life as it is till that point.

Draupadi is the lady protagonist of Mahābhārata. She was born from the sacrificial fire, she married five men. Events in her life seem like a sinusoidal wave. She was fiery, impatient and had the courage to question men and rules of a man's world. Her intelligent argument in the Kuru court in which she was humiliated speaks volumes of her strength of mind and will.(5)

In one place she states 'I am like the fire in a yogi's (ascetic's) hut, I am pure myself but I also have control on the impurities of this world'. Draupadi fought for her rights, for all things that are *sanātana dharma* (eternal truths) and was a catalyst for destruction of all people who are personification of the evil. Interestingly this is also the description (bringer of light, protector of the right and destroyer of evil) of Agni in the Vedas. Draupadi in her own right holds these deep resemblances with Agni from which she was born.

Mandodari and Tārā are characters from the Rāmāyan. They were both born from water element. They were married first to evil persons (Rāvana and Vālī respectively) and later married their brothers-in-law (Vibhishan and Sugreev respectively) who were of pious nature. Both counselled their respective husbands well and did not mutely allowed injustice or bad governance to happen. They ensured that their respective children ascend the throne after their husband's death. While Mandodari successfully kept Rāvana from harming or raping Sitā, Tārā successfully calmed down the angry Laxman and saved her husband's life. Both these women display an astute political understanding and are good councillors. They took the responsibility to care for their families in every practical manner, ensured that their children's rights were safeguarded. They came to terms with their husband's death and agreed to marry his younger brother which was also a custom and also a firm step to ensure that their children ascend the throne. They could have refused to fall in line, they need not have agreed to the counsel of their husband's slayer (Rāma) but they cited the right side and amicably achieved their ends rather than start another war. They show good sense and adaptability to circumstances. Mandodari and Tārā's is the perfect picture of extremely judicious and practical women. They achieve their ends by adopting ways that are a win-win situation, they safeguard all and choose paths that are dangerous but of minimum friction. Their fluid and malleable nature makes them like water they are born from. Both are adjusting, they will take the shape of the vessel (situation) in which they are put but will retain their own properties. Though both these characters don't have an exhaustive presence in Rāmāyan, their significance is no less and hence revered.

Sitā is the lady protagonist of Rāmāyana. She is chastity, morality, commitment, fortitude and tolerance personified. Sitā's life from her discovery in a chest right up to being kidnapped by Rāvana seems like an idyllic fairy tale. She does not see constant strife from day one the way Draupadi does. Sitā had royal upbringing. She was the only one who could lift Lord Shiva's bow. She then married Rāma who was the only person beside her to achieve the said feat. Then a twist in her idyllic life, she was kidnapped by Rāvana and was surrounded by scary looking demons and ogresses. She had to also see the cruel wounding of her only protector Jatāyu. Then meeting Hanumāna she got to know of her husband's activities to recover her. The war was won and she has to give an Agni Parikshā to prove her innocence and purity. Later she was sent away while yet pregnant based on a washer man's vile remark and finally chose self-immolation. Unwilling to bear the injustice any more she invoked her mother Prithvi (Earth) who swallowed her whole. Sitā too holds uncanny resemblances to the element from which she is born, she is powerful, and has tremendous potential but most of her life she shows deep love and commitment to her husband. Sitā is the daughter of earth and just like her mother she is tolerant, nurturing someone who needs assistance to fight off evil. Someone essential to all but always taken for granted.

1.5 Inference and Conclusion

A careful look at these five women will reveal that though they are born from different forces of the Panch Mahā Bhutas they actually seem to be codified versions of them. Though Agni, Prithvi also hold a separate existence in the Purānas and the Itihāsas they are on a celestial realm, these women however function in the earthly realm. As the complexity of codification increased it must have been felt that personifying a God in human form is not enough, he/she also needs to become an active 'person' in the society. Hence we see such human personifications further humanised. The Purānas and Itihāsas are believed to be created to make the complex ritualistic Vedic ideology and Upanishadic philosophy easy for common man to understand, re-tell and relate to. It is hence no surprise that the most important and vital of Hindu Gods find a ritualistic, philosophic and mythic presence in the evolving civilization. The fact that stories are more convenient to transmit and that they have greater impact must mean that such codification was not just made to help the deities thrive but also to make them more approachable and easier to assimilate to for their audiences.

Hindus today do not practice of Yajñā (sacrifice) to the extent to which it was done and expected to be done each day by each person in the Vedic period, nor is the Upanishadic philosophy entirely understood and practiced on a mass conscious level today. However, these stories still survive and enjoy immense popularity and have found firmer place in people's heart through broadcast and digital media. Every society has strived to retain the wisdom of its collective pasts. It will be safe to say that the Hindus have managed it quite well through effective codification of their deities who even in this modern day and age; and possibly in an abstract form remain a firm part of their realities.

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Private Armies in Contemporary International Politics

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Abstract

The use of mercenaries has been historically a constant phenomenon till almost the end of the XX century, when their activities were criminalized by the international community. Although the age-old profession of being a mercenary may be as old as the history of warfare itself, we are perhaps witnessing a 'golden age' for the soldier of fortune. Since the end of the Cold War, there has been a proliferation of mercenary activity across the globe. Today's modern mercenary cohorts, the 'private military companies' (PMCs) that pursue their services the world over, have become big business. Since 2004, the total net worth of publically traded PMCs, excluding some less legitimate enterprises, exceeded \$100bn globally. Despite the prolonged economic malaise post-2008, the private security sector has maintained an impressive upward pattern of growth. This emergence of the PMC as a key security actor within conflicts and regions of instability around the world has strengthened the age-old academic interest in the affairs of the mercenary.

Keywords: Cold war, conflicts, international community, private armies, international politics etc.

1. Introduction

The use of mercenaries has been historically a constant phenomenon till almost the end of the XX century, when their activities were criminalized by the international community. Although the age-old profession of being a mercenary may be as old as the history of warfare itself, we are perhaps witnessing a 'golden age' for the soldier of fortune. Since the end of the Cold War, there has been a proliferation of mercenary activity across the globe. Today's modern mercenary cohorts, the 'private military companies' (PMCs) that pursue their services the world over, have become big business. Since 2004, the total net worth of publically traded PMCs, excluding some less legitimate enterprises, exceeded \$100bn globally. Despite the prolonged economic malaise post-2008, the private security sector has maintained an impressive upward pattern of growth. This emergence of the PMC as a key security actor within conflicts and regions of instability around the world has strengthened the age-old academic interest in the affairs of the mercenary.

Contrary to mercenaries, private military and security companies are legally registered transnational corporations which obtain contracts from governments, private firms, intergovernmental and non-governmental organizations. In low intensity armed conflicts or post conflict situations such as Afghanistan and Iraq their employees, contracted as civilians but armed as military personnel, operate in "grey zones" as unlawful combatants without oversight or accountability, under murky legal restraints and often with immunity.

The outsourcing of a number of basic functions which traditionally were carried out by national armies or police forces, known as the top-down privatization, has blurred the borderlines between the public services of the State and the private commercial sector. The activities of humanitarian non-profitable organizations and those of military and security transnational companies working for financial gain are also being blurred. Private military corporations often provide security and protection to humanitarian non-governmental organizations in conflict or post-conflict areas where it has become difficult for the population to distinguish them from the national armies or police forces. Humanitarian assistance risks becoming associated with an intervening armed force represented by private military and security guards. Furthermore, these PMCs do not hesitate to present themselves as peace organizations and utilize the aims of humanitarian non-profit organizations to advertise their activities.

PMCs fill the vacuum mainly left in three types of unstable situations:

- I. in zones of low-intensity armed conflict (the new asymmetrical wars) where the armies are not fully deployed or in post conflict situations with a high level of insecurity;
- II. in armed conflicts when international organizations do not intervene; and
- III. in troubled areas in developing countries where there is no presence of the State and extractive transnational corporations operate.

Under the emergent system of international criminal law, the individual is a subject of the law. Mercenary, like terrorism, has become an international crime. If at the international and regional level there are specific provisions regarding mercenarism and a definition of what a mercenary is, there is no definition or references to these new non-state actors which are the PMCs.

2. PRIVATE MILITARY COMPANIES (PMC)

2.1 Private Military Companies

As mentioned before, from antiquity until today, mankind has always been engaged into wars, and as long as there are wars, there will be soldiers and out of soldiers, there must be mercenaries. From the formation of the French Foreign Legion in the XIX century and on, the urge to form far more sophisticated mercenary armies with air craft and marine became inevitable. All of this, led into the corporate transformation.

Although the man who first formed this industry by founding WatchGuard International was David Stirling, a Scottish Lard and a military man in 1960, there are some other theories that say DynCorp of United States of America was the first one, mainly because it provided "technology and logistics support" to the American Army in Korea and Vietnam since 1946.

It is universally known that the state is an organized authority which can have an army and hand over its rights to organizations to form Private Military Companies (PMC) but still under the state's sanction. The state responsibilities are elaborated by the International Law Commission under Article 5 and 8. PMC are universally accepted and answer to war crimes and sanctions just as the state army would. They operate in international or non-international conflict and can be hired by a state party for an armed conflict, by a private company to protect its operation where the conflict it's taking place or most rarely, by a non-state party for an internal armed conflict. Based on United Nations report, their industrial worth is about US\$100 billion but very much questionable if one day, all this industry is going to fade overnight. Today, there are around thirty PMCs all over the world.

2.2 Private Military Companies' Employees

Soldiers of fortune played a great role for the following five decades, but they were also controversial or they were largely marginalized as criminals. To avoid mercenary criminalization and violating activities, mercenaries fall under two specific international conventions. Under these conventions, apart from financing, recruiting, training and use of mercenaries being a mercenary is not a crime, and mercenarism is not engendered with criminalization but if a mercenary falls as a prisoner-at-war, he will have no protection. Also, as a result of conflict and war victims, in August 12, 1949, it brought forth the demand of adding the Geneva Conventions Article 47 of Protocol I a Protection on Victims of International Armed Conflicts.

These sanctions were not entirely respected by individual mercenaries, especially by the African private armies that by 1970, their fame came into question whether private armies should exist, or how much should they be allowed to rule due to the widespread terror and crime they were imposing upon people.

Although questionable if all PMC employees are mercenaries, being a part of this industry, comes at a toll. Being under the company's uniform does not make you any different than an individual mercenary because, the mercenary's main motive is profit and being destined to kill for pay. In this case, any other motive, such as patriotism, liberty, altruism, or oppressing fall out of the mercenary category. Since PMC's main motive is profit, their very essence is also business obligated to taxation, and therefore it requests a profit with transparency, legal and moral obligations.

The more the industry was growing the higher the problems involving mercenaries and companies under the international humanitarian law became. Governments insisted on privatizing their functions to PMC asserting that these employees

were “civilian contractors” and not combatants leaving the PMC and mercenaries accountable for their action. When cases appear, confusion always arises as to how contradictory this industry is and how the law applies and who answers to crimes if committed. Such are the two most familiar cases where it is still arguable whether the charges go to the private military companies, the state army or to the contracted individuals.

First is the case of the four Blackwater employees being killed and mutilated, and burned by Iraqi civilians in Fallujah bridge in April 2004 not having a clear distinction between a “civilian contractor” and a military one. Second is the CACI “civilian contractor” torturing Iraqi detainees in prison. United States has raised a court case for the US military personnel, but for the allegedly involved private contractors, nothing is raised so far. These two incidents have driven a discourse that the role, the status, regulations and accountability of a private military contractor must be increased by the international law.

There are also cases where even the US Intelligence Agency (CIA) is being questioned about engaging a private contractor for war on drugs in South America against the FARC in Columbia. There is also the Sierra Leone case with Executive Outcomes Private Military Company where employees were engaged into fight with the rebels since the national forces failed. Although their case is successive, it very much poses a challenge to those who defend the international human law. In 2001, Kathryn Bolkovac brought DynCorp on court for women and girls sex trafficking after the war in Bosnia and Herzegovina. Last but not the least case of PMCs misuse, is the pleading guilty of Sir Mark Thatcher’s collaborating with a private contractor to organize a coup in Equatorial Guinea without being aware what was he being involved in.

Based on what I have stated above, it can be concluded that the industry of the PMCs and its laws and regulations are complex and multifaceted.

2.3 Theoretical approaches

The author shall attempt to shed light on the topic of PMCs by relying on two theories, namely Realism and Security Governance theory.

Given the fundamental value attached to the notions of state centrality and the state monopoly over violent force as projected by Realism, it is perhaps comprehensible that the response to increased PMC activity in international security affairs from Realist scholars has been predominately reactionary – although we shall see this neither necessarily implies the impossibility of integrating the PMC within existing theoretical security structures nor presumes a negative outcome as a result. Whilst critics such as Peter Singer contend that the state security monopoly is only a late aberration in international affairs, it is undeniable that the existence of the PMC as an actor employed to project violence force has the potential to destabilize state-centric security structures. From a Realist perspective, the fundamental threat posed by the PMC emerges from the development of a structural ‘dependence’ upon the provision of security by private actors.

Contemporary security scholars from a range of theoretical disciplines have sought to engage with the PMC, many posing serious questions regarding the capacity of the PMC to contribute to international security. However, thus far critics have generally failed to undertake any cross-theoretical assessment of the PMC as a contributor to international security, with the vast majority of existing literature falling foul of a clear polemical bias either in favor of one particular theory of international security, or otherwise in general opposition to the PMC as a security actor.

Despite the ideological differences of both Realism and the Security Governance theory, both theories share a degree of similarity in their approach to the PMC; whilst Governance and Realism contain inherent bias for and against the PMC as a security actor respectively, the two theories share the view that the PMC is capable of both positively contributing and undermining existing security structures.

From the perspective of Realist scholars, the PMC is, in the first instance, a corporate entity. The very nature of the PMC invariably means that private military contractors act in the manner of a private company – it must be fiscally responsible and profitable for shareholders, and, as such, is capable of possessing an nationalistic or ideological commitment to any particular State only insofar as it complies with its first priority of making money. This in turn has a number of implications for states seeking to employ the services of PMC actors. Relying upon the services of PMC forces is inherently hazardous insofar as that it is impossible, or at least problematic, to order the individual PMC employee to act on the grounds of national loyalty or duty.

Whilst Security Governance theory similarly identifies an increasing structural dependence upon PMC services amongst state actors, Governance scholars embrace the growing integration of PMC actors into state security structures as both a

desirable and inevitable 'delegation' of security away from the state. For Governance scholars, the increasing employment of PMC actors represents a logical decision on behalf of state actors in response to the realities of security in the post-Cold War period.

As part of this devolution of security, the PMC presents itself as a largely positive contributor to existing state-centric security structures. For Governance theorists, the widespread integration of the PMC within the military apparatus of state actors comes in the first instance as the result of a logical pursuit of economy and efficacy that echoes aspects of the Realist argument in favor of the PMC. For many states, resource scarcity presents itself as the main driver towards the economic incentive to employ PMC forces.

Whereas such success stories may appear to validate claims that the PMC can positively contribute to state-centric security, from the perspective of Realist scholars these favorable incidences are counterbalanced by the numerous cases where a dependency upon PMC actors for security has either weakened or fatally undermined state sovereignty. In regions suffering from civil strife or internecine war, employment is lucrative.

2.4 Categories of PMC

There is a wide range of categories that various researchers give to PMCs. Below we will provide a three-tiered classification of PMC categories based on their profile of activities:

I.

- a. Operational provider – an all-purpose combat-capable military formation: insurgent suppression, country-building missions or peacekeeping,
- b. Consulting provider – tactical training, organizational analysis, management, counseling and logistical support for the U.S. Army,
- c. Logistical and training provider – provides supplies, shelter, meals and other base facilities for the military personnel. It can also provide repairing, rebuilding and fighting oil well fires,
- d. Intellectual provider – offering intelligence personnel and equipment; surveillance and aerial mapping, photographs, videos and other network assistance,
- e. Security and anti-terror provider – security and private military contractor; weapon and mine- clearance.

II.

- a. Military provider firms supplying direct tactical military assistance that can include serving in front-line combat,
- b. Military consulting firms that provide strategic advice and training and
- c. Military support firms that provide logistics, maintenance and intelligence services to armed forces.

III.

- a. Private security companies
- b. Defence producers
- c. Private military companies
- i. Consulting
- ii. Logistics and support
- iii. Technical services
- iv. Training
- v. Peacekeeping and humanitarian assistance
- vi. Combat forces

b. Non-statutory forces and

c. Mercenaries.

This very diverse classification, serves only as an illustration to how sophisticated and complex is the combatant industry.

The overall PMC's role is not to engage in combat roles. However, over the last few decades most of the high-profile companies have engaged into a combat while in defense, or into an attack when guarding in operation. Therefore, apart from consisting security for the bases, facilities and individuals, logistical, Special Forces and intelligence gathering operations, PMC's combat role is constantly increasing.

For the sake of this thesis argument, we will be focusing on the case study of one of the most prominent representatives of the PMC world, namely Blackwater. Based on the classifications above, Blackwater falls under a many different categories, yet we will consider it as falling under the second categorization, namely as an Operational Provider.

3. THE INTERNATIONAL LEGAL FRAMEWORK

3.1 Mercenaries by the UN Approach

The immense use of mercenaries and PMC throughout history, forced the international law to come up with more detailed and specific laws for mercenaries. As mentioned in chapter III and in PMC's Employees above, the first document under the Geneva Convention of 1977 is the Article 47 of Protocol I, which explaining the term "mercenary", exempting them from the right of prisoner-at-war and prohibiting combatants to carry weapons. The second document adapted in 1989 but enforced in 2001 is the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries.

Based on the Article 47 of Protocol I, the United Nations Convention:

1. A mercenary is any person who:

- (a) Is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) Is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party;
- (c) Is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;
- (d) Is not a member of the armed forces of a party to the conflict; and
- (e) Has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.

2. A mercenary is also any person who, in any other situation:

- (a) Is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at:
 - (i) Overthrowing a Government or otherwise undermining the constitutional order of a State; or
 - (ii) Undermining the territorial integrity of a State;
- (b) Is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation;
- (c) Is neither a national nor a resident of the State against which such an act is directed;
- (d) Has not been sent by a State on official duty; and
- (e) Is not a member of the armed forces of the State on whose territory the act is undertaken

According to this, to be a mercenary, you must meet all of the six requirements. However, two of them are the most problematic ones.

The first condition, "recruited to fight" leaves a gap into understanding that the contractor must be involved into "fighting" in order to guard a place or installation, or to defend a military objective against enemy forces regardless if its "offensive" or

“defensive” operation. This raises the question how would the “training” that the private contractor provides will be taken. There is a specific case during the Croatian-Serbian war where the US private military company called the MPRI, was hired to plan and command the military operations to the military personnel .

The second issue is being a “neither a national of a Party to the conflict nor a resident of a territory controlled by a Party to the conflict” which also is unclear how it applies to the PMC’s state and the mercenary state. When the Article 47 was adopted, the nationality issue was not a problem, but with the rise of the PMC’s industry, issues like this became more evident. For instance, during the Iraq’s invasion, the US PMC hired a German contractor who falls within Article 47, however, for the same issue, a British or an American co-worker, would not.

3.2 “Civilians” and “Combatants”

To limit civilian loss and to achieve an important side of traditional interstate relations, the international humanitarian law made a fundamental distinction between a civilian and a member of the armed forces - combatant. The international humanitarian law does not allow a “quasi-combatants” category as it has been used in some war efforts.

3.2.1 Combatants

By the international humanitarian law, a person who is entitled to participate or engage into hostility is called a “combatant”. Furthermore, a combatant and a person protected under Geneva Convention is a:

1. members of the armed forces (including militias or volunteer corps forming part of such armed forces).
2. members of other militias and other volunteer corps, including those of organized resistance movements, operating in or outside their own territory, even if this territory is occupied, provided that they:
 - a. are commanded by a person responsible for his subordinates;
 - b. have a fixed distinctive sign recognizable at a distance;
 - c. carry arms openly; and
 - d. conduct their operations in accordance with the laws and customs of war.
3. members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.
4. persons accompanying the armed forces such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labor units or of services responsible for the welfare of the armed forces.
5. members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft.
6. Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had the time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

3.2.2 Civilians

A civilian is a person who has no right to what the combatant above has; has no right to engage into a hostility and no right of the Prisoner-of-War status, which would be elaborated more thoroughly below. On the other hand, since a person is either a civilian or a combatant, PMC employees are not combatants, but civilians and indeed do not have the right to participate directly in hostilities. Since, under the international humanitarian law, mercenaries do not enjoy the privilege of POW, this raises the question if PMC’s employees are combatants just for the purpose to be covered within the international humanitarian law.

3.2.3 Prisoner-of-War (POW) status

If an army member is captured in war, he or she benefits from the official status by not getting prosecuted by the capturing state. This privilege is the “prisoner-of-war” status. The Third Geneva Convention of 1949 under the Protocol I of Article

43, states that there is no difference between regular armed forces and other armed groups in the combatant status. Entitled to POW status are:

1. The armed forces of a Party to the conflict consist of all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, even if that Party is represented by a government or an authority not recognized by an adverse Party. Such armed forces shall be subject to an internal disciplinary system which, inter alia, shall enforce compliance with the rules of international law applicable in armed conflict.
2. Members of the armed forces of a Party to the conflict (other than medical personnel and chaplains ...) are combatants, that is to say, they have the right to participate directly in hostilities.
3. Whenever a Party to the conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other Parties to the conflict.

For this POW treaty, there are presently 164 states as a member of this party. Combatants must distinguish themselves by wearing a uniform and arms openly or else, they lose their POW status.

This status does not apply if it is a non-international conflict, usually between a government and rebels. The same applies to PMCs operating in an international armed conflict because the Protocol I of 1977 is not yet ratified by all states. Furthermore, depending on the states jurisdiction, some PMCs they hire by the state have a card that confers a certain recognition for being a state contractor in which based on Hague Regulations of 1899 and 1907, grants the POE status. Based on the above-stated combatant status for having the right to use the POW status, some interpretation of the term "belonging to a Party to the conflict" address that when a state hires the PMC, it would be required to formally incorporate them into its army domestic legislations. In that case, the state can have some "moral and legal" control" over its contractors. It is less clear when PMCs are contracted by another company if they are granted the POW status.

The privilege of the "prisoner-of-war" status does not apply to civilians as well, unless they are companion member of the military, war correspondent, supply contractors for the welfare of the armed forces and have an identity card.

3.2.4 "Civilian" of a PMC

If the mercenary status, the combatant and POW status do not apply to the PMCs employees, they are protected under the Geneva Convention Relative to the Protection of Civilian Persons in Time of War. PMCs member benefit of fundamental customary rules related to the prohibition of inhumane treatment, torture, hostage-taking and a right to a fair trial. They also have the right to be visited by ICRC representatives and correspond to their families. Under the security of the Detaining Power, PMCs member may be a subject to internment without a trial in an appropriate court and unlike a POW, they "shall be released by the Detaining Power as soon as the reason no longer existed."

3.3 State Responsibilities for Hiring a PMC

The International Law Commission prepared a norm inside Article 5 and 8 in regards to the state responsibilities for the actions of PMCs when they hire them. States should "ensure respect" for the international humanitarian law within all circumstances and when hiring a PMC, their responsibilities do not pass along to PMCs. The state must follow if PMCs are properly trained, must instruct them in the international humanitarian law, must have a legal adviser, and must contain rules of engagement.

According to the Geneva's First and Second Convention of 1949, states must publish the international human law principles to the entire population, especially to the fighting forces, medicinal personnel and the chaplains mainly by providing programs and instructions. Practically, states tend to pass it along to other actors like Red Cross societies or academic centers but when they hire PMCs, not necessarily these contractors fall under the civilian population. Generally, government would train a relevant judiciary, police and prison personnel to make sure that PMCs are trained for these laws.

To clarify this, Henckaerts and Doswald-Beck to the international humanitarian law, they added customary laws which are considered to be as a series of rules. According to these customary laws of the international humanitarian law, number 147 states:

"A state is responsible for violations of humanitarian international law which can be attributed to it, including:

- (a) Violations committed by its organs, including its armed forces;
- (b) Violations committed by persons or bodies capacitated by the state to exercise government authority;
- (c) Violations committed by persons or groups acting under the instructions of the state, or under its direction or control; and
- (d) Violations committed by private persons or groups which it acknowledges and adopts as its own conduct.

In addition, when PMCs commit crimes while engaged in conflicts, the states hiring them are just as responsible. For instance, the case of the International Court of Justice against Uganda while occupying Congo and the crimes private contractors committed in Ituri. The court found Uganda responsible for lack of vigilance in preventing violence under Article 43 of the Hague Regulations of 1907.

Lastly, United States had to specifically come up with similar recommendations for the PMCs operating outside the land, especially after the "Baghdad's Bloody Sunday" caused by the mercenaries of Blackwater. In September 2007, as well as in the following year, the Department of Defense and the Department of State initiated major personnel shift from another state to Iraq, and second, requested from all PMCs a daily briefing with the Department. PMCs with the Department of Defense and the Department of State signed a memorandum of agreement of procedures and policies for the PMCs personnel. The contractor's personnel are also to inform the appointed military commanders.

The U. S. and Iraq, in 2008, signed an agreement that would cover operations of armed forces when working with foreign countries. This agreement is called SOFA and it stands for a Status of Forces Agreement and it states that Iraq maintains executive criminal and jurisdiction over U.S. contractors under their employees. However, this agreement only covers PMC's contractor under United States Armed Forces, while private security personnel for protecting Embassies or military supply convoys would still be considered combatants.

In addition to this, in September 2008, the International Committee for the Red Cross and the government of Switzerland, provided the Montreux Document for monitoring the PMCs action internationally. The document holds laws of the international humanitarian law and the human rights obligations and it also holds a Global Code of Conduct for PMCs. So far, this document is signed by 34 countries.

3.4 Other Criminal Responsibilities Connected with Mercenaries

Violations of the international humanitarian law are war crimes and a subject to universal jurisdiction. War crimes can be committed by civilians, private contractors or by military force, however, for PMCs these laws apply if the state has adopted legislation enabling them to prosecute persons under the universal jurisdiction for war crimes. Many trials have taken place regarding this matter, but almost none yet for any PMC member mainly because of the messiness and unwillingness between states and because of avoiding expenses insuring witnesses from abroad.

However, there are two aspects for which a PMCs member can report and answer a war crime:

- Command Responsibility – if they have ordered or been informed of the crime they or their subordinates commit and did nothing to prevent. If there is no hierarchy of responsibilities within the PMC, then the question is who would. If a similar case appears within any state official, the International Criminal Tribunal can identify the case by the DE FACTO control as the case in the Former Yugoslavia (ICTY). This is not the case with hiring a PMC because the practice actually shows that the superior does not need to know of such violations and crimes and does not have to be guilty by virtue of command responsibility.
- Superior Orders – makes the subordinate responsible if he knew of a crime being committed. In this case, the soldier can use this as a defense if the superior has given him the order, but this case is not been present in some time. Whether this applies entirely to PMCs, is questionable because there is no precedent answer to this.

CONCLUSION

The globalization of the world economy and the reduction of the regular armed forces of States, in developed and developing countries, are some of the causes behind the rapid development of the privatization of violence. Classical inter-state wars with clear front lines have almost disappeared. Instead, we witness low intensity armed conflicts; a widespread

use of light weapons; and the privatization of military functions and asymmetry of the parties in the conflict. Private military and security companies are more and more performing a number of military functions. In many instances, they are managed by former militaries, are efficient and have a modern structure which characterizes for offering multiple services. Their participation has mushroomed in low intensity armed conflicts or post conflict situations such as in Afghanistan and Iraq employing "private security guards" who are heavily armed but with an ambiguous status permitting them to provide passive protection in situations and conflicts where there are no front lines and where the line between passive and active confrontation is extremely thin. There are a number of international instruments, which indirectly may be invoked with regard to the activities carried out by private military and security companies, the 1989 International Convention against mercenaries being one of them. There is, however, no international instrument, which regulates and monitors the military and security activities of these transnational companies. The only direct international form of regulation is the one which relates to the contract, which private military and security companies sign either with the government department outsourcing some of its functions, the international governmental organization, NGO, firm or individual which contracts them. They define the scope and scale of their activities as well as the rules of engagement. Those contracts, however, are private and kept confidentially.

Guaranteeing security, public order and respect for law and order and human rights are State obligations. Foreign policy is subject to international law, whether it is carried out by state organs or by private agents: States cannot avoid their international obligations merely because an activity is conducted by a private actor. States may contract these companies in attempts to avoid direct legal responsibilities. The fact that a State contracts and delegates its functions to private entities does not change its responsibility. International and constitutional law assign the task of security, public order and defense to the military and police forces under the concept of sovereignty and the monopoly of the use of force. If the state fails to show due diligence in preventing and responding to human rights violations committed by private actors, such abuses can give rise to state responsibility under international human rights law.

There is a lack of regulations at the international, regional and national levels regarding private military and security companies which often operate without effective oversight and accountability. Weak or insufficient domestic legislation, regulation and control of private military and security companies encourage these transnational companies to seek to recruit former military personnel and ex policemen from other developing countries, where labor is cheaper, as "security guards" in low-intensity armed conflicts.

Based on what was presented, do hiring PMCs, in the case Blackwater, help or harm?

From the point that PMCs, including Blackwater, were already specialized and well trained in logistics, specialized training, it helped the government function together stronger. Guarding and helping the U. S. military, in a way, Blackwater or any other PMC would do the job better and would save the other military army force perform their combat tasks.

In conclusion, it is possible to assert that the process of legitimization that the majority of PMSs are undertaking deepens the complexity that is already embedded into the issue of privatized security. PMSCs represent a hybrid actor, which draws its legitimacy both from the market and from other international actors and – more importantly – that is capable of adapting to different norms, but also to shape them in their favor. It is precisely because of this flexible and mutating nature that makes it impossible to give a definitive statement about whether or not their presence in a variety of security scenarios will be beneficial or detrimental to international politics.

This thesis attempted to make a modest contribution in showing the evolution of these actors in a limited time frame; it might be an initial step to understand not only where PMSCs are going but also how is it possible to legitimize even further their activities, maximizing the benefits and reducing the risks of their work.

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A Qualitative Study of the Separation of Powers in the Criminal Justice System of Kuwait

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Abstract

The present article considers the separation of powers (SOP) in the criminal justice system of Kuwait. The topic is underrepresented in literature, which may be partially attributed to the fact that SOP in criminal justice is not very extensively studied; instead, administrative SOP is usually reviewed. Furthermore, the investigation of the literature devoted to Kuwaiti criminal justice system also reveals the lack of sufficient coverage. Still, some evidence indicates that in Kuwait, executive bodies have notable power over the criminal justice system of the country. This issue, along with the gaps identified in the literature, prompts the present investigation. The article employs a qualitative methodology to gain insights into the topic. In particular, the literature review is used to identify the areas of interest, as well as gaps in the literature, and interviews are employed to fill the gaps and provide additional details and information. The interviews engaged specialists, including the representatives of the three branch of power, as well as lawyers and academics, and prompted them to consider the topic of SOP in Kuwait, especially in the criminal justice system, as well as its strengths, weaknesses, and plans for improvement. The results indicate that the issue of the excessive power of the executive bodies over the criminal justice of the country is not only present; it also causes significant problems and, according to the participants, needs to be eliminated to ensure the protection of human rights. Additional topics like the potential safeguards and alternatives to SOP that can ensure the protection of human rights were also considered. As one of the very few studies that review Kuwaiti criminal justice and SOP, the present article contributes important data on both topics.

Keywords: criminal justice system, separation of powers, law.

Introduction

The Separation of Powers (SOP) is a major mechanism for the protection of human rights.¹ According to Barkow, who has provided a framework for the present study, SOP in criminal justice is particularly important because it prevents power abuse, which is especially dangerous for citizens in such settings.² However, Barkow also observes that the topic of criminal-matters SOP is noticeably understudied when compared to the administrative-matters SOP.³ Additional research indicates that Kuwaiti criminal justice system is not very well-researched either. Furthermore, the literature that is present points out potential issues that are worth investigating.⁴

First, it can be concluded that Kuwait employs its Constitution to declare the significance of SOP and guarantee it along with human rights.⁵ However, the cases in which SOP is not adhered to in Kuwait are also reported. For example, the Constitution itself specifies that the Ministers (representatives of the executive power) are also a part of the country's legislative body.⁶ On the other hand, certain legislation (in particular, the Decree Law No. 23 of 1990)⁷ can be viewed as unconstitutional because it directly limits the power of the judiciary, transferring it to the executive bodies. Police and

¹ David Samuels, 'Separation of Powers' in C Boix and SC Stokes (eds), *The Oxford Handbook of Comparative Politics* (OUP 2009) 703, 706.

² Rachel Barkow, 'Separation of Powers and the Criminal Law' (2006) 58 *Stanford Law Review* 989, 993.

³ *Ibid.* 989.

⁴ John Morison and Brian Grimshaw, *Investigation, Process and Legal Standards within the Criminal Justice System in Kuwait* (Queen's University Belfast, 2016) at 3.

⁵ Constitution of Kuwait, 1962, art. 50

⁶ *Ibid.* art. 56, 80.

⁷ Kuwait, Decree Law No. 23 of 1990: Regulation of the Judiciary Law, 1990, art. 2.

prosecutors do not have an effective SOP in Kuwait either.¹ Thus, there is some evidence to SOP-related problems in Kuwaiti criminal justice system, even though it does not receive extensive coverage in modern research.

Other issues related to the criminal justice of Kuwait are also reported by studies, including the lack of significant elements (for instance, relevant procedures for political cases² or guidance for crime investigation), bureaucracy, unclear roles and responsibilities, resource shortages, and the excessive presence of foreign judges.³ In general, however, the topic is represented by very few sources, and none of them focuses on the impact that SOP can have on the mentioned problems.

Another topic that receives at least some coverage is the origins of Kuwaiti legislation. The latter has been influenced by several factors, including that of the British Jurisdiction, with which Kuwait had entered an Anglo-Kuwaiti Treaty. As a result, Kuwait had two independent jurisdictions between 1925 and 1961,⁴ and the British jurisdiction was apparently the dominant one.⁵ However, Kuwait's independence was proclaimed in 1961, and the British legislation was abandoned. Instead, a new system, which was influenced by the French and Egyptian law, as well as the Islamic law, was developed.⁶ A literature review demonstrates that this diffusion of the law could result in negative effects (for instance, in adopting the flaws of the French law),⁷ but no positive ones were reported. Also, the literature review failed to find the sources that would consider the impact of the origins of Kuwaiti legislation on SOP in the judiciary.

In summary, a study of the sources on the topics of Kuwaiti SOP and its criminal justice system indicates the presence of some issues, but they are not very extensively examined. At the same time, the literature review also demonstrates the significance of the research on the topic, which is specified by the particular circumstances that make power abuse in the criminal justice system especially damaging. Consequently, a study of the SOP in Kuwaiti criminal justice system would be both original and valuable as it focuses on notable literature gaps and contributes the data can help to develop solutions to the identified issues.

Based on these assumptions, the present article put forth the following research question: how effectively does SOP in the criminal justice system of Kuwait, which is rooted in the country's Constitution and demonstrates the impacts of several law systems, contribute to protecting the rights of citizens, and what can be done to ensure this protection? In order to respond to this question, an appropriate methodology was developed.

Methodology

The presented study employs qualitative methodology because the latter is capable of exploring the evidence related to the topic and providing insights into it.⁸ The postpositivist perspective was adopted to guide the research; its philosophy supports qualitative methods and postulates that knowledge can be constructed based on evidence, which includes qualitative data.⁹ The first part of the work involved the review of primary and secondary sources on the topic, which helped to contextualise the study and identify the gaps in the literature. Apart from that, it was used to develop the criteria of SOP which were then employed for interviews.

Individual semi-structured interviews with 25 people (see Appendix A) were carried out to retrieve the data based on the experiences and expertise of the participants. The choice of the type of interview is explained by the fact that semi-structured interviews find a balance between ensuring the structure of the process (to cover the necessary topics) and

¹ Morison and Grimshaw, *supra* (n 4) at 7.

² Mahmoud Rudi Mousavi, 'A Comparative Study between Kuwait and Britain Level of Understanding the Scope of Free Speech in Both Countries' (2016) 7 *International Journal of Educational Research and Reviews* 880, 884.

³ Morison and Grimshaw, *supra* (n 4) at 1-7.

⁴ Martin Woodward, 'Legal Business: The Judicial Aspects of British Rule in the Gulf' (Qatar National Library, n.d.), para 5 accessed 5 May 2018

⁵ Louis Allday, 'The Kuwait Cat's Meat Crisis' (Qatar National Library, n.d.), para 1-12 accessed 5 May 2018

⁶ Myra Williamson, 'The diffusion of Western Legal Concepts in Kuwait: Reflections on the State, the Legal System, and Legal Education' in S Farran, J Gallen and C Rautenbach (eds), *The Diffusion of Law: The Movement of Laws and Norms around the World* (Routledge 2016) at 41.

⁷ *Ibid.* at 38.

⁸ Tim May, *Social Research: Issues, Methods and Research* (Open University Press 2011) at 132; see also Paivi Eriksson and Anne Kovalainen, *Qualitative Methods in Business Research* (SAGE 2015) at 4.

⁹ Adam Frane, *Measuring National Innovation Performance* (Springer 2014) at 6.

offering some freedom to the interviewee who can then provide more details and additional insights.¹ The tool for the interviews (see Appendix B) was developed specifically for the project and improved with the help of triangulation.

The sample was based on quota approach:²the study aimed to recruit the people from the three branches of power, as well as lawyers and academics. The total of 25 people was involved in the project (five from each group). Only Kuwaiti people between 35 and 55 years were recruited to ensure that they have some experience with the topic; relevant expertise was guaranteed by their occupations (see Appendix A). All the applicable human subject protection concerns were reviewed; the participants were provided with an information sheet (see Appendix C) and consent forms (see Appendix D).

The data was analysed with the help of thematic analysis, which is an appropriate and well-established method that is employed with qualitative data.³A table with the established themes was developed to include the frequency of their appearance in the interviewee's responses. The main limitation of the methodology is the subjective nature of the results; this fact needs to be taken into account. Also, the results are not generalisable, but the study does not intend to generalise; it focused on exploration. The findings of the interview are presented below.

Findings

All the responses of the 25 participants were analysed with the help of thematic analysis, which produced the themes and subthemes that are presented in Appendix E. The present section will consider each of the themes individually and describe them, using the examples and quotes from the participants' responses.

Demographics

The final sample corresponds to the one planned. As can be seen in Figure 1, a little more than one-fourth of the participants were female (see Figure 1).

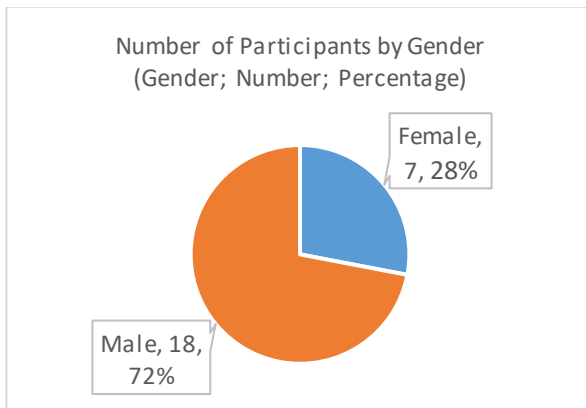


Figure 1. Gender of participants.

Most participants (nine or 36%) were between 45 and 49 years old. Only 5 participants (20%) were younger than 40 (see Figure 2). All the planned quotas were taken into account, and five participants were recruited from each group. The following groups were included: Parliament Members (PM, legislative authority), Judges (J, judicial authority), Lawyers (LW), Professionals (P, executive authority), and Academics (AC). All the participants reported being able to respond to the questions on the topic, and only one of them (P3) expressed uncertainty, stating that she is not a specialist in the field, which is why her account might be imprecise.

¹ May, *supra* (n 15) at 134-135; see also Eriksson and Kovalainen, *supra* (n 15) at 94.

² May, *supra* (n 15) at 100.

³ Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 *Qualitative Research in Psychology* 77, 78.

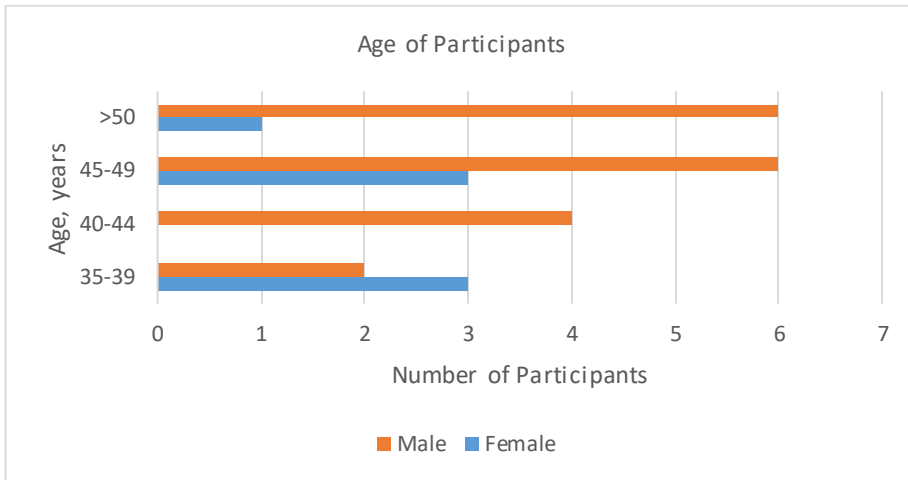


Figure 2. Age of participants.

Coverage of the Topics of Interest

None of the participants suggests that the topics of interest are not important or should not be studied. Some of the participants specifically emphasise the idea that the topics of interest (predominantly, SOP and SOP in criminal justice) are important and require the coverage of the practical and theoretical research. Moreover, some of the respondents believe that currently, the topics do not receive sufficient coverage. According to one of the MPs “we really have a vacuum in research specialised in the separation of powers in criminal justice.”¹ Furthermore, the participants suggest that the present investigation and similar studies would be practically applicable; as suggested by LW4, SOP and related topics “actually need a lot of study to help legislators in the Kuwaiti National Assembly recognise the deficiencies in the separation of powers in justice in Kuwait.”² Thus, the significance of the topic was rather well-established as can be seen in the table below.

Themes	Subthemes and Key Codes	Representation
Importance of topics	The research of the topics is important	5PM 5LW 2P 4AC 4J
Attention to SOP in criminal justice	Increased attention from scientific communities required	5PM 4LW 2P 4AC 4J
	Increased practical investigation required	1PM LWP 1AC 1J

Note: Here and in the rest of the tables, the following abbreviations are used: PM – Parliament Members, LW – Lawyers, P – Professionals, AC – Academics, J – Judges. The figure before the letter specifies the number of respondents of a particular group who mention the theme in their responses.

Kuwaiti Legislation Origins

The idea that the Kuwaiti legislation is the product of the influence of multiple schools is generally supported by the respondents: all of them acknowledge this fact. Several participants also suggested that the diversity of the influences which have shaped Kuwaiti legislation “distinguishes”³ the latter makes it unique, “distinct.”⁴ The idea that the mixed origins make the Kuwaiti legislation better was also voiced. In particular, it was suggested that the origins of Kuwaiti legislation make it flexible and beneficial for SOP and democracy. Also, some of the participants believe that having a variety of

¹ Participant MP3.

² Participant AC5.

³ Participant PM1.

⁴ Participant LW4.

sources is helpful for the legislators. These findings respond to one of the research questions of the study and indicate the idea that SOP can be supported by the legislation of Kuwait (see table below).

Themes	Subthemes and Key Codes	Representation
Kuwaiti legislation origins	Multiplicity of origins is present	5PM 5LW 5P 5AC 5J
	Uniqueness of Kuwaiti legislation	2PM 2LW 2P 1AC J
	Positive outcomes of Kuwaiti legislation origins	2PM 1LWP 1AC 3J
	Flexibility for legislators Variety of sources for legislators Contribution to democracy Positive impact on SOP	1PM 1LW 2P 1AC 2J 2PM LWP 2AC 2J 2PM 1LW 3P 3AC 1J

Functions and Importance of SOP

A wide variety of functions were attributed to SOP by the participants. First, they noted that SOP is required for the independence of the three authorities, including the judiciary. Second, the significance of SOP for democracy was supported. As put by J5, SOP "is the essence of the democratic system."¹ In contrast, the lack of SOP was associated with dictatorship and absolute power in the participants' responses. According to J4, the developers of the Constitution were aware of this fact and specifically worked to incorporate the principle of SOP into the Constitution to ensure that the judiciary would be independent and that the rights of the citizens would be protected when accused.

Consequently, several participants also noted the idea that human rights are supported by SOP. Other functions that were noted included the improvement of transparency and the reduction of corruption in the government and the criminal justice system. The ultimate goal of SOP was reported to be concerned with public justice. In particular, J5 demonstrates that all or most of the SOP functions are required for public justice. Thus, the mentioned functions of SOP are shown to contribute to the eventual goal of a just judiciary system that can uphold public justice as can be seen in the table below and Figure 3.

Themes	Subthemes and Key Codes	Representation
Multiple functions of SOP	SOP for the independence of authorities	5PM 3LW 3P 2AC J
	SOP for judiciary independence	PM LWP 3AC 4J
	SOP to avoid dictatorship/SOP for democracy	4PM 4LW 3P 3AC 2J
	SOP for human rights	2PM 2LW 3P 4AC 4J
	SOP against corruption	PM 1LW 1P 1AC J
	SOP for transparency	2PM 2LW 1P 3AC 2J
	SOP for justice	2PM 2LW 1P 3AC 4J

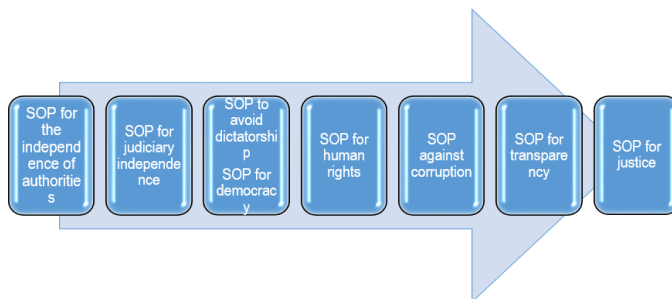


Figure 3. SOP functions contributing to justice.

¹ Participant J5.

Moreover, SOP within the judiciary was supported. In particular, as pointed out by PM1, the Constitution recommends the establishment of the Supreme Council of the Judiciary and the Council of State, in which the latter would be concerned with administrative justice. However, despite being mentioned in the Constitution,¹ this principle has remained inactive since 1962. According to the PM and one of the judges, this fact can affect the effectiveness and independence of the administrative judiciary in a negative way (see table below).

Themes	Subthemes and Key Codes	Representation
SOP within criminal justice	Constitutional roots of SOP within criminal justice	1PM LWP AC 1J
	Lack of SOP within criminal justice in Kuwait	1PM LWP AC 1J
	Need for SOP within criminal justice in Kuwait	1PM LWP AC 1J

SOP in Kuwait

When considering Kuwaiti SOP in the field of criminal justice, the respondents employed the proposed criteria (see the end of Appendix B), and some of them directly expressed their agreement with the factors chosen for consideration (see table below). Neither of the participants suggested that the criteria were inappropriate; some of them just did not comment on their appropriateness, but they still employed the criteria.

Themes	Representation
Proposed research criteria approval	2PM 1LW 1P 2AC 1J

The majority of the participants explicitly characterise SOP as a tool that can effectively ensure the protection of Kuwaiti population, even though some of them also note the issues that Kuwaiti SOP experiences. The rest of the participants also commend SOP as a principle, but they focus on the issues that Kuwaiti SOP faces. When considering the guarantees of SOP in Kuwait, the majority of the interviewees noted Constitution,² but they also mentioned other legislation (Regulation of the Judiciary Law,³ as well as specific precedents), administrative provisions, the Parliament, Constitutional Court, and even public opinion.

The effectiveness of SOP in Kuwait can be described as follows: it is generally effective and has a relatively good legislative foundation (especially in the form of the Constitution), but there is a number of issues that “impedes its application, which makes the abuse of power potentially possible.”⁴ Given the attention of the project to criminal justice SOP, most of the examples offered by the participants are mostly concerned with the latter, but some illustrations are not connected to it. In particular, as pointed out by PM1, in Kuwait, “the members of the executive power, the ministers, are considered members of the legislative power by virtue of their posts.”⁵ From the perspective of the PM, this issue suggests that the principle of SOP is not fully implemented in Kuwait.

Most controversial issues that are considered by the participants are related to the judiciary. The problem of the Article 2 of the Regulation of the Judiciary Law⁶ consists of the fact that it moves the “acts of sovereignty” out of the field of the judiciary’s responsibility, which is viewed as unconstitutional by the participants since this piece of legislation violates SOP. The executive power also has control over the management of misdemeanour cases and has the right to contract foreign judges. Investigators are not separated from the executive power either. Furthermore, as pointed out by the respondents, the financial independence of the judiciary is compromised: the Ministry of Justice is the executive body that is busy with the judicial budget, which PM2 describes as a “blatant violation”⁷ of SOP.

¹ Constitution of Kuwait, 1962, art. 171.

² Constitution of Kuwait, 1962, art. 50, 163.

³ Kuwait, Decree Law No. 23 of 1990: Regulation of the Judiciary Law, 1990, art. 2.

⁴ Participant AC3.

⁵ Participant PM1.

⁶ Kuwait, Decree Law No. 23 of 1990: Regulation of the Judiciary Law, 1990, art. 2.

⁷ Participant PM2.

Another issue that is pointed out by the participants is the fact that the Judicial Council includes the Undersecretary of the Ministry of Justice, who is obviously a member of the executive power. PM2 suggests that this person cannot have notable power since it is just one representative of the executive power among those of the judiciary power, but he still views the presence of the Undersecretary in the Judicial Council as an issue that compromises SOP. In fact, the participants highlight the idea that this fact is unconstitutional. Overall, at least two participants explicitly suggest that in Kuwait, the executive branch has much power over the remaining two. As one of them puts it, “the elements of preference and influence are always in favour of the executive power over other authorities.”¹ Thus, notable issues with SOP in Kuwait were found during this study (see table below).

Themes	Subthemes and Key Codes	Representation
SOP in Kuwait	SOP is an effective tool in achieving the protection of the population of Kuwait	4PM 2LW 5P 4AC 5J
	Guarantees of SOP in Kuwait Constitution Parliament Regulation of the Judiciary Law Public opinion Precedents Administrative provisions Constitutional Court	4PM 4LW 5P 5AC 5J 1PM 2LW P 1AC 1J PM LW 2P AC 3J 1PM 1LWP AC 1J PM 1LWP AC J PM 1LWP AC J 2PM 1LW 2P AC J
	Deficiencies in Kuwaiti SOP Incomplete application of SOP in practice Article 2 of the Regulation of the Judiciary Law Financial dependence of the judiciary Foreign judges as a problem Need for investigator independence Executive control over misdemeanours The presence of the Undersecretary of the Ministry of Justice in the Supreme Council The executive branch overpowering the rest	2PM LWP 2AC J 1PM LWP 4AC 4J 5PM 3LW 2P 5AC 4J 3PM 2LWP 1AC 4J 5PM 4LW 3P 5AC 5J 3PM 3LWP AC J 5PM 4LWP 2AC 3J 2PM LWP AC J

Characteristics of Kuwaiti Judicial System

The effectiveness of Kuwaiti SOP in the judiciary is supported by multiple respondents. For example, according to J4, the Kuwaiti “judiciary is considered a distinguished judiciary in the region,”² which, from his perspective, indicates that the SOP within this system is effective. However, J4 proceeds to admit that “there may be shortcomings”³ which might have negative effects on the effectiveness of the system. Using the proposed criteria, the respondents noted the following characteristics of Kuwaiti judicial system, many of which can be used to exemplify the issues with SOP in Kuwait.

The participants commend the transparency of Kuwaiti judiciary almost unanimously; only one of the participants points out that there are “issues over cases of a special nature, such as those having a great political or commercial interest”⁴ (see Figure 4). The same person is also the only one to suggest that the judicial system demonstrates some favouritism when judge appointment is concerned, “which is evident from the repetition of certain names and family ties.”⁵ No other participant explicitly mentions favouritism. Most of the participants also commend the appeal system of Kuwait, and some of them praise the judge dismissal mechanism.

¹ Participant PM1.

² Participant J4.

³ *Ibid.*

⁴ Participant PM1.

⁵ *Ibid.*

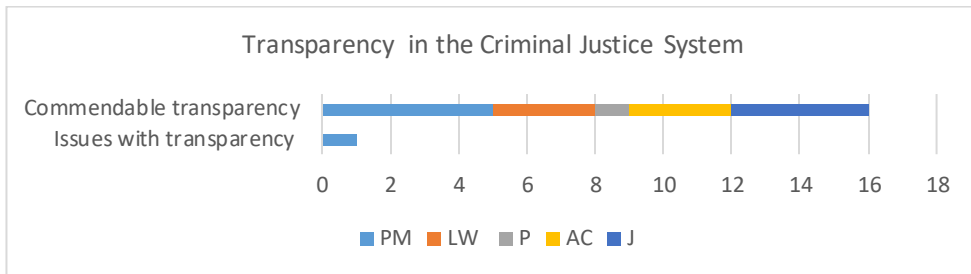


Figure 4. Transparency in Kuwaiti criminal justice system.

Another very important topic is the independence of the judiciary. According to J5 and other participants, "no person has the right to interfere in the judge's decisions and acts,"¹ which means that the independence of the judges is guaranteed in Kuwait. However, there are some aspects that can compromise this independence.

First, the fact that the Minister of Justice and his deputy attend the Supreme Judicial Council when the appointment of its members is in process was pointed out as problematic. The Minister of Justice has no right to vote in this process, but in the view of some of the participants, the situation still can be viewed as "indirect interference,"² which "may put pressure on members of the judicial authority and affect any decision that may be taken."³

Moreover, as pointed out by participants, the Ministry of Justice does have some power over the judiciary, which might be translated to some indirect power over the appointment procedures. In particular, as stated by J4, has the right to contract foreign judges, which is "an unjustified intervention"⁴ that can compromise the independence of the judiciary. J5 calls it a "blatant violation of the judicial authority,"⁵ as well as the principle of SOP. PM1 reports that there are some efforts aimed at the Kuwaitization of the judiciary, but states that the problem of foreign judges is still present.

Furthermore, the Ministry of Justice is concerned with the supervision of the judicial budget. According to J4's opinion, this dependence can provide the Ministry of Justice with the opportunity to affect the judiciary. Finally, the topic of the militarisation of the General Directorate of Police Investigations includes the concern with the transfer of interrogation authority to the military. According to PM1, the military "is constantly following the instructions of its superiors by virtue of military education,"⁶ which, consequently, can compromise the independence of the interrogator. Overall, the executive power has multiple mechanisms that it can employ to affect the judiciary.

Other themes that are mentioned by the participants include the presence of bureaucracy in the system, which slows down its processes, and the need for SOP within the judiciary itself (as proposed by the Constitution). Furthermore, the participants were asked to evaluate the cases of the miscarriages of justice and the rights of offenders and inmates. Most of the interviewees generally believe that the Kuwaiti criminal justice system is just and that the miscarriages do not occur particularly often. However, they report that the situation can be different for political crimes. As pointed out by PM2, "in general the Kuwaiti judiciary can be relied upon at all levels, but there may be controversial cases that are political in nature."⁷ According to the participants, this issue may be caused by the fact that there is no direct regulation of political crimes, which is a problem in itself.

Regarding the rights of inmates, as pointed out by LW1, the "evaluation of the rights of offenders and inmates is bad"⁸ specifically because the practice of their rights is insufficiently in line with the legislation. The respondents generally agree that the rights of offenders and inmates are protected in theory, but several of them also point out the idea that in practice,

¹ Participant J5.

² Participant J4.

³ Participant J3.

⁴ Participant J4.

⁵ Participant J5.

⁶ Participant PM1.

⁷ Participant PM2.

⁸ Participant LW1.

the relevant legislation is not always realised. All the themes pertinent to the characteristics of Kuwaiti judicial system can be seen in the table below.

Themes	Subthemes and Key Codes	Representation
Characteristics of Kuwait judicial system	Transparent judiciary	5PM 3LW 1P 3AC 4J
	Issues with transparency in the judicial system	1PM LWP AC J
	Favouritism and patronage in judicial system	1PM LWP AC J
	Judge independence and related issues Legislative independence of judges (Article 163) Appropriate judge dismissal mechanism Favouritism in judge appointment The presence of the Undersecretary of the Ministry of Justice in the Supreme Council Financial dependence of the judiciary (Ministry of Justice) Foreign judges (appointed by the Ministry of Justice) Effort at judiciary Kuwaitization No separation of investigators from the executive power	PM 2LW 3P 2AC 4J PM LWP 1AC 3J 1PM LWP AC J 5PM 4LWP 2AC 3J 5PM 3LW 2P 5AC 4J 3PM 2LWP 1AC 4J 2PM LWP 1AC J 5PM 4LW 3P 5AC 5J
	Excessive bureaucracy	PM LW 3P AC J
	Need for SOP within the judiciary	1PM 1LWP AC J
	Miscarriages of justice Rare miscarriages of justice Political crimes and miscarriages of justice No political crime category (legislative level issue)	5PM 4LWP 1AC 4J 4PM 3LWP 1AC J 5PM 3LW 5P 4AC 4J
	Rights of offenders and inmates Appropriate legislation for the rights of offenders and inmates Inappropriate practical application of the rights of offenders and inmates	5PM 2LW 1P 1AC 5J 5PM 3LWP 1AC 1J
	Commendable appeal system	5PM 5LW 4P 2AC 5J

It is noteworthy that P3 who is working at the Ministry of Justice suggests that the situation with the budget “may be theoretically unacceptable, but actually, there is no interference from the part of our Ministry.”¹ Also, she believes that the fact that the Ministry does not appoint judges mitigates the fact that it contracts foreign judges. A similar position is expressed by P1 and P2, who believe that “overseeing” the budget is not the same as “controlling” it. However, LW2 disagrees with this position, stating that even “if the ministry claims that all it regulates is the financial procedures, it does not mean that it has the right to the same.”²

In a similar way, P1 reports that he does not “find a significant negative effect of this issue”³ when talking about the lack of the separation of investigation from the executive power. P1 also believes that there is no need for a political crime law. However, these statements are contradicted by the suggestions of some of the participants that the problem of the dependence of the judiciary and the lack of appropriate legislation results in miscarriages of justice. In particular, LW2 relates almost every issue of the judiciary with the intervention of the executive power, including the miscarriage of justice in the cases of political crimes and the poor practical implementation of the rights of culprits and detainees. LW3 also suggests that the political crimes issue is connected to the fact that misdemeanours are investigated by the Ministry of Interior. The topic of the causes of the issues of SOP will be considered next.

¹ Participant P3.

² Participant LW2.

³ Participant P1.

Possible Causes of Issues

A common theme in the responses is the idea that the dependence of the judiciary on the executive authority results in negative outcomes. This theme is also connected to the statements that some of the shortcomings of the judiciary are the result of the activity or inactivity of the executive and legislative branches. For instance, LW3 reports that the miscarriages of justice with respect to political crimes are the result of the interventions of the executive branch. Moreover, as pointed out by the participants, the lack of the definition of political crimes is an issue that is caused by the legislative bodies. Apart from that, some of the issues are interconnected. For example, AC3 and AC5 suggest that the presence of foreign judges, who are contracted by the executive branch, is the result of the financial dependence of the judiciary. Thus, at least some of the issues are connected to the executive and legislative power.

Such statements imply that while dependent, the judiciary cannot resolve some of its issues. For example, when considering the problem of political crimes, PM1 states that he does not “blame the Kuwaiti judiciary,”¹ pointing out that this issue is outside of the competency of the latter. Similarly, J4 suggests that since it is the decision of the executive branch to contract foreign judges, the related shortcomings are “not on the part of the judicial authority.”²

In this connection, the participants have proposed the idea that the lack of SOP, dependence of the judiciary, and legislative and executive shortcomings or misconducts are some of the key reasons of the difficulties experienced by the Kuwaiti judiciary. Some of the examples of the latter include the lack of required legislation (for instance, on political crimes) and the exploitation of this issue (for instance, the intervention of the executive power in political crime management). Also, the participants note “the failure of the National Assembly to perform its essential functions, its focus on supervision rather than legislation”³ and the presence of unconstitutional legislation, for example, Article 2 of the Regulation of the Judiciary Law⁴ (and its exploitation by the executive power). In summary, the lack of proper cooperation between the branches of power was established as the cause of the issue.

On the other hand, the participants do not suggest that the judiciary cannot do anything to improve the situation. In fact, J4 expresses firm belief that “the legislative power has a major role in reforming these shortcomings”⁵ because the latter are directly concerned with its field of activity. Consequently, the inactivity of the judiciary is viewed as one of the reasons for the issues. Moreover, the inactivity of the people of Kuwait was also noted; it is the belief of some of the participants that the people can and should promote changes in Kuwait to ensure SOP and democracy.

Themes	Subthemes and Key Codes	Representation
Possible causes of issues in Kuwaiti judiciary	Lack of SOP	1PM 2LW P AC J
	Dependence of the judiciary	1PM 2LW P AC J
	Legislative and executive shortcomings cause SOP inefficiencies	1PM LW P 2AC 2J
	Unconstitutional legislation	1PM 4LW 1P 2AC 3J
	Lack of required legislation	PM LW P 1AC 1J
	Exploitation of the inappropriate legislation by the executive power	PM 1LW P 2AC 1J
	National Assembly focuses on supervision, not legislation	
Weak cooperation between power branches	1PM 1LW P AC 1J	
Weak public activity (absence of pressure on the legislative branch from the public)	2PM LW P AC 1J	
Inactivity of the judiciary	PM 2LW P AC 1J	

¹ Participant PM1.

² Participant J4.

³ Participant AC2.

⁴ Kuwait, Decree Law No. 23 of 1990: Regulation of the Judiciary Law, 1990, art. 2.

⁵ Participant J4.

A number of opinions were voiced regarding the possibility of flaws in the Constitution that could result in issues. Many participants suggest that the Constitution provides sufficient information about SOP and can serve as its guarantee. However, it was also suggested that while “Article 50 refers to the separation of powers in a clear manner,”¹ other articles that mention the three branches of power tend to “mix”² them. An example that is offered by PM1 illustrates this tendency. As pointed out by the interviewee, “the members of the executive power, the ministers, are considered members of the legislative power by virtue of their posts.”³ Therefore, the legislative and executive powers are not fully separated in the Constitution itself despite the statement made in Article 50.⁴ Furthermore, the notion of the “cooperation” of powers was noted as problematic because it can prompt confusion and even be used to negate the principle of SOP. In particular, according to J2 and AC3, the Ministry of Justice employs the argument of cooperation to justify it “overseeing the judicial budget,”⁵ which limits the independence of the judiciary.

It should be pointed out that this position can be contested. Some of the participants do not view the use of the word “cooperation” as problematic. Instead, they consider Constitutional phrasing to be sufficiently clear. For instance, J3 suggests that the Constitution “provides for separation and then cooperation,”⁶ which implies the greater significance of SOP that can be followed by cooperation in case the latter does not lead to interference. In fact, according to J3, cooperation and interference are distinct, and since the Constitution only mentions cooperation, it does not condone interference. In turn, AC3 suggests that the “cooperation” element can be beneficial since it offers opportunities for a flexible approach to the arrangement of the three branches, but in her view, it may have resulted “wrong practices.”⁷ According to AC3, the Constitution stresses the importance of SOP, which, in her view, includes “administrative and financial separation”;⁸ AC3 does not view these aspects of independence as subject to the “flexibility” related to cooperation.

The existence of the legislation that is unconstitutional and tends to endanger SOP was also mentioned by the participants. According to J4, the “problem is not in the Kuwaiti Constitution... the problem is in the legislation that violates this article.”⁹ A similar idea is proposed by J2. An example of such unconstitutional legislation, which is mentioned, among other participants, by J4 is the Article 2 of the Regulation of the Judiciary Law,¹⁰ which deprives the judiciary of the right to consider the “acts of sovereignty.” J4 describes the situation as the one in which “the Executive Authority can violate the law.”¹¹ AC2 also believes that it is the unconstitutional legislation that causes the issues while the Constitution is sufficiently clear.

¹ Participant PM1.

² *Ibid.*

³ *Ibid.*

⁴ Constitution of Kuwait, 1962, art. 50, 56.

⁵ Participant J2.

⁶ Participant J3.

⁷ Participant AC3.

⁸ *Ibid.*

⁹ Participant J4.

¹⁰ Kuwait, Decree Law No. 23 of 1990: Regulation of the Judiciary Law, 1990, art. 2.

¹¹ Participant J4.

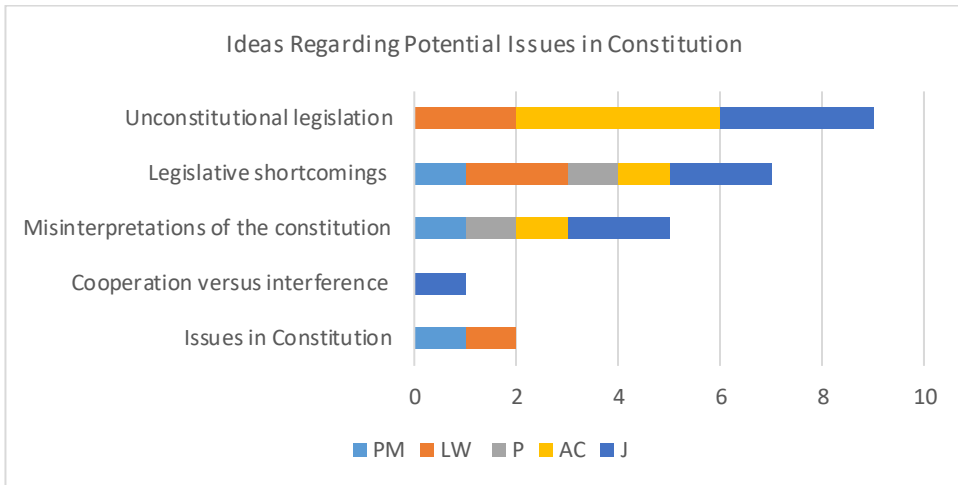


Figure 5. Considerations of the potential issues in Constitution.

J5, on the other hand, admits the presence of wrongly developed legislation but also suggests that SOP issues may be the result of incorrect interpretations of the law. J1 also supports the idea of misinterpretation stating that he does not “blame the Constitution” but rather “the understanding of the legislator.”¹ AC1 points out that Constitutional texts are not supposed to be detailed, which implies that the definition of Kuwaiti Constitution is sufficient, but misinterpretations do take place. Finally, the absence of appropriate legislation or “legislative vacuum”² as phrased by J3 may result in the problem of unconstitutional activities. The example of the latter issue is the absence of the regulation of political crimes, which results in miscarriages of justice and violations of SOP as was shown above. Figure 5 and the table below illustrate the debate regarding the appropriateness of the constitutional definition of SOP.

Themes	Subthemes and Key Codes	Representation
Issues in Constitution	Inappropriate constitutional definition of SOP	1PM 1LWP AC J
	Appropriate constitutional definition of SOP. Real causes of issues: Cooperation versus interference Misinterpretations of the constitution Legislative shortcomings Unconstitutional legislation	PM LWP AC 1J 1PM LW 1P 1AC 2J 1PM 2LW 1P 1AC 2J PM 2LWP 4AC 3J

Additional Measures and Solutions

When considering the additional mechanisms that can help SOP or be otherwise conducive to it fulfilling its function, the participants made two major suggestions: they focused on the public opinion and its various aspects and the transparency and independence of the press. The former element was mentioned predominantly for its ability to exercise pressure on the government in order to push it to ensure SOP and make various changes that would prevent dictatorship and support democracy. Furthermore, some of the participants point out the importance of educating the public to ensure their ability to defend their interests. As put by PM4, it is necessary to “raise the awareness of people so that they will put pressure on their representatives.”³ The participants also highlighted the role of various organisations in making the public opinion heard (including the promotion of awareness and the pressuring of the government into the direction of the public will). The

¹ Participant J1.

² Participant J3.

³ Participant PM1.

organisations include those concerned with human rights and transparency, as well as the professional organisations of the people working in the criminal justice system.

According to some participants, the public opinion is also greatly influenced by the press, which is why the freedom and independence of the press were also viewed as a form of complementary safeguards. For example, PM1 reports taking action in this respect by filing motions “to promote the Kuwaitization and transparency of the press,”¹ in particular, with respect to financing. Also, in his opinion, editorial policies and the appointment of editors and journalists by the owner of a newspaper should be avoided. Thus, the PM suggests a number of actions that can help to improve the freedom of speech and keep the press independent. The additional measures can be found in the table below.

Themes	Subthemes and Key Codes	Representation
Additional measures to ensure the protection of human rights (aside from SOP)	Additional measure: public opinion The activities of the human rights organisations, transparency organisations, Kuwait Lawyers Society, and Association of Lawyers Improvement of public awareness Pressuring the government to make changes	1PM 4LW 2P 1AC 1J 3PM LW 1P 1AC J 2PM 4LW 2P 1AC 3J
	Additional measure: transparency and independence of the press	2PM LWP 1AC J

Apart from the additional measures, the participants considered the factors that can help to resolve the issues that they had mentioned. In general, the need for change is supported by every participant, although they may have different foci. For example, the Ps who do not consider the dependence of the judiciary to be a problem focus on the issue of bureaucracy and suggest combating it. In particular, as proposed by P3, “it is time to reduce paperwork and give more powers to ordinary employees in order to speed up the course of judicial work.”² However, the rest of the participants are more concerned with ensuring the independence of the judiciary.

They offer several solutions to the issue. Given the fact that many of the issues were connected to the problems with the legislative and executive branches, many interviewees focus on them. They point out the idea that legislation can be used to resolve virtually any issue and highlight the importance of the key legislative body (National Assembly) in the process. Furthermore, they emphasise that the cooperation of the executive power with the judiciary is required to combat the currently present imbalance in their power dynamics.

Moreover, since the inactivity of the judiciary was criticised by the participants, suggestions were made about some changes in it, including the introduction of Kuwaitization and SOP (consisting of the separation of administrative justice). Since Kuwaitization is currently prevented by the contracts with foreign judges that are made by the executive power, this measure may be not entirely within the judiciary’s power. However, as pointed out by LW3, this issue can be resolved by one of the above-mentioned solutions; in particular, the legislative power can develop “a law that prevents the Ministry of Justice from contracting foreign judges.”³ There were also direct comments about the need to ensure SOP, but, in general, all the suggestions seem to be related to the idea of reducing the power of one branch over the other, which constitutes SOP. In summary, the proposed solutions target the causes of the issues that were found by the participants, as well as some individual problems.

Themes	Subthemes and Key Codes	Representation
Solutions to the SOP inefficiencies in Kuwait	Need for change	5PM 5LW 5P 5AC 5J
	Legislation as a solution	PM 1LWP 3AC 1J
	National Assembly	1PM 2LWP AC J

¹ Participant PM1.

² Participant P3.

³ Participant LW3.

	Cooperation of the executive branch with the judiciary	2PM LWP 1AC J
	Kuwaitization of the judiciary	2PM LWP AC J
	SOP within the judiciary	1PM LWP 1AC J
	Ensuring SOP	2PM LW1P AC J
	Combating bureaucracy	PM LW 3P AC J
	Reducing paperwork	PM LW 1P AC J
	Sharing power	

Change Efforts

An important theme that was identified is the efforts aimed at changing the exposed issues. Multiple efforts have been mentioned. Some of them include the activities in which the participants take part due to their occupation (for example, educators spread the information about SOP, and PMs promote it in their practice). Apart from that, the use of research to advance SOP and some public efforts were also mentioned. For instance, PM1 describes the efforts aimed at taking away the authority of the executive power over misdemeanours, and PM2 reports those targeted at improving the practical application of the guarantees of the rights of inmates and offenders with the focus on the resources of correctional institutions. Moreover, it was stated that the government reflects the need for the improvement of the Kuwaiti criminal justice system and SOP in its vision (in particular, slogans). However, PM1 does not believe that change is a priority of the current government (see table below).

Themes	Subthemes and Key Codes	Representation
Change efforts	Occupational	4PM 5LW2P 4AC 5J
	Research-related	PM 1LWP 3AC J
	Public	1PM 1LW2P AC J
	Change is not a governmental priority in practice	1PM LWP AC J
	Change is supported by the governmental vision	1PM LWP AC J

The success of such campaigns is not discussed by the majority of the participants, but there are some conclusions that can be made. For example, PM1 reports that "several campaigns have failed to transfer"¹ the authority over the investigation of misdemeanours from the executive to the judiciary power. Similarly, L4 reports that they are "tired of asking the government to respect the Kuwaiti Constitution."² However, neither of the participants reports giving up change efforts; rather, they all make proposals for change, and the majority of them report working to advance it.

Apart from that, some of the participants seem to communicate a call to action. For example, J5 believes that "academics, researchers and transparency societies" should "exercise pressure"³ to address the inefficiencies described above. J2 highlights the importance of the activity of the judiciary, including individuals, who can exert pressure on the legislative and executive branches. The same idea was proposed by J3 who considers the inactivity of the judiciary to be one of the reasons for current SOP issues. The participants believe that by taking action, the judiciary can reclaim its independence and that the public can exert sufficient pressure on the legislative branch to improve the situation.

Additional Notes: Participants' Perspectives

It is noteworthy that most of the participants expressed their personal attitudes and evaluations of the discussed phenomena. One of the issues that many of the respondents feel strongly about is the presence of foreign judges in the system and want to ensure the Kuwaitization of the judiciary. PM1 rationalises his perspective by suggesting that Kuwaiti judges would have a greater emotional investment in their position. In particular, foreign judges "lack any ties to Kuwait and are not "prepared to fight battles or take risks and sacrifices" since they come "to collect his children's livelihood and

¹ Participant PM1.

² Participant L4.

³ Participant J5.

return”¹ to their country. PM1 also expresses strong a belief that a “citizen judge” has a better understanding of the Kuwaiti context, in particular, the “social and economic foundations on which the regime is based.”² Thus, PM1 suggests that the employment of foreign judges should be detrimental to the country.

On the other hand, PM2 expresses confusion about the situation, suggesting that the prevalence of foreign judges implies the lack of vacancies for Kuwaiti judges. In his view, the preference of foreign judges cannot be explained logically. He states that he does not believe that there is any “justification for the existence of any foreign judge”³ because, according to him, there is no shortage of Kuwaiti law graduates. This sentiment is shared by LW4 who finds the situation “funny, as if Kuwait does not have legal Kuwaiti cadres who are capable of working as judges.”⁴

PM3 believes that foreigners should not be contracted because they might be appointed through different criteria in their home countries, although he stipulates that in the cases when it might be necessary, the judiciary needs to be involved in the process, not the executive power. PM4 highlights the idea that Kuwaiti citizens have less reason to trust foreign judges. AC2 proceeds to suggest that “there is no need to appoint a foreign judge, unless the Executive Authority wants to interfere in the judicial authority.”⁵ In summary, the problem of foreign judges is associated with multiple arguments and strong feelings for some of the participants.

Apart from that, some hopeful comments were offered. For instance, J1 expresses the hope that the change efforts made by him and his colleagues can improve the situation. J5 hopes to see more research on SOP, believing that it should be helpful in improving the criminal justice in Kuwait. Most of the participants mention change efforts and their own contribution to such efforts. They also propose meaningful solutions for the issues. They have a practically-oriented and optimistic approach to the desired changes.

Conclusions

The present chapter has summarised the findings of the interviews. The discrepancies in the responses are few; the perspectives of the respondents came into direct confrontation in the cases of the transparency of the criminal justice system, the presence of flaws in Constitution, and the impact that the interference of the executive branch has on the judiciary. In most cases, the participants’ responses either support or complement each other. The significance of the topic was established along with the multiple functions of SOP; Kuwaiti SOP, especially in criminal justice, was analysed. Moreover, the criminal justice system was also analysed, the causes of issues within it were reviewed, and suggestions for its improvement were offered. The findings covered the key topics that the interviews intended to cover, and the results will be discussed in the next section.

Discussion

The respondents covered the interview questions in a way that was almost unanimous. The key themes can be used to support, illustrate, or expand on the topics discovered during the literature review. First of all, the participants justify the research: some of them explicitly pointed out that the discussion of its topics is essential, and the rest did not oppose this idea. Furthermore, some of the participants reported that increased academic or practical interest to the topics is needed. Thus, the need for the current research is supported by the respondents.

Furthermore, the participants confirmed the idea that SOP is important for a democratic society, which is expressed in the studied literature.⁶ They suggested multiple functions of SOP, some of which are not reported by the reviewed studies, but in general, the idea that SOP is a requirement for democracy and the independence of the judiciary was voiced. Moreover, a couple of respondents suggested the need for SOP within criminal justice (to separate administrative cases), stating that

¹ Participant PM1.

² *Ibid.*

³ Participant PM2.

⁴ Participant LW4.

⁵ Participant AC2.

⁶ Barkow, *supra* (n 2) 989, 995; see also Michael Socarras, ‘Judicial Modification of Statutes: A Separation of Powers Defense of Legislative Inefficiency’ (1985) 4 *Yale Law & Policy Review* 228, 228-229; Samuels (n 1) 1; Gerard Conway, ‘Recovering a Separation of Powers in the European Union’ (2011) 17 *European Law Journal* 304, 306-307; Matthew Hall, ‘The Semiconstrained Court: Public Opinion, The Separation Of Powers, And The U.S. Supreme Court’s Fear Of Nonimplementation’ (2013) 58 *American Journal of Political Science* 352, 352-353.

the approach is proposed by the Constitution,¹ which is true. Overall, the idea of SOP is valued by the majority of the participants, and many believe that SOP is vital for protecting the people of Kuwait.

Apart from that, participants reported the complex origins of Kuwaiti legislation² and suggested that this specific feature can have positive outcomes for the country and its SOP. The latter idea is not directly supported by the literature, which mostly discovered negative side-effects,³ but the found issues also do not contradict the specific outcomes that the participants mention. Also, some of the participants expressed pride with respect to the uniqueness of Kuwaiti legislation.

While using the SOP criteria developed by the study, no participant critiqued them, and some suggested that they were helpful. Therefore, the tool can be employed in this research. It helped the participants to determine that while multiple guarantees of SOP exist (most of the interviewees focused on the Constitution⁴), in practice, SOP is not applied correctly. Some of the issues that they named included Article 2 of the Regulation of the Judiciary Law,⁵ the problematic nature of which was discovered during the literature review, and the dependence of the judiciary on the executive power, which was also found during the consideration of studies. The latter factor incorporates multiple issues, including the problem of foreign judges, which is discussed in the literature review,⁶ investigator dependence, the oversight of the budget of the judiciary by the executive power, and the appointment issues.⁷ The respondents also discuss the problem of the executive control over misdemeanours and, in general, they conclude that the executive branch may have overpowered the rest of the branches in Kuwait.

Additional issues that were found in Kuwaiti judiciary are concerned with transparency, favouritism, bureaucracy, miscarriages of justice with respect to political crimes, which, as shown in the literature review and findings analysis, are not a specific category in Kuwaiti legislation,⁸ and some problems with the rights of the offenders and inmates. It should be pointed out that many of the participants believe that the transparency and offender and inmate rights protection in Kuwait are appropriate. However, the presence of negative evaluations of the mentioned phenomena implies that problems can be present, which, for transparency, is shown in the literature.⁹ Also, the participants commend the appeal system in the judiciary and believe that it is rather just.

As for the problems, many of the participants tie them together with the lack of SOP and the need for judiciary independence. They also consider legislative shortcomings that were discovered during the literature review,¹⁰ insufficient cooperation of the powers, and the inactivity of the judiciary and the public. The participants suggested the need for rectifying these issues while also addressing specific problems (for example, Kuwaitizing the judiciary and combating bureaucracy) and supporting human rights organisations. Change efforts are also introduced by the participants. For instance, the Kuwaitization efforts, as well as the occupational and research-related attempts, were mentioned. Some discontent with the progress of the change was also voiced, but a respondent suggested that the vision of the government supports change. The change efforts remained mostly uncovered by the literature review. In general, the respondents added a number of important details as can be seen above.

As can be seen from the information presented above, in the majority of cases, no direct contradictions in the themes were found. Consequently, the few contradictions that do occur require close consideration. One of the reasons for the differences in opinions can be associated with the experiences of the participants. For example, the only participants who suggested that the factors which limit the independence of the judiciary are not problematic were the professionals who belonged to the executive authority. Both the representatives of the judicial and legislative authorities, as well as the lawyers

¹ Constitution of Kuwait, 1962, art. 171.

² Williamson, *supra* (n 13) 25-41

³ *Ibid.*

⁴ Constitution of Kuwait, 1962, art. 50.

⁵ Kuwait, Decree Law No. 23 of 1990: Regulation of the Judiciary Law, 1990, art. 2.

⁶ Herbert Liebesny, *The Law of the Near and Middle East: Readings, Cases, and Materials* (SUNY Press 1975), 110; see also Williamson, *supra* (n 13) at 36; Alkarama Foundation, 'Kuwait: Report submitted to the Human Rights Committee in the context of the third periodic review of Kuwait' (Alkarama Foundation, 2016) 13. Accessed 22 March 2017.

⁷ Alkarama Foundation, *supra* (n 84) at 13; see also Freedom House, 'Kuwait' (Freedom House, 2016), para. 3. accessed 12 January 2017.

⁸ Mousavi, *supra* (n 9) 880, 884.

⁹ Williamson, *supra* (n 13) at 36.

¹⁰ Kuwait, Decree Law No. 23 of 1990: Regulation of the Judiciary Law, 1990, art. 2.

and academics who did not belong to any of the authorities, disagree with this position and consider the limitation of the power of the judiciary a problem.

On the other hand, some of the representatives of the executive power described the activities of the executive power that limit SOP and judiciary's independence as not problematic. It can be reasonably assumed that as a part of the executive branch, they might find it difficult to criticise the approaches of the latter. Alternatively, they might never witness the problems associated with the dependence of the judiciary and the overpowered nature of the executive power the way the rest of the participants do. In general, the position of the interviewees may have been affected by their personal experiences, and since the members of the judiciary are more likely to have relevant experience in this situation, their position seems to need to be prioritized.

Another topic with respect to which direct discrepancies were found consist of the possible flaws in the Constitution, and here, individual positions or interpretations can be viewed as the cause. For example, only one PM and one LW suggest that issues within constitution are possible; the rest of the participants do not share the position and imply that the misinterpretation of Constitution or the breach of its statements are more likely to be the issue. Here, it may also be suggested that for some people, the idea of criticising the Constitution may appear controversial. This view can be supported by the point made by one of the PMs: in the Constitution, it is established that Prime Ministers, members of the executive power, are indeed a part of the legislative power.¹ While the number of Prime Ministers in the legislative body is limited, the situation still presupposes a breach of SOP that is present directly in the Constitution.

On the other hand, some of the Constitution-related discrepancies in answers may be associated with different interpretations of the same phenomenon. In particular, the question of cooperation is viewed as a loophole for anti-SOP activities by some of the participants who also describe the cases of it being used that way by the executive power.² On the other hand, some participants believe that cooperation differs from interference, and the problem is not in the phrasing of the Constitution but the deliberate or accidental misinterpretation of an understandable term.³ Such different perspectives are accompanied with sufficient arguments to consider them both valid.

Furthermore, some minor discrepancies were also found. For example, only one participant explicitly criticised transparency in the country's judiciary, suggesting that in special cases (for instance, political ones), transparency suffers. While other participants also mentioned the fact that political cases are treated specifically and can, among other things, be associated with miscarriages of justice, no other respondent introduced transparency issues, and many praised the judiciary's transparency in Kuwait. In such cases, the themes that are voiced by a few persons cannot be neglected and should be taken into account as they demonstrate possible issues which are not witnessed or experienced by every participant.

In summary, the presented findings cover the topics of interest to the study and support or advance the findings of the literature review, filling the gaps identified because of the lack of studies devoted to Kuwaiti criminal justice system and criminal-matters SOP. Most of the results do not contradict each other; the discrepancies that are present might be explained by the specifics of qualitative research; namely, by the subjectivity of perceptions and personal experiences. It can be concluded that Kuwait's criminal justice system experiences multiple issues, many of which stem from the insufficient SOP in it; in particular, the executive branch holds noticeable power over the judiciary. However, there are numerous efforts to rectify the issue, which employ the reported mechanisms for improvement and the supplementary measures. Also, the specifics of the origins of Kuwaiti legislation might be beneficial for SOP.

Conclusion

Given the significance of SOP in the judiciary, the lack of research on the topic appears to be a problem. Furthermore, given the signs of the issues in Kuwaiti SOP and criminal justice system, they seem to need more coverage in literature. The present study employed qualitative methodology (in particular, semi-structured interviews) to contribute some evidence related to the topic of SOP in Kuwaiti criminal justice. The results indicate that certain issues are indeed present in the system, many of which are associated with incomplete SOP, but the participants of the study report the efforts that are aimed at promoting SOP with the aim of ensuring the protection of Kuwaiti population. The findings support some of the

¹ Constitution of Kuwait, 1962, art. 50, 56.

² Participant J2.

³ Participant J3.

conclusions of the literature review while also contributing new data. As one of the few studies on the topic, the present article helps to fill the gaps in modern research.

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How Can Social Media Be Helpful for Immigrants to Integrate Society in the US

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Abstract

With an increase in diversity in the society, the United States has been faced with the challenge of how to integrate its immigrants in the American communities. Different researches have shown that social media has a significant role in the integration of these immigrants. However, that which has been missing in such studies encompasses the conceptual frameworks for understanding the existing interplay between the utilization of social media and, on the other hand, integration. The results of this research point out that social media has a significant relevance in the participation of immigrants in acquiring language, cultural competencies and bridging social capital. Based on these results, therefore, an analysis of immigrant integration in American by using social media has been demonstrated in the paper.

Keywords: Diversity, social media, immigrants, integration, cultural competencies

Introduction

How Can Social Media Be Helpful for Immigrants to Integrate Society in the US?

As a result of increased immigration into several societies, encompassing the United States, populations have become both culturally, as well as, ethnically diverse. For instance, in America, the number of immigrants caught crossing the southern border reduced to a low of 11,127 in 2017 following President Trump's hard stance on immigration. However, this was short-lived as it was announced by the Department of Homeland Security on April fifth that Border Patrol Agents had caught thirty-seven thousand three hundred and ninety-three individuals who had tried crossing over in March. This is a representation of more than 200 percent increase on the previous year (Illegal immigration to America is rising again, 2018). Such statistics postulate that there is an enormous potential of the American society becoming increasingly diverse. The development creates problems for the American society based on the need to integrate various ethnic minorities in the country. Therefore, this research will discuss the significance that social media plays in integrating immigrants in the American society.

First, immigrant integration can be described as the process whereby newcomers in a particular country become part of the hosting community (Wachter and Fleischmann, 2018). The authors continue to mention that not every immigrant integrates into a similar rate as it is influenced by a host of different factors such as the intention of staying in the host nation. Mass media and in particular to social media has an important role in integrating minorities in the community. Reddy (2014) describes social media as a collection of online channels of communication that have a dedication toward society-based inputs, collaboration, improving interactions between different segments of the community and even in sharing of content. Through this, non-economic concerns such as cultural erosion, and threats to the national identity that have a huge dependence on the level of social integration by the immigrants can be effectively avoided (Laurensyeva & Venturini, 2017).

Currently, social media has commenced playing a significant role in the lives of several individuals particularly the young. Smith and Anderson (2018) assert that Facebook and YouTube have dominated the landscape of major sites used by American Adults. Additionally, younger Americans particularly those between the ages of eighteen and twenty-four have embraced other platforms such as snap chat, Twitter, and Instagram. A sizeable majority i.e. seventy-one percent of them visit the sites several times a day (Smith & Anderson, 2018). These are cumulative statistics and therefore represent every resident of America including the immigrants. Thus, increasing presence of social media and its unique traits do affect social relations and the American community as a whole.

Methodology

In this research, the qualitative method was utilized. It was in particular to carrying out interviews. The method was regarded as the most effective to provide answers to the research question i.e. how social media can be helpful for immigrants to integrate them in the American society. Its appropriateness was pegged on its ability to give detailed data on the experiences, as well as, the thoughts of the participants regarding the impacts of social media on their ability to sufficiently integrate. The in-depth interviews took place in California where caravans of the Central American immigrants do pitch tent. In fact, California has the greatest number of the immigrants with current statistics standing at 207,700 ("U.S. Immigrant Population by State and County", 2018). The study was conducted between May 1st and 31st of 2018.

As a result of the problems that are usually experienced when recruiting the respondents into a study, there was a need for including the participation of cultural insiders. These are individuals who have an exponential background of the immigrant crisis in America. The experts live in California and helped in the research through recruitments and enrollments into the study subject to their extensive social networks, as well as, extended associations.

In total, thirty immigrants were interviewed. They cut across broad cultural backgrounds ranging from Syrians, Mexicans, Afghans and those from Africa. A majority of these respondents had lived in California for approximately three years and could thus easily tell the impacts that social media had on their lives. Also, worth noting is that the immigrants were either processing their asylum status or, on the other hand, had already been admitted as American citizens. Each interview averagely took thirty minutes. The cultural insiders assisted in conducting the interviews and their role mainly came into play in cases where their participants did not have sufficient English command.

The primary focus of the interviews was on the patterns associated with internet utilization and social media applications. Another focus was directed towards knowing the motives behind the use of social media, the expectations, as well as, the perceptions of users, and the important role that social media undertakes in the promotion of immigrant integration in America. Various open-ended questions were raised concerning the immigrants' vision of being integrated into America. For instance, the participants were asked to shade light on the significance they peg on different aspects of their lives in the US. Such encompassed language, education, and even cultural adoption. There were also questions on what their thoughts were on the necessities required so that they may feel integrated into the United States going by the discussions that are taking place both in mass media such as television and radio and in other social media networks. Tape recorders were significant during the entire period of the interview process as they were used in recording every discussion.

Literature Review

Integration is increasingly becoming significant and chances are that it will continue doing so in the decades to come. Alba & Foner (2014) further note that its continued significance will be as a result of the problems often experienced with the changes in demographics that are occurring on every side of the Atlantic. In fact, there is a great potential that every rich country will undergo a situation referred to as "transition to diversity." (Alba & Foner, 2014). Such a transition necessitates that an efficient integration process takes place from all spheres including the social media. However, it should be noted that there have been great difficulties even in America when it comes to welcoming immigrants into the society. For instance, there have been Western-European tensions and in particular to Christian and Muslim immigrants which has also spilled to social media platforms. This consequently leaves several questions unanswered regarding the cultural integration of individuals (Karim & Al-Rawi, 2018).

Social media has a great potential in the integration of immigrants in the US because of the widespread presence of generation Y in social media. In fact, Bolton et al., (2013) assert that this is a generation exerting a unique fascination both in their academics and, on the other hand, as managers. They are thus referred to as digital natives and are the preceding generation to have lived a significant portion of their life in a digital environment. Since technology immeasurably affect their lives and work, incorporating social media in integrating immigrants should not be a difficult task. For instance, in social media platforms, Bolton et al., (2013) mention that youngsters in this generation actively contribute, share, search and consume content. By, therefore, sharing positive aspects regarding immigrants, it is very possible integrating them in the American societies. The usage of these platforms is also a harbinger of the manner in which people behave towards not just the immigrants but other aspects of the society and in particular to the future (Bolton et al., 2013).

Striking a balance between unity and diversity has consistently become a problem for multi-cultural countries. The main challenge that faces nations globally is the manner in which they can legitimize, as well as, recognize the variations while

also constructing overarching national identity (Banks, 2014). Such an identity should be one that takes into consideration the voices and experiences of diverse groups that immigration often brings. Immigration usually results in several ethnic, language and even religious groups consequently culminating in weak identifications because of their marginalization (Lecheler, Bos & Vliegthart, 2015). However, Banks (2014) writes that social media platforms can be used to revamp their hopes, dreams and even possibilities. Such information on integration spread quickly in social media as a result of the wider reach and the number of participants in these platforms. It is also possible communicating on the general welfare of the immigrants so that the American societies can become fully informed.

Findings

The findings from the study postulated that every participant in the research has a bigger social media preference in comparison to other internet applications. Further, the difference in age, as well as, gender did not determine the number of times in addition to the forms of social media to be used during the process of integration. The most common social media sites that were of interest to the respondents encompassed Facebook, which was the leading in terms of preference. Others were YouTube, Instagram, WhatsApp, and Google. The respondents also noted that they spent an average of seven hours per day on these platforms.

The fact the immigrants are capable of logging into their social media accounts through their cellphones has also worked towards increasing the duration that they stay online. The respondents noted that social media can be used in pushing for the right agenda regarding immigration while at times it can be used as an oppression tool mainly through the hostility shown to them. The oppression is mainly through the negative comments and updates that are at times associated with them.

The study found out that the high number of hours immigrants spend on social media is partly because of the enormous idle time they harbor. It is mainly because they lack a meaningful economic activity such as employment. According to the respondents, their lives in most cases is hard, as well as, monotonous. There exists few or even no particular leisure activities for them. This aspect assists in explaining the increased need and usage for social media as a way of coping up with anxiety and passing time.

However, before coming into the United States, the participants reported that they initially used less social media while in their home countries. It was mainly because of the busy work schedules that they exhibited. They could thus, as a result, only use the platforms for an hour a day which is a great contrast to the present seven hours that they do. Some such as immigrants from Afghanistan mentioned that their use of social media was limited owing to the strict legislation in their country. In the discussions, the respondents also mentioned the shortfalls of increased social networking. In fact, some of them perceived it as problematic that several individuals would spend significant periods on social media. This was despite their recognition of the importance of social media in their lives in America. They also doubted the content credibility in these sites. They asserted that they did not know whether the information on the online platforms is factual or not, or whether they are dependable.

Cultural learning, as well as, language also enormously featured in the data that was collected. The respondents placed a considerable emphasis on the significance of first having to learn English for purposes of communicating with the locals and other immigrants. This is because English is the most widely spoken language in America. They also mentioned that it was necessary for full integration since culture and language learning would make it easier accessing the labor market, acquiring education and gaining citizenship. Worth noting also is a section of the respondents who retorted that integration is basically a 2-way process. This was based on their need to maintain their cultural backgrounds while also being assimilated in America.

The findings point out that social media platforms are used by immigrant societies to find information regarding their rights and citizenships. In fact, a majority of the respondents reported that they have in the past utilized Facebook in sourcing for information regarding immigration processes, regulations, tax issues and legal services. They postulated that they resort to social media since at times locating information from government websites can be a very difficult and time-consuming. However, for social media, the information is readily available.

Discussion

Pineau & Waters (2016) write that 2015 became the fiftieth anniversary since the Immigration Act came into law in 1965. It is the passage of this act that culminated in significant immigration into the US. The Act was responsible for abolishing the otherwise restrictive quota that mostly prevailed in the 1920s. It consequently opened America for legal immigration while also assisting in setting the stage for a rise in immigration from different places encompassing Asia, Africa, and even the Caribbean. Also, the Act placed a limitation on the number of immigrants that were coming from the Western hemisphere. However, this only succeeded in souring the number of undocumented immigrants. Currently, a total of forty-one million immigrants live in America representing 13.1% of the total population. Children born out of the immigrant groups are 37.1 million representing 12% of the population (Pineau & Waters, 2016). Therefore, the question of whether these immigrants have been successfully integrated into the American society is one which is both crucial and pressing.

The research has depicted that social media is especially significant for immigrants for purposes of improving their social connections. Most of the respondents agreed to have a connection with Facebook groups whose aims are mainly to improve the inter-cultural contact between them and the native communities. The social media sites also play a great role in the immigrants' acquisition of English and other cultural competencies. All these aspects work toward integrating the American society because of the availability of diverse groups.

Social media has also assisted the immigrants to integrate by enabling them to keep in touch with their families and allies in their home countries (Alencar, 2017). This aspect is significant for their social, as well as, emotional support. Basically, using social media can assist in tackling the challenges of integration. Also, integration through social media has the potential of making the immigrants consider their new countries as safe havens. For instance, social media leads to the passage of information regarding rights and freedoms, mainstreaming and even issues of identity which also work toward the formation of an integrated society (Eretin, 2017).

Herdagdelen, State, Adamic & Mason (2016) mention that socio-cultural dimensions or how best a person manages his or her day to day life in a completely new culture is usually predicted by the knowledge of the host's culture, the degree of contact between the natives and the immigrants and attitudes of various groups within a society. Additionally, McAuliffe & Weeks (2015) assert that the establishment of a vivid picture on the manner in which the discussions on immigration are presented on social media will help in better understanding the behavioral, as well as, attitudinal trends as per the rising global immigration.

Thus, it is apparent that these aspects are usually captured by creating significantly new friendships in the social media platforms. The friendships are usually between individuals drawn from varied cultural backgrounds and mostly undertaken in Facebook and Instagram. This works toward integrating the immigrant communities by operationalizing the cultural distance that initially existed between them. It should be known that several friendships on Facebook have commenced without either party knowing each other. They take place across varied ages and races which otherwise boosts the integration process.

Social media is also helpful for immigrants as it assists them in getting information concerning the activities of civil societies and other local entities working toward the achievement of cohesion in America. The connections usually established by the immigrants in the social media platforms culminate in offline social interactions. Through this, therefore, the immigrants will acquire reliable and sufficient information regarding issues such as the American labor market, as well as, the system of education. Visibly, social media acts as a means of orientation that substantially guides the immigrants in coming up with strategic and meaningful choices. For instance, the choice of undertaking education in America will boost the integration of the immigrants and the natives because learners interact in schools. These learners are drawn from very different backgrounds and are ethnically diverse. Since not every information in social media can be trusted, offline connections assist in proving their credibility.

Media consumption is also vital in the conceptualization of integration of immigration in their new places. This can be better understood by transnationalism. Transnationals are basically individuals connected with work, family, acquaintances and other important social networks across national borders. Through social media, it is also possible forming ethnic networks which can easily culminate in integration. It is because it is through these ethnic networks that opportunities, as well as, ethnic and political contacts which are otherwise significant for migrant populations are formed (Kindle, Ratcheva & Piechowska, 2015).

As a result, immigrant integration in America postulates a situation of parallel relations encompassing standards and identity narratives. These are responsible for shaping the life strategies, future dreams, as well as, the sense of belonging for the immigrants which are all significant factors in case of integration (Vihalemm, 2016). Social media can thus be helpful by assisting the transnationals to keep up with the news from their countries of origin while also taking part in social media campaigns. Social media, therefore, has a significant role in the achievements of an individual. It is because the strategies and visions that they undertake whose information is also found online are necessary for the achievement of their success.

Vihalemm (2016) continues to mention that social media assists in the integration of immigration through the creation of weak networks. A weak network is simply the communication that is taking place between individuals that are not close family or friends. The communication is not regular but usually rekindled after an extended period. The weak networks established in their new homes are promoters of integration. It is because the communication takes place with a broad array of people drawn from different cultures thus leading to a harmonious stay with others. Social media is also significant in boosting the integration of the immigrants by enabling constant mediations of the customs, lifestyles, opportunities and even the cultures of the host communities. Such aspects will culminate in the integration of these communities because of their interest in being assimilated in the host societies. For instance, by learning the local language and the cultures around, integration takes place since it is now easier interacting with the locals.

Digital technology possesses the ability to transform immigrant settlements in different areas of socio-economic, political, as well as, cultural integration. Consequently, new technologies such as social media will help in the integration process by providing the immigrants with general information regarding their rights, support services, citizenship while also assisting them not to feel isolated (Alencar, 2017). Social media also has the capacity of propagating the human-interest frame necessary for integration. Dekker & Scholten (2017) assert that this frame is usually propagated by lawyers, politicians and non-governmental entities.

These aspects culminate in integration by pushing for policy attention and desired change necessary for enhancing immigrant livelihoods. Therefore, from the discussion, social media's role in the integration process especial in a new nation is important to several immigrants. This is because it enables them to exploit, as well as, maintain crucial links to their original nations while also assisting them in establishing new connections in their current place of residence. It happens as they work towards resisting and subverting the ways of positioning themselves in these host nations (TLANG, 2018).

Conclusion

- [1] The paper has discussed how social media can be of assistance particularly for immigrants in being integrated into the American society. To achieve this, the paper has presented the findings of a study carried out on the immigrant population based in California. Its main finding is that social media has an integral role in integrating immigrants with the host populations because it boosts their interactions and sharing of vital data regarding several aspects such as their rights and freedoms and also the activities of various non-governmental organizations. Social media also permits interaction at a broadly trans-national level which ultimately culminates in the much-needed integration in the American society.

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Challenges of Higher Education Learning and Scientific Research Process Management

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Abstract

This work is dedicated to the 100th anniversary of the First University of Georgia and aims to find ways to improve management policies of higher education institutions in Georgia. The study was based on the analysis of foreign experience of modern strategies of higher education management, the qualitative analysis of TSU management system and the survey of academic personnel of the university economics and business faculty. Based on the results obtained, the challenges of management and scientific process management are analyzed. Challenges identified in the paper are informative not only at TSU but at other higher educational institutions of Georgia for understanding the conditions there and it will be the basis for the mechanisms of overcoming challenges at higher education institutions and management improvement recommendations.

Keywords: Higher Education Management, Management of Academic Staff, Learning Process Management, Scientific Process Management.

Introduction

Ivane Javakishvili Tbilisi State University (TSU) is the oldest educational institution in the South Caucasus region and is the largest in Georgia. This university is elected by the best school leavers from every corner of Georgia. The processes taking place in the university, the quality of teaching, the management system, the forms of established relationships spread everywhere and influence the whole country. Consequently, management of the challenges of this university should be a priority for the country's policy.

The present work is a continuation of the previous research, which was devoted to studying the perceptions of university challenges by students (Gulua, Ekaterine, 2017). Students' survey revealed twenty-five major challenges. The questions answered by the lecturers gave us an opportunity to make more concrete conclusions and compare their results to students' opinions. Although student polls preceded a survey of academic staff, the questionnaire was made simultaneously. These two studies are the integrity of the parts of the unified research system.

Improvement of management processes based on the challenges of higher education institutions is the purpose of this work, along with other researches conducted under the auspices of the Human Potential Laboratory, whose results are published in both local and international conference proceedings and scientific journals (Kharadze, Natalia; Gulua, Ekaterine, 2016), (Kharadze, Natalia; Gulua, Ekaterine, 2017); (Kharadze, Natalia; Gulua, Ekaterine; Dugladze, Davit, 2017); (Gulua, Ekaterine; Kharadze, Natalia, 2017); (Kharadze, Natalia; Gulua, Ekaterine, 2017); (Kharadze, Natalia; Gulua, Ekaterine, 2018).

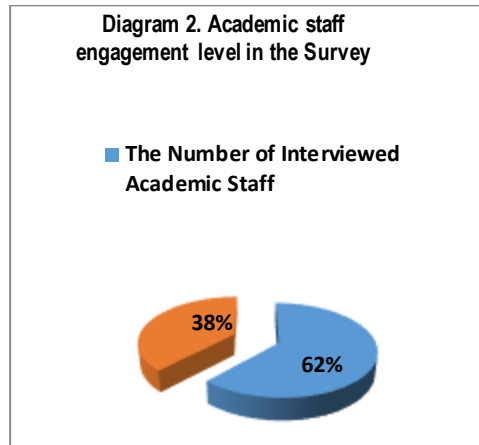
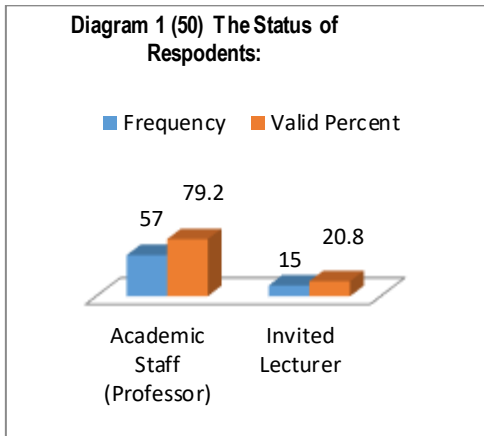
Academic staff of the Faculty of Economics and Business and invited lecturers were selected as a research object. Although the research is limited to one faculty staff, it provides the basis for analyzing the unified management system of the TSU, because structural units are governed by the centralized rule, faculties do not have the sharply expressed autonomy, the specific system of governance. The questionnaire included 48 closed and two open questions. To a number of questions, according to their content, a respondent could write several answers, so the percentage of answers to these questions exceeds one hundred percent. The data was developed in the program "SPSS-Statistics". A survey based on a questionnaire was conducted in March 2017.

The results of the survey were divided into two main parts: 1. Challenges of learning and scientific process management; 2. Infrastructural and systematic management challenges. The present work is only the first part of the study, which includes two main directions:

A) Challenges of teaching process management;

B) Challenges of scientific process management.

At the time of the research, the academic staff of the Faculty of Economics and Business composed of 92 members, the number of temporary invited staff is not permanent – it changes according to the terms and years. 150 questionnaires were distributed to all the departments. The survey was conducted in compliance with the anonymity of respondents. 72 respondents filled out the complete questionnaire, 2 respondents filled out only partially, the responses of the latter were excluded from the research. 57 members of the academic staff participated (62% of total staff) into the survey, 15 were invited lecturers (see the Diagram 1). 52 blank card were returned. 79.2% of the respondents were academic staff (Diagram 2).



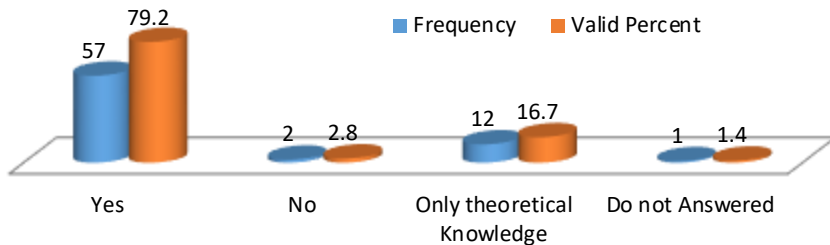
Challenges of teaching process management

Teaching process of higher education institution is to give the students a modern, international level education that will give them a global competitiveness, as the countries are more or less participants of global relations, only the education of local significance and level can not give graduates a guarantee of employment, success, possibility of professional self-realization. Naturally, the subject of interest is determine how this issue is evaluated by the lecturers. 79% of the lecturers believe that they give students the knowledge of international level. The response of 3% is extremely negative – they believe that they do not transmit the knowledge of international level, 17% states that they only transmit theoretical knowledge (Diagram 3). The students' answers to this question are somewhat different, only 16% of the students have a positive response to this question, the vast majority of the students consider that they get such knowledge only in some subjects (Gulua, Ekaterine, 2017)¹. In general, unfortunately, only 12% is confident that they will have knowledge of international level after completion of the study - and sharply negative position is expressed by 31% of the students².

¹ Gulua Ekaterine, Modern Challenges of Higher Education, Business and Economics Refereed and Reviewed International Scientific and Practical Journal of the Faculty of Economics and Business, Ivane Javakishvili Tbilisi State University, Volume X, N2 2017 Volume 226 pg. 112-132, Diagram3, pg115

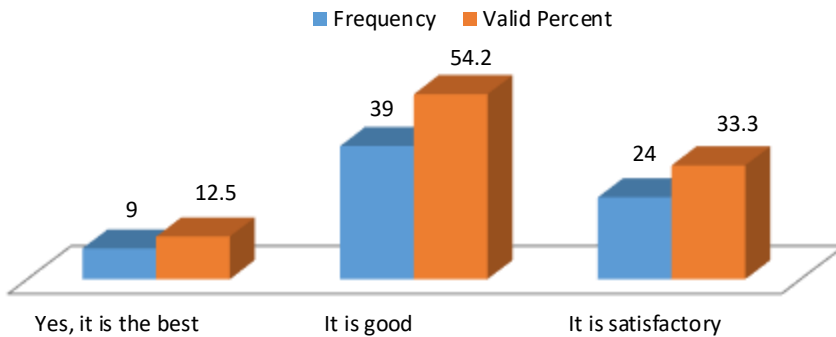
² The same one, The Diagram 2. pg.114.

Diagram 3. (N1) Do you give your students international level knowledge in your subject?



The university teaching system is estimated as best by 12.5% of the lecturers; Well 54% thinks that it is good; 33% considers that it is satisfactory (Diagram 4). It should be noted that higher education institutions and the relevant programs periodically go through the authorization and accreditation procedures which provide the compliance of the country's highest level of education with modern requirements, in order to be considered the interests of the country, as well as of the students, as future work force and key factors of the country development.

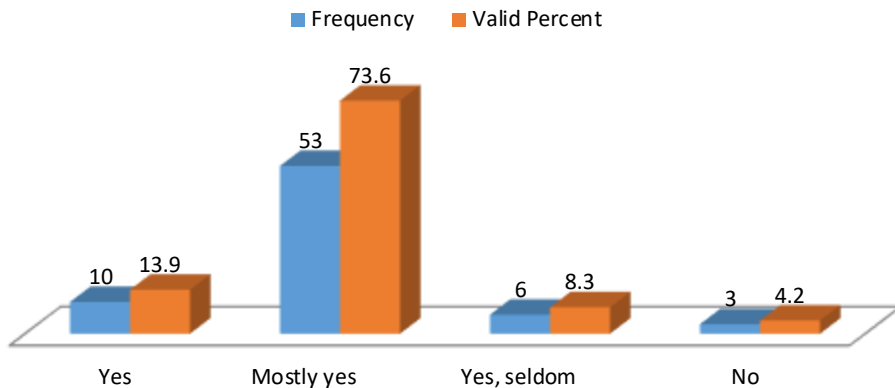
Diagram 4 (2). Does the University Teaching System Meet the Standards of Higher Education System?



14% of the respondents believe that the diploma issued by the university is relevant to the student's knowledge, 74% thinks that the diploma is mostly in line with the relevant level of knowledge, and 12.5% of the respondents have relatively negative responses (Diagram 5). According to the student survey, 11% thinks that after completing their studies they will have the relevant knowledge, 72% thinks they will have only theoretical knowledge, 17% of the respondents' position in this direction is very negative¹.

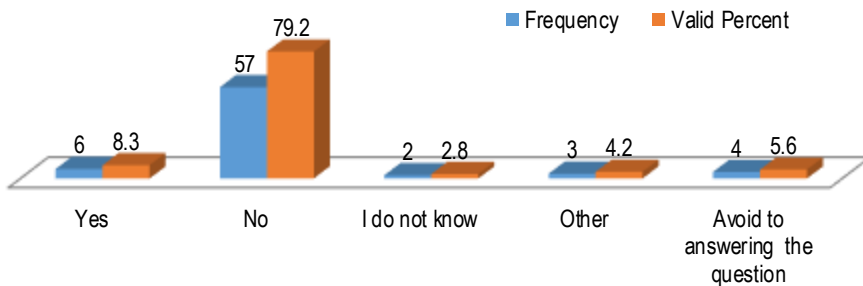
¹ The same one;The Diagram 8, pg 118.

Diagram 5 (7). Do you think the university diploma is relevant to the knowledge of the student?



8,3% of the interviewed lecturers believe that competing universities give students better knowledge than TSU. 79,2% rate the advantage of TSU (Diagram 6). Positive perception of the university's image by the students is far below the level of the lecturers. 34% shows that throughout Georgia the best level of knowledge to receive is available at TSU, and the negative response was recorded by half of the respondents¹.

Diagram 6(8). Does any of the competitor universities give students better knowledge in your field?

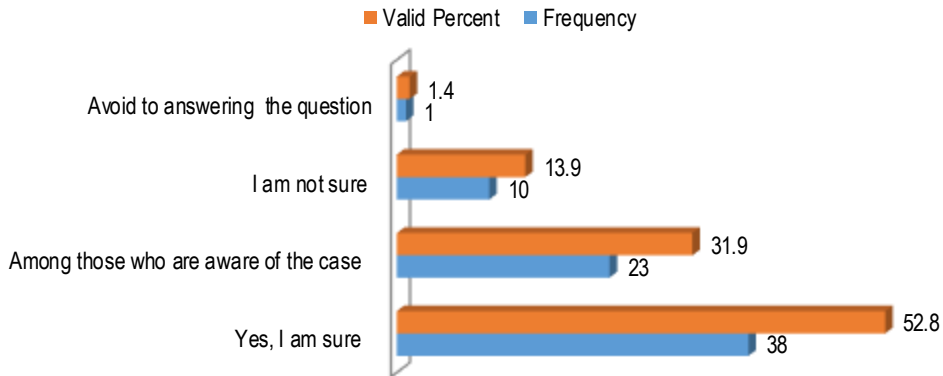


53% of the interviewed academic staff members are convinced that TSU alumni use high authority among employers, 32% thinks TSU is preferred by the category of employers who are aware of the case. The University authority is dubious for 14% of the respondents (Diagram 7). 74% of students responded positively to the same question, and 26% - negatively².

¹ The same one; The Diagram 20, pg.127.

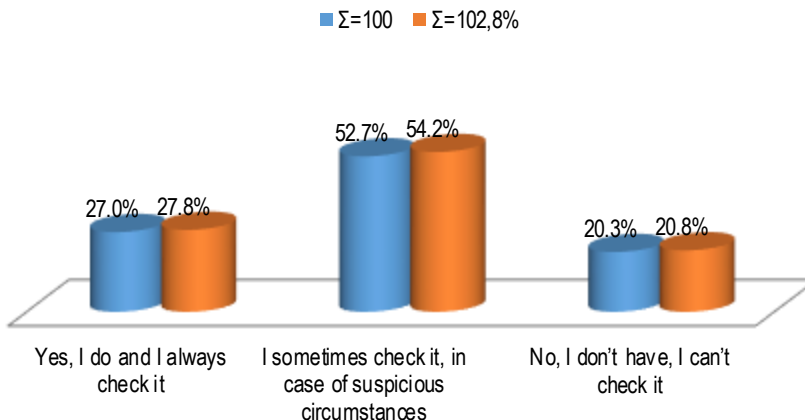
² The same one; The Diagram 21, pg.128.

Diagram 7(9). Does your university diploma have a high authority among employers?



The methodology significantly determines the quality of teaching. It is important to determine how much academic staff can develop a student's analytical thinking, independent reasoning and analysis. In this respect for studying the position of academic personnel there are actual mechanisms for determining plagiarism in students work. 27.8% thinks that they own plagiarism identifying mechanism and always use it, 54.2% inspects it only when noticing a suspicious condition, 20.8% of the respondents does not have a mechanism for checking and can not check it (Diagram 8). The answers of 55% of the students showed that this situation in the university is extremely difficult. Only 9% thinks that the students works are always checked¹. The qualitative research finds that a mechanism for plagiarism is not officially developed at the university level, which is a significant flaw in the teaching process for this university where the ability of introducing individual approaches is significantly limited.

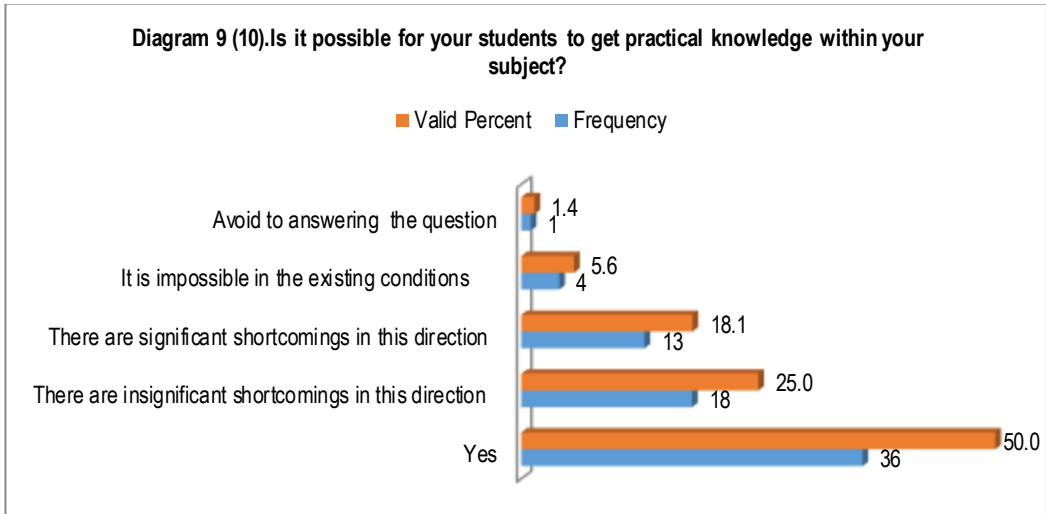
Diagram 8 (6). Do you have a mechanism to check the level of plagiarism in students' work (abstract, coursework, conference theme, master's thesis)?



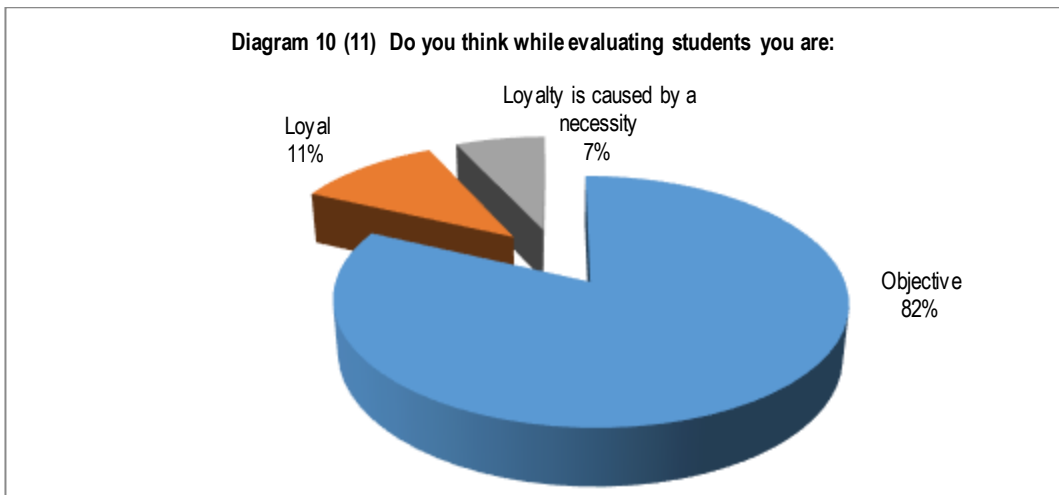
Half of the respondents report that the knowledge transferred to students by them is in compliance with practice, in this regard minor shortcomings are recognized by 25% of the lecturers; 18% considers that there are significant gaps in the

¹ The same one; The Diagram 7, pg.117.

field of transmitting practical knowledge; 5,6% thinks that practical knowledge can not be transferred under existing conditions (**Diagram9**). 7% of the students expressed satisfaction in this direction, and 29% had a very negative attitude¹.



82% of the interviewed lecturers report that they are objective during assessing the students.11% admits that they are loyal, 7% thinks that their loyalty is due to the necessity (**Diagram 10**). The dominant position of the lecturers is shared by 53% of the interviewed students, 43% complains about the obscurity of assessment criteria and only 3% thinks that lecturers are not objective².

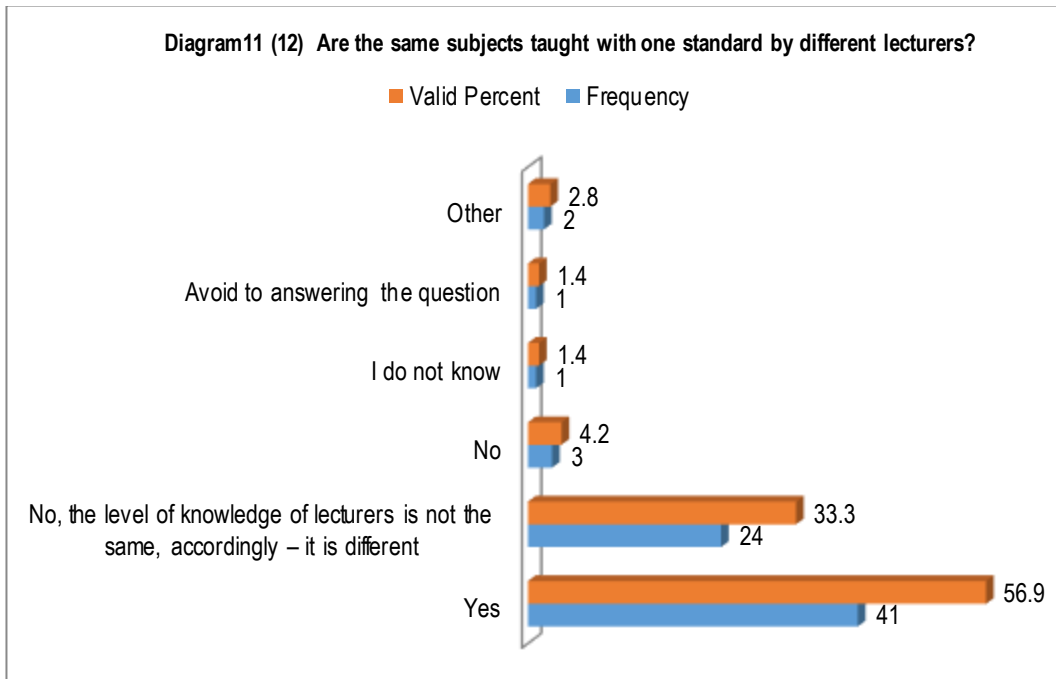


57% of the interviewed academic personnel believes that the subjects are taught in uniform standards, in total 37.5% admits that total university standards don't exist, among them 33,3% believes that the difference is due to the unequal level

¹The same one; The Diagram 9, pg. 118.

² The same one; The Diagram 10, pg. 119.

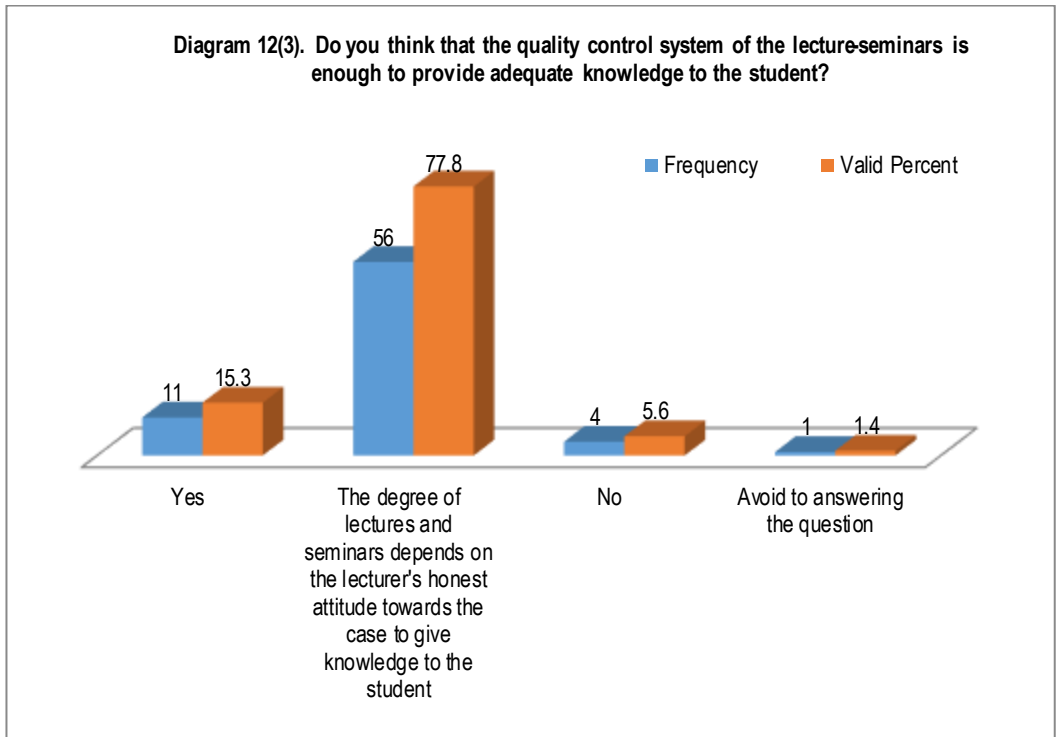
of the university lecturers (**Diagram 11**), While 24% of the students are extremely dissatisfied with the level of lecturers' knowledge, most of them (76%) are satisfied with them, thus, the answer to 21% is unquestionably positive¹.



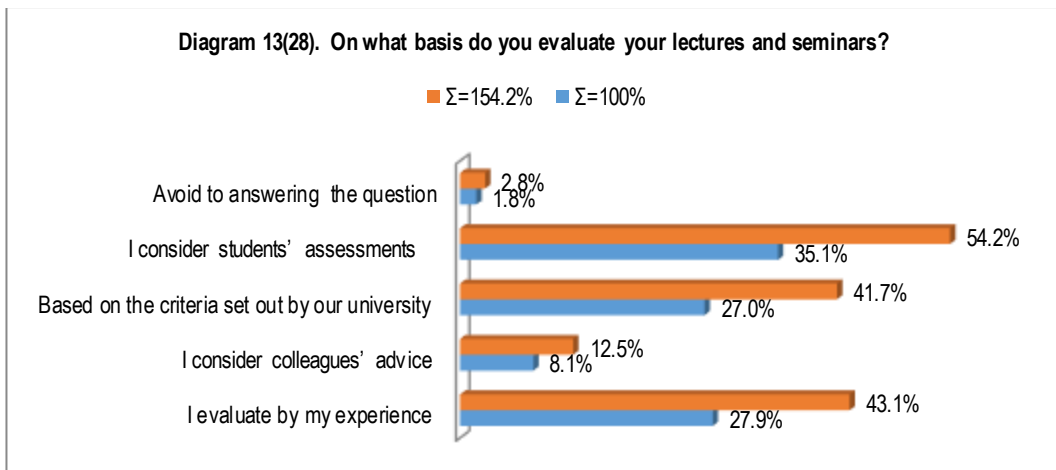
➤

➤ 78% of the lecturers recognizes that the quality of lecture-seminars depends on the conscience of professors, 5,6% of the respondents thinks that quality control system is not enough, and 15,3% positively evaluates the quality of control mechanisms (**Diagram 12**).

¹The same one; The Diagram 14, pg.114.



➤ The basis for self-assessment criteria of lecturers is interesting. 54,2% of the respondents (35,1%) uses students' evaluations for their self-esteem, 43,1% (27,9%) evaluates themselves with their own experience, 41,7% (27%) - in accordance with the criteria set out in the university, 12,5% 8,1%) - considers the colleagues' opinions (**Diagram 13**).



➤ Based on the analysis of the abovementioned issues, the following important issues have emerged from the challenges of teaching process management:

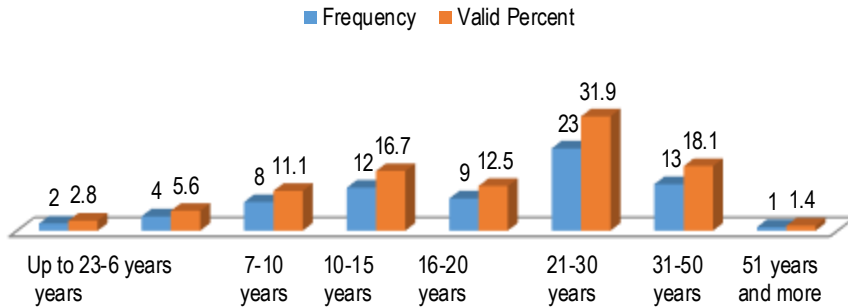
- 1. The need to manage challenges for transferring global knowledge in order to enable students to obtain international and not local education, which means their competitiveness in the global work force;
- 2. The implementation of training programs, learning process and their ensuring mechanisms, along with many other factors, ensures efficiency of the teaching system.
- 3. The diploma – a document for identifying education level taken by the university graduates is important to have the authority to be a real quality indicator, which can only be the result of the implementation of multi-year, purposeful measures;
- 4. It is important not only to improve the programs, curriculums, syllabuses, but also to ensure its mechanisms of quality, content and realization into practice.
- 5. An important guarantor of the success of the graduates is the authority of the higher education institution in its turn in relation to the competitors and the perception of the authority of the university by the employers, which is achieved through long-term actions;
- 6. The purpose of teaching process is to develop students the ability of independent, critical, creative thinking. For this it is necessary to introduce a specific teaching methodology, including not allowing plagiarism in students' analytical works, for the later it is necessary to equip the lecturers with appropriate mechanisms;
- 7. The necessity of ensuring compliance of theoretical knowledge with practical knowledge is a major challenge for every university in any corner of the world. The particular difficulty in this respect is the teaching of professions requiring creative approaches, original thinking, the need to acquire knowledge that has no analogy, even for time and spatial distinctions; It is important to create mutually beneficial forms and platforms for cooperation of science and higher education system with business. In this way it is possible to get synergistic effects (Gulua, Ekaterine, 2015).
- 8. Strictly established standards of students' assessment system and ensuring objectivity of assessment criteria determine both students' comparativeness and self-evaluation capabilities, as well as the authority of the university and the certificates issued by it;
- 9. The existence of uniform standards and norms for assessing teaching and processes ensure the minimum standards of quality that will give lecturers the opportunity to evaluate the level of lectures and seminars and maintain the proper quality of the process.
- 10. The learning process is a field of service, therefore, it requires specific control mechanisms in order to ensure that quality is less dependent on the subjectivity of the lecturers and their honesty towards their job.

➤ **B) Challenges of scientific process management**

➤ To assess the academic process, we examined the qualifications of the academic personnel, their work experience, knowledge sharing conditions, personal and professional development opportunities; individual and team work conditions; The possibilities and conditions of establishing in an international scientific space.

➤ The research has found that the academic performance of the vast majority (80.5%) of the respondents exceeds 10 years, and they have academic degrees at the same time, which is a high level of teaching at the university and highlights the high level of TSU according to the international experience. We can also judge the age group of the staff. 20% is young, 20% - is of high age group, and the main part - 60% is middle age personnel, which is quite normal for the higher education organization (**Diagram 14**).

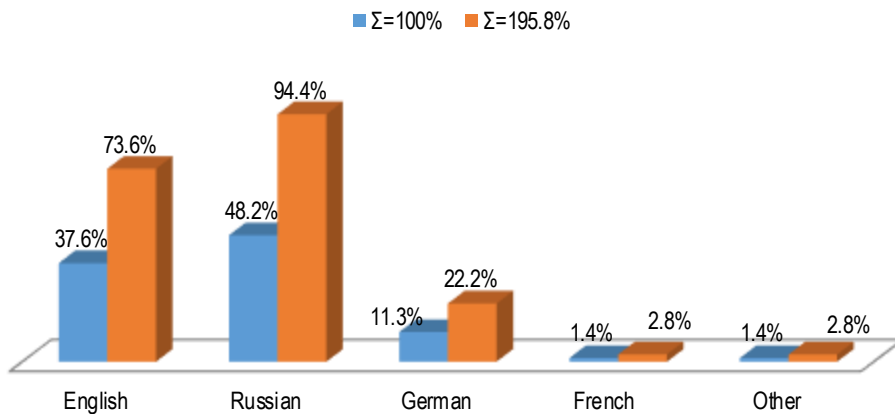
Diagram 14 (49). Your work experience at the university is:



For the country whose language is not international, the necessity to know any foreign international language and to be based on foreign scientific literature is obvious for an individual and generally for scientific development.

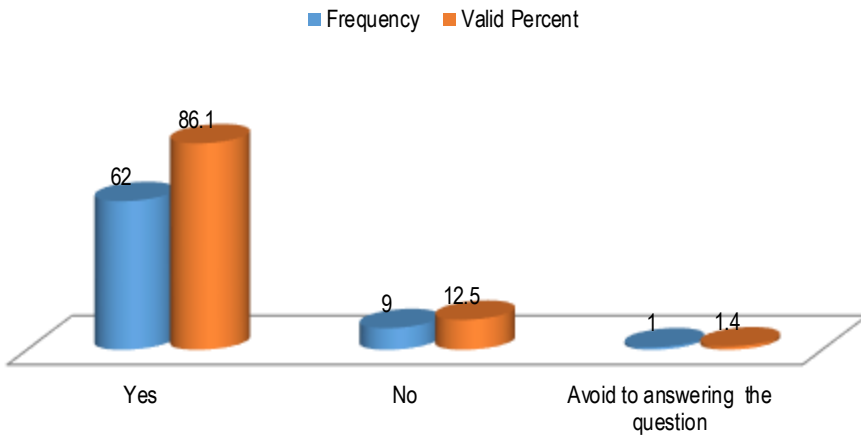
The survey has shown the preference of three languages by the lecturers. 94% speaks the Russian language, 74% - the English language, 22% - the German language (Diagram 15).

Diagram 15 (48) Which foreign language do you know?



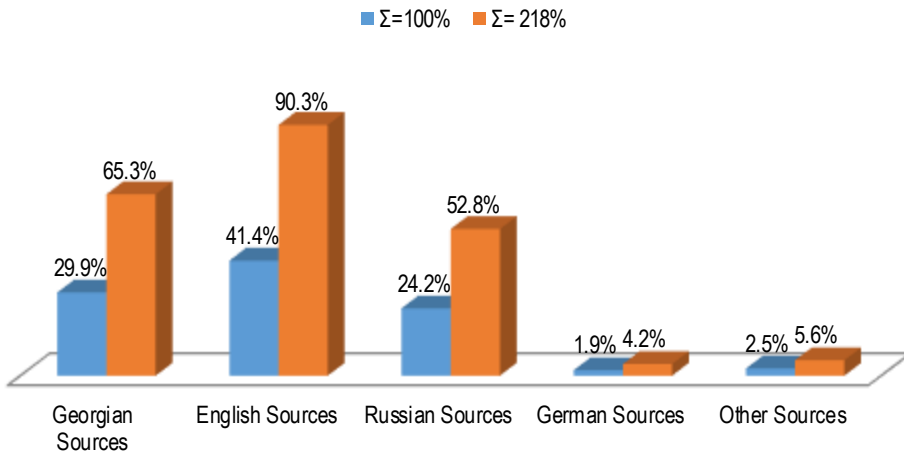
86% of the respondents think that professors must know a foreign language, and 12.5% responded negatively to this question. Since the possibility of finding literary sources in the native language is limited, naturally, we got interested in the offered subjects to students by the professors in this regard (Diagram 16).

Diagram 16 (4) Is knowing any international language necessary for a professor?

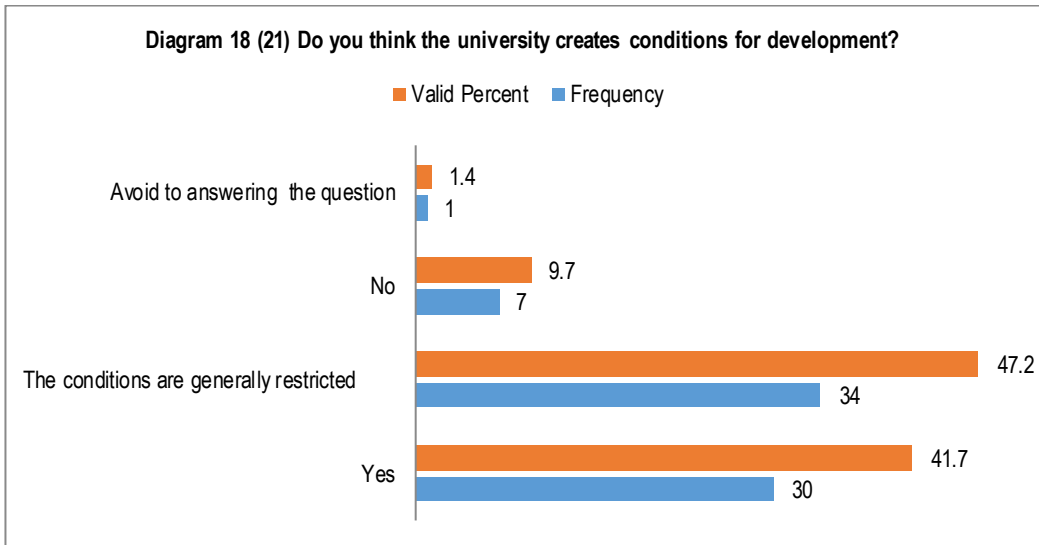


It was found that mainly English, Georgian and Russian sources are used for preparing lectures. Almost 100% of the respondents are using foreign language sources while preparing lectures (**Diagram17**). Particularly the use of English-language and Russian-language sources prevails.

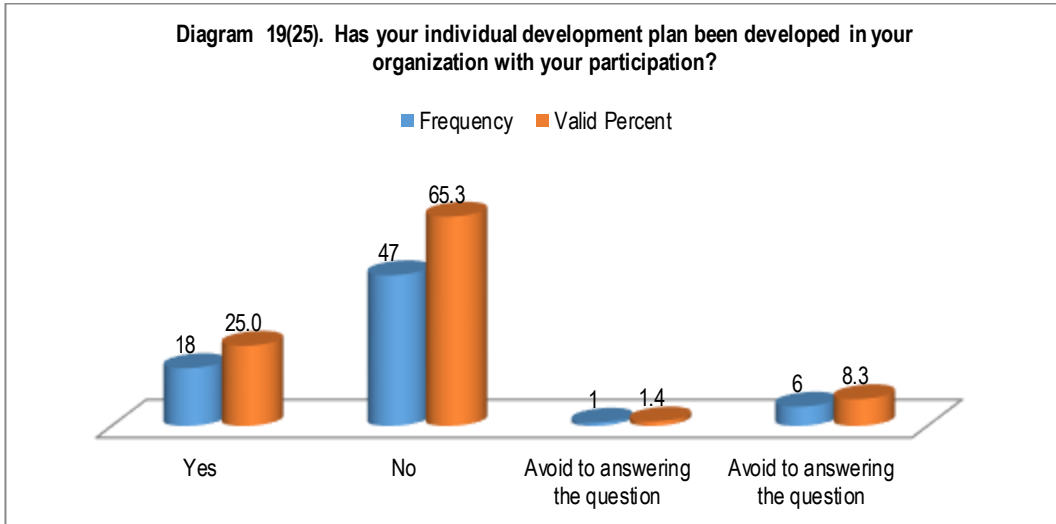
Diagram 17(5). While preparing a course, you rely on:



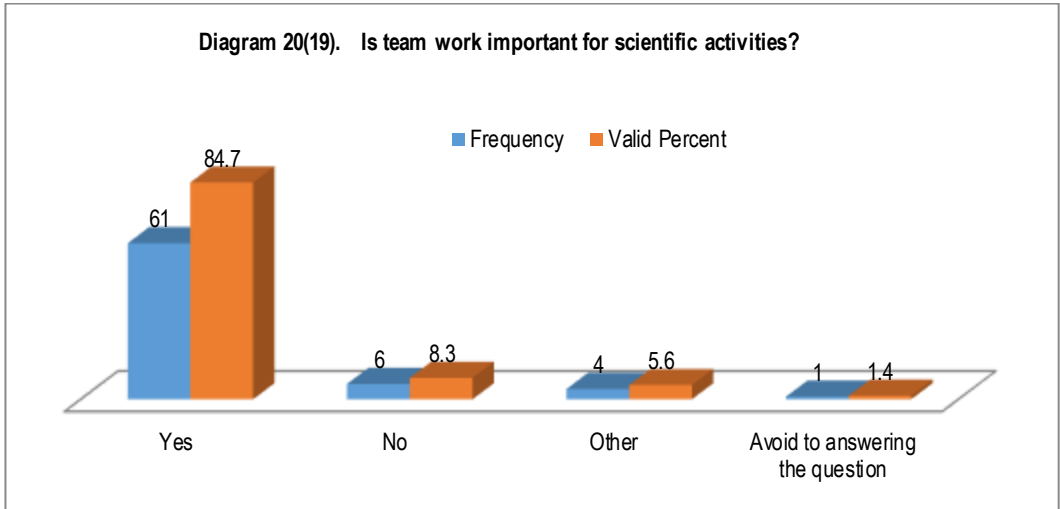
The successful functioning of higher education institutions is conditioned by the qualification of the academic staff, to care about it is the main concern of these types of organizations. It is interesting to see how much this care is appreciated by the organization itself. 41,7% is satisfied with the support from the university to increase their qualification, 47,2% thinks that the conditions are generally limited, the answers of 9,7% are the most negative to this question (**Diagram18**).



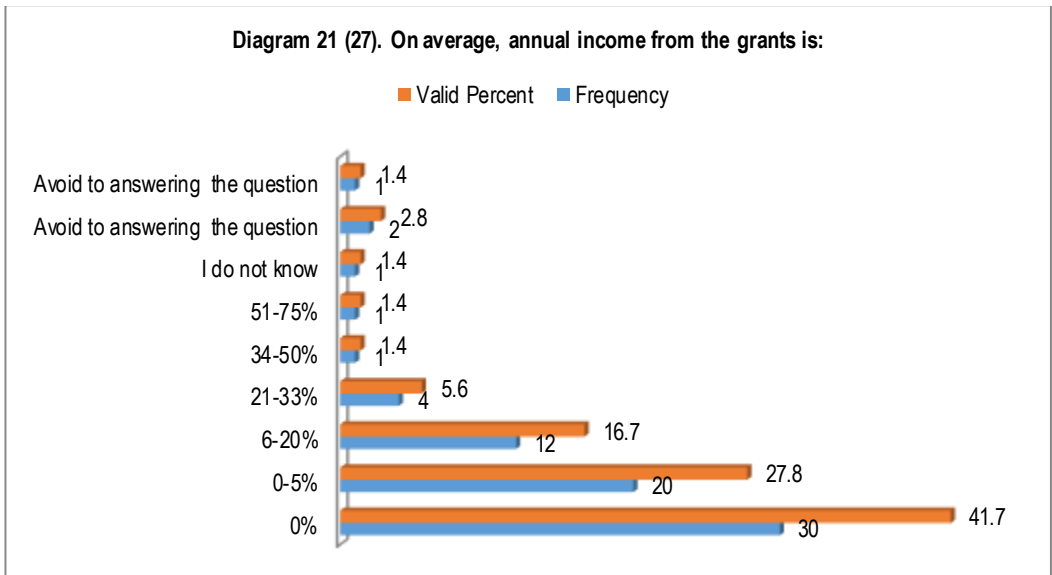
Care about personnel in modern organizations is expressed by the creating an individual development plan for the organization members and promoting its implementation. 65,3% of the respondents report that they have no such plan. The qualitative analysis also shows that the organization does not use the practice of developing such plans. Nevertheless, 25% of the respondents positively responded to this question and presumably meant the development plans of their own. One respondent has clearly stated that he/she had developed such a plan independently (Diagram19).



Scientific work in the modern environment is unimaginable without team work (Kharadze, Natalia; Gulua, Ekaterine, 2018). The necessity of it is recognized by 84.7% of the interviewed lecturers and 8,3% believes that scientific activity is an activity that should be performed individually (Diagram20).



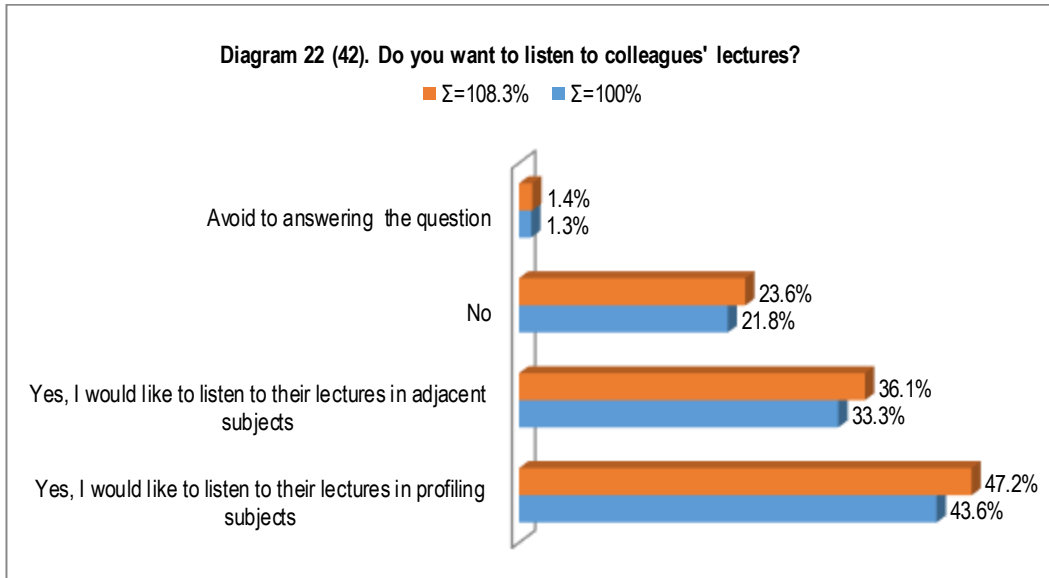
The low level of involvement in grants by academic staff indicates a lack of team work. It has been found that income from the grant is 0% for 42% of the respondents, from 0 to 5% for 28%, from 6% to 20% for 16.7% (Diagram 21). The study of the students' attitudes toward the academic personnel assessment criteria, conducted by the Human Potential Management Laboratory found that 49% from 1093 students interviewed at the Faculty of Economics and Business puts the grants awarded to their lecturers from seven places in the sixth and seventh positions (Kharadze, Natalia; Gulua, Ekaterine, 2018) This means that students do not see the link between the quality of the lecture and the grants received by the lecturer.



In order to reveal team work management mechanisms the respondents were asked an open question about the techniques they use with their colleagues for knowledge sharing, the contrast in responses showed that in this direction sharply formulated system does not exist, which indicates that in this direction culture management is weak (Gulua, katerine;

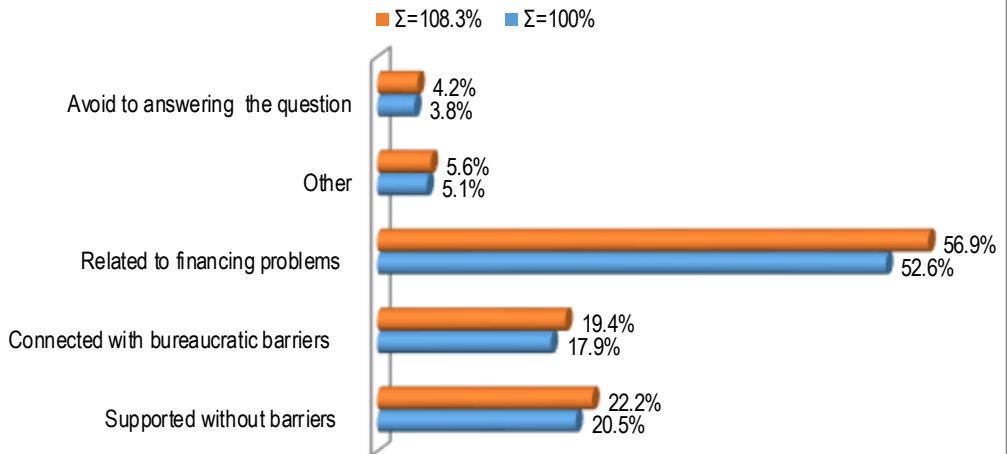
Kharadze, Natalia, 2018), correspondingly, culture management directions are fragile (Gulua, Ekaterine; Kharadze, Natalia, 2014). From the forms of knowledge sharing conferences were reported most frequently by the respondents.

77% of the respondents expressed willingness to listen to colleagues' lectures. 43.3% of them wants to listen to colleagues' lectures in profiling subjects and 33.3% - in adjacent subjects, 22% does not have the same desire (**Diagram22**).



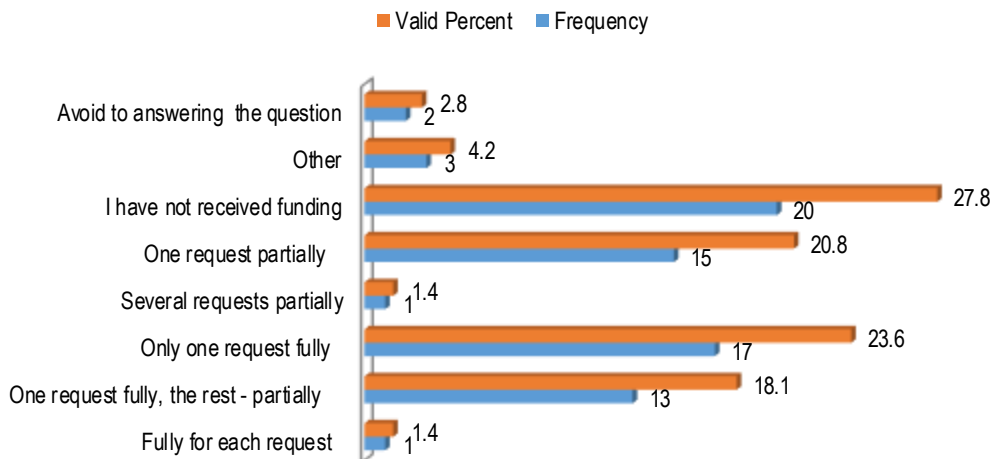
The best way to share the knowledge of scientists is to participate in international events. 22.2% of the interviewed lecturers believes that international trips are supported by the university without barriers. The main contradictions by the respondents in this regard are considered to be financial and bureaucratic problems (**Diagram 23**). The study of the students' attitudes (Kharadze, Natalia; Gulua, Ekaterine, 2018) towards Lecture Assessment Criteria shows that 42% of the interviewed students consider a participation in international conferences as the second and third priority while assessing lecturers and putting it on the second place after the quality of the lecture.

Diagram 23 (37) International business trips are:

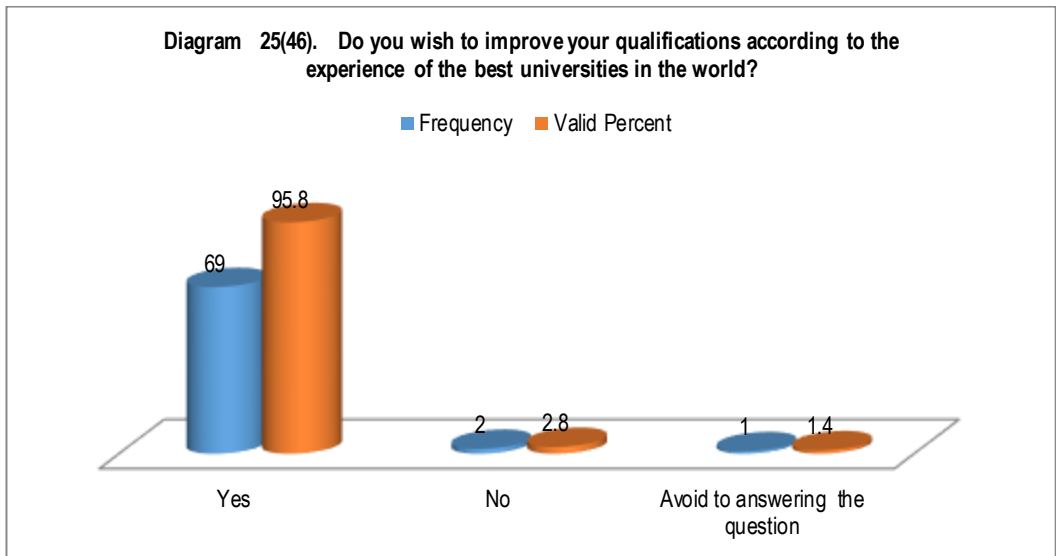


It is interesting to know how frequently the organization provides trips abroad for the staff. 27.8% reported that they did not receive funding for this purpose; Only one person named that each request was satisfied in full. 23.6% say that one request is satisfied fully; 20.8% reported that one visit is partially financed, and for 18.1% - one request fully, the rest-partially (Diagram24).

Diagram 24(38). How often does your organization support your visits abroad a year?



Absolute majority of the respondents -96% express their willingness to increase their qualifications abroad, 2 respondents have no desire of this, one refrained from answering to this question (Diagram25).



From the challenges of scientific process management the following issues have been identified:

1. The level of knowledge of academic personnel depends largely on their scientific activities. Therefore, mechanisms for encouraging scientific activities should be taken into consideration with many perspectives in the management strategy of the university.
2. Knowing international languages by scientific and academic personnel plays a crucial role in the gaining and transferring modern knowledge and in the science development. It is therefore important to promote international language teaching at all levels of education system;
3. Establishment of assessment criteria for scientific and academic personnel and to promote the awareness and authority of the scientists ("branding"), based on a publicity of personal data, promoting engagement in public activities will result in improving the image of university and professors, as well as increasing scientists' objective self-esteem and improving students' attitudes towards studying;
4. Several months are not enough to increase the qualification of scientists. This needs years – it is a result of long-term labor. The maximum return of scientists starts at the age of 45-50. Considering this fact, attention should be paid to making the best young people interested in these challenging activity, the healthy change of generations, the maintenance of experienced scientists; the reasonable replacement of auditory and scientific work. With the growth of a scholar's age and qualification the qualification of a listener must be developed and the number of listeners should be reduced;
5. Taking into consideration the abovementioned and also individual personal interests and talents individual development plans for scientists should be made by the involvement of the special department of Human Resources Management. The organization is obliged to observe and support their implementation;
6. Scientific groups are the most successful in creating scientific products in the modern world. Individual scientific activity rarely gives a result compared to team work. Therefore, it is important to encourage group work by using different effective mechanisms against stimulating internal competition. Professional and personal self-esteem is naturally an internal competition nutrient;
7. International and local scientific grants are effective for the development of science, as well as for the growth of scholarship and university revenue. That is why scholars who gain international grants in this direction achieve success in this direction, especially those who can involve their own colleagues and young generation representatives in such projects, are necessary to be adequately encouraged;

8. Introduction of knowledge sharing mechanisms is important for the development of science and raising scientists' qualifications. The ability to attend colleagues' lectures is a good way to share knowledge;

9. The opportunity to attend international events for scientists allows Georgia to establish a certain image in the international scientific society. It is important for the university to have a specific policy in this direction. The main thing here is to take care of the quality and not quantitative improvement of the condition, which will increase the efficiency of costs;

10. The desire to increase the qualification of scientists is important to be followed by the appropriate realistic support. In this regard, it is important to use internal reserves fully and buy external services on the basis of analyzing the expediency of expenditures.

Preliminary hypotheses have been verified by statistical methods. In particular, we used Pearson correlation analysis of pyroson, the Chi-squared tests to substantiate the reliability of the connections between the variables and linear regression, namely the ANOVA test.

H1: Variable – Q1 (Do you give your students international level knowledge in your subject?) **affects the variables:**

Q4 (Is knowing any international language necessary for a professor?);

Q19 (Is team work important for scientific activities?).

H2: Variable Q9 (Does your university diploma have a high authority among employers?) **affects the variables:**

Q2 (Does the University Teaching System Meet the Standards of Higher Education System?);

Q12 (Are the same subjects taught with one standard by different lecturers?).

H3: Variable Q21 (Do you think the university creates conditions for development?) **affects the variables:**

Q19 (Is team work important for scientific activities?);

Q25 (Has your individual development plan been developed in your organization with your participation?);

Q38 (How often does your organization support your visits abroad a year?).

H1 Hypothesis. To prove H1 hypothesis we have made **Pearson Correlation Analysis Test**. By the test the correlation between variables Q1 and Q14, Q19 has been confirmed. The link between Q1 and Q14 is very strong (it almost equals to one). The link between Q1 and Q19 is week (In the range between -0,5 and 0.5) (**see Table 1**).

Table 1. Pearson Correlation Analysis

		Q1	Q4	Q19
Q1	Pearson Correlation	1	.997**	.414**
	Sig. (2-tailed)		.000	.000
	N	72	72	72
Q4	Pearson Correlation	.997**	1	.419**
	Sig. (2-tailed)	.000		.000
	N	72	72	72
Q19	Pearson Correlation	.414**	.419**	1
	Sig. (2-tailed)	.000	.000	
	N	72	72	72

** Correlation is significant at the 0.01 level (2-tailed).

The Chi-squared test has shown that the connection between these variables: Q4 and Q1, Q4 and Q19 are reliable. In both cases sigma is less than 0,005 (**see Table 2, 3**).

Table 2. Chi-Square Tests (Q4* Q1)				Table 3. Chi-Square Tests (Q4* Q19)			
	Value	df	Asymp. Sig. (2-sided)		Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	72.598 ^a	6	.000	Pearson Chi-Square	18.842 ^a	6	.004
Likelihood Ratio	11.403	6	.077	Likelihood Ratio	8.979	6	.175
Linear-by-Linear Association	70.599	1	.000	Linear-by-Linear Association	12.484	1	.000
N of Valid Cases	72			N of Valid Cases	72		

a. 9 cells (75.0%) have expected count less than 5. The minimum expected count is .01.

According to linear regression analysis, **R Square** coefficient shows that Evaluation of the indicators is very close to real; It Almost equals to one. (see **Table 4**).

Table 4. Model Summary by linear regression analysis

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.997 ^a	.994	.994	.878

a. Predictors: (Constant), Q19, Q4

By the linear regression analysis, the ANOVA test has shown that the model is reliable, because the sigma is less than 0,005 (see **Table 25 (H2)**). Between Q4 and Q19 the more important is Q19.

Table 5. Linear regression (ANOVA^a)

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	9387.301	2	4693.651	6094.161	.000 ^b
	Residual	53.143	69	.770		
	Total	9440.444	71			

a. Dependent Variable: Q1

b. Predictors: (Constant), Q19, Q4

H2 Hypothesis. By Pearson **Correlation Analysis Test** the correlation between Q1 Q14 Q19 variables has been confirmed. It was turned out that the link between Q10 and Q2, Q2 and Q12 is very week and week; the link between Q10 and Q12 is medium (In the range between -0,7 and 0.7) (**Table 6**).

Table 6. Pearson Correlation Analysis

		Q10	Q2	Q12
Q10	Pearson Correlation	1	.157	.537**
	Sig. (2-tailed)		.189	.000
	N	72	72	72
Q2	Pearson Correlation	.157	1	.224
	Sig. (2-tailed)	.189		.058
	N	72	72	72
Q12	Pearson Correlation	.537**	.224	1
	Sig. (2-tailed)	.000	.058	
	N	72	72	72

** . Correlation is significant at the 0.01 level (2-tailed).

The Chi-squared test has shown that the connection between the variables: Q10 and Q12 is reliable. The sigma is less than 0,005 (see **Table 7**).

Table 7. Chi-Square Tests (Q10* Q12)

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	53.669 ^a	20	.000
Likelihood Ratio	26.611	20	.147
Linear-by-Linear Association	20.464	1	.000
N of Valid Cases	72		

a. 25 cells (83.3%) have expected count less than 5. The minimum expected count is .01.

By the linear regression analysis, the ANOVA test has shown that the model (Q10 Q2 Q12) is reliable, because the sigma is less than 0,005 (see Table 8).

Table 8. Linear regression (ANOVA^a)

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	2716.667	2	1358.333	14.064	.000 ^b
	Residual	6663.945	69	96.579		
	Total	9380.611	71			

a. Dependent Variable: Q10

b. Predictors: (Constant), Q12, Q2

H3 Hypothesis. The existence of correlation between Q21, Q19, Q25, Q38 variables has been confirmed by the Pearson Correlation Analysis Test. However, the connection between these variables was weak (In the range between -0,5 and 0.5) (see Table 9).

Table 9. Pearson Correlation Analysis

Correlations		Q21	Q19	Q25	Q38
Q21	Pearson Correlation	1	.490**	.362**	.407**
	Sig. (2-tailed)		.000	.002	.000
	N	72	72	72	72
Q19	Pearson Correlation	.490**	1	.117	.376**
	Sig. (2-tailed)	.000		.328	.001
	N	72	72	72	72
Q25	Pearson Correlation	.362**	.117	1	.263*
	Sig. (2-tailed)	.002	.328		.025
	N	72	72	72	72
Q38	Pearson Correlation	.407**	.376**	.263*	1
	Sig. (2-tailed)	.000	.001	.025	
	N	72	72	72	72

** . Correlation is significant at the 0.01 level (2-tailed).

* . Correlation is significant at the 0.05 level (2-tailed).

The Chi-squared test has shown that the connections between the variables: Q21 and Q19, Q25, Q38 are reliable. The sigma in each case is less than 0,005 (see Table 10, 11, 12).

Table 10. Chi-Square Tests (Q21*Q19)

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	79.186 ^a	9	.000
Likelihood Ratio	19.526	9	.021
Linear-by-Linear Association	17.039	1	.000
N of Valid Cases	72		

a. 13 cells (81.3%) have expected count less than 5. The minimum expected count is .01.

Table 11. Chi-Square Tests (Q21*Q25)

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	30.555 ^a	9	.000
Likelihood Ratio	20.678	9	.014
Linear-by-Linear Association	9.328	1	.002
N of Valid Cases	72		

a. 12 cells (75.0%) have expected count less than 5. The minimum expected count is .01.

Table 12. Chi-Square Tests Q21*Q38

	Value	df	Asymp. Sig. (2-sided)

Pearson Chi-Square	42.624 ^a	21	.004
Likelihood Ratio	27.744	21	.148
Linear-by-Linear Association	11.736	1	.001
N of Valid Cases	72		

a. 24 cells (75.0%) have expected count less than 5. The minimum expected count is .01.

By the linear regression analysis, the ANOVA test has shown that the model (Q21 – Q19, Q25, Q38) is reliable, because the sigma is less than 0,005 (see Table 13).

Table 13. Linear regression (ANOVA^a)

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	3409.407	3	1136.469	12.965	.000 ^b
	Residual	5960.537	68	87.655		
	Total	9369.944	71			

a. Dependent Variable: Q21

b. Predictors: (Constant), Q38, Q25, Q19

Thus, the listed hypotheses have been proved.

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Means of Evidence in the Contested Procedure

M.Sc. Artan Qerkini

Abstract

This research paper addresses means of evidence in contested procedure, through describing and analyzing all means of evidence recognized under the Law No. 03/L-066 for the Contested Procedure in Kosovo (hereinafter LCP). This research, amongst others, provides for a comparative overview on certain important issues between LCP, the old Law on Contested Procedure in Kosovo which was in force until 2008, and the Code of Civil Procedure of Albania (hereinafter CCPr). Nonetheless, despite containing comparative elements, the research, in its entirety, aims to elaborate the means of evidence in line with LCP, while highlighting the strengths and weaknesses of relevant legal dispositions in Kosovo covering this matter. This paper will initially define means of evidence, the importance these means have on determining relevant and contentious facts between litigants, universally recognized facts as well as facts which must be necessarily determined through means of evidence. Following this, this paper will elaborate other institutes relevant for the contested procedure, as: object of evidence, obtainment and assessment of evidence, etc. This paper will initially provide a description and explanation of means of evidence foreseen under LCP of the Republic of Kosovo. Given that it is precisely the evidence administered in a contested procedure what gives direction to determining the merits of the case in a certain matter, this paper pays particular attention to evidence obtaining methods, starting from examination, evidence administration through experts, and party hearing. This research paper humbly acknowledges that it does not suggest that all elements and matters concerning means of evidence in contested procedure have been covered. Nonetheless, we are confident that it does cover the fundamentals of the addressed topic.

Keywords: means of evidence, contested procedure

Introduction

Means and obtainment of evidence in the contested procedure represent vital procedural actions, which allow for verification of complete and fair factual situation, through which the court, as a state entity, guarantees an impartial and fair judicial process.

Means of evidence in the contested procedure serve for the verification of facts presented by the parties, or, verification of facts which need to be determined by the court *ex officio* in cases when the parties wish to dispose of the rights which they cannot freely dispose of. The main actions which the court undertakes in order to determine the material truth concerning the contested matter and every other judgment for the revealing of this truth is nothing but a recognition process.¹

We must note that the contested procedure only verifies those facts deemed relevant for dispute settlement. The court will determine which facts are to be considered relevant for the establishment of the factual situation which will serve as basis for applying the material law. In most cases, the court deals with the identification of those facts which belong to the past, which are inconsistent with the time the matter is being reviewed in the court.²

Concerning the evidence and their obtainment in the contested procedure, Article 321, Paragraph 1 of LCP, suggests that it is not necessary to prove facts which are universally recognized, and neither the facts which the court has verified in previous judgements. Universally recognized facts are those which the natural person is familiar with, as are, e.g. earthquake, floods, war etc. In view of the above stated legal definition we notice that even facts already established within previous final judgments/rulings do not request to be re-verified, even if applied in a different case. For example, should we assume that the final judgment has established that the damage has been caused and has also conclusively identified

¹ Brestovci, Fak, Procedura Civile I, Universiteti I Prishtinës, Prishtina, 2006, pg. 231.

² *Id.*

the person responsible for the damage, in the contested procedure, for the reduction or increasing of the lifetime rent, the issue of (non-)existence of damages and responsible person will not be reviewed, given that said facts have already been established through the final decision of a previous judgment.

The essence of the contested procedure may only be achieved if the issued judgment in the procedure where contested facts exist between litigants is accurate. This, however, may only be achieved if the factual situation verified in the procedure is identical with the events in the past.¹

LCP has approved the subjective burden of proof, given that it is an obligation for the litigants to provide evidence through which relevant facts for dispute settlement may be established. In view of the adversary principle of the contested procedure, facts which have been affirmed during the proceedings do not need to be verified.

Means of evidence and obtainment of evidence are procedural actions which, in absence of an intermediate judgment², are highly important, given that the court cannot initially decide merely on the legal basis of the lawsuit, and only later address its height.

Evidence in Contested Procedure

Evidence in contested procedure indicates the use of means of evidence which are recognized within the LCP, for the verification of the factual situation, which must be necessarily confirmed in order to apply the material and legal norms which would assist in dispute settlement. In our procedural system, evidence, just as the ascertainment of the factual situation, is a mutual task between the court and litigants.³

The court reviews the evidence according to its independent understanding, as it deems appropriate, which indicates that the court is not dependent to a certain legal norm in how it evaluates the probative evidence. However, this does in no way imply that the court is completely independent in its assessment. The court still has a legal obligation to justify the basis upon which it has evaluated evidence as trustworthy, or vice-versa, why it has considered a certain fact as unsubstantiated.

The party in procedure must maintain an active role, given that due to dispositions set out in LCP, the parties are obliged to represent and provide the court with all relevant facts for dispute settlement, and put forth all evidence which helps determine the alleged facts⁴. As far as the active role is concerned, this may also be maintained by third party persons who participate in the contested procedure, as is, for instance, a mediator.

Object of Proof

Object of proof implies all contested facts between litigants which, as we previously noted, are relevant for dispute settlement. The main task of the court throughout the main review session is to differentiate the contested facts from those uncontested, and then, similarly, differentiate the relevant facts from those irrelevant for dispute settlement. It is not uncommon for the judge to be insufficiently prepared to review the case, which leads to a tendency to also review facts irrelevant to dispute settlement, which in fact is one of the main reasons the proceedings, and trial, are delayed.

Object of proof, are those facts which the litigants present to the court through different procedural steps, either through lawsuits, response to lawsuits, in the main hearing and all the way until the completion of the contested procedure.⁵

According to general principles of the civil law, legal facts imply facts which are relevant for the creation, modification or suppression of civil legal rights. Legal facts which may be manifested through natural events (for instance, one of the litigants requests to be exempt from the responsibility, given that non-compliance with the contract is a result of a *vis major*), and, the same, those which may be manifested through natural persons' actions (for instance, one of the litigants alleges that a contract has been unlawfully terminated one-sidedly), are also considered to be Objects of Proof in the contested procedure.

¹ Poznic, Boriv oje, *Gradzansko Procesno Pravo, Savremena Adminsitracija*, Belgrade, 1999, pg. 228.

² LCP does not recognize intermediate judgment. This gives an even more significant importance to probative means compared to the importance given to them through the old LCP.

³ Brestovci, Fak, *Procedura Civile –I* Universiteti i Prishtinës, Prishtina, 2006, pg. 232.

⁴ Poznic, Boriv oje, *Gradzansko Procesno Pravo, Savremena Adminsitracija*, Belgrade, 1999, pg. 228.

⁵ Jaksic, Aleksandar, *Gradzansko Procesno Pravo*, Belgrade, 2010, pg. 378.

An object of proof may be a positive fact (e.g. existence of a contract), as well as a negative fact (non-existence of a contract).¹ Conversely, object of proof cannot be legal norms and neither civil legal institutions, but only those legal facts the (non-)existence of which brings about the implementation of the material norms.

Thus, in light of the above, we may conclude that object of proof implies facts manifested as natural events, that is, events in the causing or prevention of which the litigants cannot have an impact, as are, i.e. floods, earthquakes, explosion of nuclear reactors etc.; nonetheless, object of proof may also be natural persons' actions, as are, e.g. the fact whether the goods have been sent, whether the necessary actions have been undertaken for the prevention of damages, etc.; followed by a long list of actions potential of being defined as an object of proof.

Evidence as a Necessary Procedural Action

Evidence (proof), is presented as a mandatory procedural action in all cases where the parties' allegations are conflicting. Should one of the parties allege that a specific contract has been established, whereas the other party denies such establishment, these claims must be confirmed through specific means of evidence recognized by LCP. All means of obtainment of evidence must be in line with the legal requirements. Courts cannot use other means of evidence, apart from those specifically foreseen under the relevant laws. For instance, the court cannot request from the witness to give an oath based on religious rituals in order to obtain their testimony.

The answer as to which facts are relevant for dispute settlement would depend on the fair legal qualification of the contested legal matters from the court.² Generally speaking, the important facts that allow for the issuance of a decision in contested procedure are those which fall into the dispositions of the material legal norms through which the claimant defends his denied legal rights.³

Based on Article 322. Paragraph 2 of LCP: "*if the law does not foresee something else, the party that contests the existence of a right carries the responsibility to prove which fact was the obstacle.*"

If the defending party affirms the request for lawsuit of the claimant, through a response to the lawsuit, the court has no obligation to review the facts presented in the lawsuit, but may instead issue a decision based on the affirmation of the defendant. The only exclusion to this procedure would be in the event that the party which affirms the allegations of the claimant in the request for lawsuit, acts in contradiction with Article 3, Paragraph 3 of LCP.

Should the court form a negative impression on the truthfulness of a certain fact which is vital to the basis of the request for lawsuit, further proof concerning the defendant's denials will not be necessary. Should the court consider a certain fact provided from the defendant liable (e.g., that the request for lawsuit has passed the statutory limitation), attaining proof in relation with facts in which the claimant has based his lawsuit will be unnecessary.⁴

Cases in Which Evidence is Not a Mandatory Procedural Action

Contested procedure is a procedure based on which the parties are guaranteed with a fair and impartial judgment. There are certain situations in which the evidence obtainment procedure and evidence obtainment in general do not need to be undertaken. Such situations would occur when a party admits a certain fact; when we deal with universally recognized facts; and when we face legal presumptions also known as "*presumptio juris*".

Statement of Facts

Statement of facts is a unilateral procedural action of litigants, through which the parties ease the work of the court to a large extent, given that, as we previously noted, the facts affirmed by the parties do not need to be proven.

The above rule has an exemption to it, which has to do with the application of Article 3, Paragraph 3 of LCP, based on which the court will not accept the affirmation of the parties if through such affirmation the parties are willing to dispose of

¹ Jaksic, Aleksandar, *Gradzansko Procesno Pravo*, Belgrade, 2010, pg. 380.

² Triva, Sinisha dhe Dika, Mihajlo, *Gradzansko Parniono Procesno Pravo*, Narodne Novine, Zagreb, 2004, pg. 485.

³ Jaksic, Aleksandar, *Gradzansko Procesno Pravo*, Belgrade, 2010, pg. 381.

⁴ Jaksic, Aleksandar, *Gradzansko Procesno Pravo*, Belgrade, 2010, pg. 381.

rights which they cannot freely dispose of. When we say 'rights which the parties cannot freely dispose of', we denote the disposal of rights which goes against the legal system, legal norms and ethical public norms.

Statement (or affirmation) of facts is a unilateral procedural action, through which a party in procedure declares that the facts set out by the opposing party are correct, even when said facts may be unfavorable for the party admitting their accuracy.

We may come across cases when the party is questioned by the court whether it affirms a certain fact or not, and it remains silent as opposed to expressly declaring that it does. Such passive attitude, or silent response, may be interpreted in three ways:¹

The party affirms the fact alleged by the opposing party;

The party objects the fact alleged by the opposing party; and

The court will evaluate the silent answer of the party based on its own evaluation.

Different authors support one or the other presumption of the three. However, we may consider that the second interpretation is the most fair. That is, due to the fact that a passive statement (or lack thereof), according to analogy, is interpreted in line with the norms of the Code of Criminal Procedure, which articulates that should the defendant not give any declarations concerning his innocence, or guilt, it is considered that the party objects the existence of guilt. In this situation, silence cannot be construed as acceptance – in the contrary, it must be considered as an objection towards facts claimed by the opposing party.

Universally recognized facts

Universally recognized facts, are those which are well-known to all people, or to a large network of people, without having to prove them through means provided for within the law. The court considers the universally recognized facts as established due to procedural cost-effectiveness, but also due to the impossibility to prove them, which is why the court deems it unnecessary to assess their truthfulness. In this manner, for example, earthquake as a natural disaster is an undeniable fact and it would be highly unnecessary to request from the seismological agency to issue specific evidence to ascertain that the earthquake has indeed occurred. Otherwise, earthquake as a natural occurrence, could be relevant in contested legal issues if the party responsible for damages intends to defend its position precisely due to such natural event. Under these circumstances, the party will defend its positions claiming that said natural occurrence has prevented it from fulfilling the requirements as set out in the contract, and accordingly requests to be exempt from the responsibility of the damage caused. This natural event may be at times only known to a certain country or a number of countries, depending on its proportions.

However, for a fact to be considered as universally recognized, it must also be known to the court.² The party which may base its allegations on the lack of knowledge of such fact, may try to prove that said fact does not possess the qualities of a universally known fact. Should said party succeed in establishing the lack of the 'universal' qualities for the alleged facts, then the latter must be established through evidence which will verify the accuracy and truthfulness of the opposing party's allegations that such fact is indeed universally recognized.³

C) Legal presumptions - “*presumptio juris*”

The facts which are provided within a legal norm, which contain legal presumptions, do not need to be proven. This implies that the existence of these facts is established through presumptions of the law itself.⁴ When we deal with legal presumptions, we only need to verify the legal link between the occurred event and the fact foreseen within the law. This way, for instance, based on Law No. 2004/32 for the Family, the father of the child born in a wedlock, is considered the husband of the child's mother. Most of the legal presumptions are however, refutable, because the contrary may be

¹ Triva, Sinishadhe Dika, Mihajlo, Gradzansko Pravnico Procesno Pravo, Narodne Novine, Zagreb, 2004, pg. 490

² Brestovci, Faik, Ib Id, pg. 239.

³ Ib Id.

⁴ Jaksic, Aleksandar, Gradzansko Procesno Pravo, Belgrade, 2010, pg. 386.

substantiated. Here, for example, it may be verified that the father of the child born in a wedlock, may not necessarily be the husband of the child's mother.

Legal presumptions are not considered as contested by the court, if they are not initially contested by one of the litigants. An example may be drawn if we hypothetically consider a contested procedure concerning alimentation (child support): If the child for whom alimentation from one of the parents is requested was born in a wedlock, based on the legal presumption that the child's father is considered to be the child's mother's husband, the court will not deem it necessary to verify if the father from whom alimentation is being requested, is indeed the biological parent. However, if the father, throughout this contested procedure objects his paternity, then, the court has an obligation to ascertain whether the father from whom child support is being requested is in fact the biological father.

Taking of Evidence

The legal system of the Republic of Kosovo (through different laws on different time-frames) has recognized both the active and passive role of the court concerning taking of evidence. This way, based on LCP and ex RSFJ, the court had an option of taking evidence *ex officio*, based on the principle of review and investigation.

Whereas, according to LCP in force in the Republic of Kosovo, the court, in principle, has a passive role in the taking of evidence, which implies that the court does not propose the taking of evidence *ex officio*, but instead, the parties in procedure have the burden of proof for their presented claims. By way of derogation, the court, based on Article 3, Paragraph 3 of LCP, may suggest the taking of evidence *ex officio*, if it considers that the parties are intending to dispose of rights with which they cannot freely dispose of. Mostly, the taking of evidence in this manner is applied in family disputes, especially when a child's alimentation and custody is concerned.

Normally, taking of evidence is undertaken in line with the request of the parties. Through initiating such evidence obtainment, the parties act in accordance with their personal interests, but at the same time, fulfill their legal obligation to provide the court with all procedural materials.¹

The idea of creating a passive role for the judge in the contested procedure has been an attempt to preventing the judge to initiate deliberate taking of evidence which could favor one of the parties, causing a legal procedural apprehension. This also serves as an effort to maintain the neutrality of the court as a state body which is independent and impartial. However, this aim of the Kosovar legislator, although significantly progressive and guarantees a fair and impartial trial, has its own deficiencies. The most substantial weakness of this system is that, in certain situations, the court may have insufficient professional knowledge for specific facts which appear as contested between the parties, in spite of which, the court has no right to propose an expertise *ex officio*. In cases when the opinion and observation of an expert in relation to contested facts is mandatory, and the parties fail to propose an expertise, the court will find it highly difficult to decide on disputed issues based solely on its merits and authority.

The taking of evidence is primarily completed in the main hearing, however, as an exclusion, this procedural action may also be undertaken before the main hearing, with the purpose of ensuring additional evidence. The decision on taking of evidence precedes the actual taking of evidence. This decision must specify the fact which constituted the object of proof and the means of evidence through which such fact will be established.²

A separate complaint against the decision which approves or dismisses the proposal for taking of evidence is not allowed, but this decision may be appealed against once the final judgments is issued, respectively, the judgment through which the contested procedure is concluded.

Evidence Proposing

Evidence, namely means of evidence, are proposed by the litigants through ways provided for within the applicable laws. Based on Article 402 of LCP, the court notifies the parties, through a summon letter for the preparatory hearing, on their obligation to represent all relevant facts which support their claims no later than in the preparatory hearing session, as well as all evidence which they deem relevant throughout the procedure. Nonetheless, the parties may also propose the taking of evidence throughout the main hearing session, if they manage to prove that the failure to ensure said evidence in the

¹Poznic, Borivoje, *Gradzansko Procesno Pravo, Savremena Adminsistracija*, Belgrade, 1999, pg. 244.

²Poznic, Borivoje, *Gradzansko Procesno Pravo, Savremena Adminsistracija*, Belgrade, 1999, pg. 245.

preparatory session was not due to their fault. The proposal for the taking of evidence must not be notional, but rather oriented in the establishment of facts relevant for the dispute.

The few competences recognized to the court for taking of evidence, which are of a supplementary character, do not represent a violation of the principle of availability of evidence. For instance, the calling of an expert by the court¹, which is not an evidence but a mean to obtain and assess the evidence (Article 224/a of CCPr), the questioning of the parties which has more of an explanatory and supplemental nature, rather than investigative (Article 283 of CCPr), or the examination of the people and things primarily decided for by the court (Article 286 of CCPr).²

In the Kosovar procedural law, the principle of judicial investigation has been abolished, however, as an exception, the court applies it in specific cases. This principle is mostly applied in family disputes which deal with child custody. In such disputes, even if the parents agree upon which parent will be given child custody, the court must *ex officio* obtain evidence whether the appointed parent fulfills the conditions required for the upbringing of the child.

The Court must abide by and decide only on the basis of means, explanations, documents and evidence indicated or brought forth by the parties (Article 20 of the CCPr), through thoroughly examining all the circumstances of the case.³ Therefore, in light of the above, we can conclude that the facts and means of evidence through which relevant facts are determined are in principle proposed by the parties, and exceptionally *ex officio* from the court.

Means of Evidence

Means of evidence imply things and people which allow for the court to be introduced to relevant facts for dispute settlement. LCP recognizes five types of means of evidence: site examination (sight-seeing), documents, witnesses, expertise and hearing the parties.

Examining the sight – Sight-seeing

Sight-seeing is a mean of evidence through which, with the help of senses, the court (respectively the judge in the case) verifies relevant facts or clarifies circumstances relevant for the dispute. Based on the legal definition, sight-seeing is undertaken each time it is deemed necessary to establish a fact, or clarify a specific condition, for which direct examination of the sight by the court is necessary.⁴

Example: The Judge arrives at the scene and observes the signs of vehicle braking; the judge visits the plaintiff's residence to determine the noise coming from the defendant's apartment so as to determine the obstruction of possession; the Judge orders the Claimant to bring the product to the court, to determine that its logo or appearance represents a breach of a protected trademark, as provided for within the law.

Examination of sight is realized in ways most appropriate for fact establishment, to be determined through this type of means of evidence. The court will observe the disputed item at its sight, only when it is structurally impossible to bring the object to the court.

Example: If the object of dispute is the proof of ownership of an immovable object, it is naturally unfeasible for the latter to be brought to the court, for which reason the judge needs to observe the property through examining it at its location.

In the event that the object which needs to be examined is in the possession of the opposing party, and the latter refuses to allow its examination, we apply the dispositions stipulated within the LCP which provide for ways of receiving proof from third parties. The same applies in cases when the disputed item is in the possession of a state body.

¹⁹ LCP does not foresee the possibility for the court to *ex officio* propose obtainment of evidence through expertise, except in cases where application of Article 3, Paragraph 3 is concerned.

²⁰ Alban Abaz Brati, Procedura Civile, Botimet Dudaj, Tirana, 2008, pg. 284.

²¹ Alban Abaz Brati, Procedura Civile, Botimet Dudaj, Tirana, 2008, pg. 285.

⁴ See Article 326 of LCP

Documents

Due to a traditional division, documents may be of private or public nature. Private documents are those which have been drafted by persons with no public authority, e.g. a contract for sale of a certain amount of mobile phones established between two private companies, is considered a private document given that private companies are not entitled to public authorizations.

Unlike private documents, public documents are those drafted and issued by public authorities within the limits of public authorizations.

Example: The Single Administrative Document (SAD) is a public document, because it serves to determine the value of the imported goods. Should it be disputable whether said goods have entered the Republic of Kosovo, such thing may be verified through presenting the SADs, which are public documents, due to its drafting by the public authority – the Kosovo Customs.

Based on Article 329 of LCP, documents which have been drafted by public authorities within the limits of their competences, as well as documents which have been drafted in ways specific for particular entities as provided within the law, prove the accuracy of its content.

LCP, however, also provides for the possibility of arguing that the public documents have not established the facts accurately or that they have been improperly drafted. It is not a rare occurrence that the public documents contain incorrect data. In the example given above, the Custom SAD may contain incorrect data concerning the amount of goods delivered, the origin of the goods etc; Therefore, if the actual amount of goods which have entered the country is being contested, the parties have the right to establish, different from what is provided in the SADs, that the data in the latter is incorrectly listed, and instead, establish that the amount of goods which entered in Kosovo have been lower, or higher, from what the SADs provide.

If the document is in the possession of a state or legal body who has been entitled to public authorizations, whereas the party is incapable of providing such document, the court will, according to the party's proposition, obtain this document *ex officio*. Sometimes, the question arises as to which legal persons have been entrusted with public competencies, and whether commercial banks fall within that category. Based on the previously stated disposition (Article 332 of LCP), the court may compel commercial banks to submit the bank statements of the respondent, in line with claimant's proposition, in order to examine such statement as an evidence to the contested procedure. We consider that the court, based on Article 332 of LCP, may enforce such request upon banks. That is due to the latter's licensing from the Central Bank of Republic of Kosovo, which by itself entitles them to exercise certain public authorizations.

Should one of the litigants claim that the document is within the possession of the opposing party, the court will issue a decision which obliges the opposing party to provide the court with the document to then serve as a probative item. If such document pertains to both parties alike (e.g. a written contract), or if the party itself refers to a specific document, that party may not refuse to submit said document. In the event that the party that has been requested to provide the evidence denies its possession, the court will investigate such matter. One way to examine such possession would be the direct sight examination, witness hearing or party hearing. In this respect, scientific proof will also be administered as an evidence.

Example: Through the e-mail dated 19 October 2012, the respondent has sent an e-mail informing the claimant of the confirmation and acceptance of contract, adding that the same has been protocolled in respondent's archive with the protocol No. 123/2012.

If the party who possesses the document is not willing to submit it to the court, acting in contrary to the decision of the court for the submission of such document, or denies the allegation that it indeed possesses said evidence, the court will use its own discretion to assess the significance of these claims. Before deciding that the party has failed to comply with the court's decision due to party's inaction and denial that such evidence is within its possession, the court must initially justify its findings through available evidence.

In this case, the establishment of contract between litigants is not contentious, given that the e-mail dated 19 October 2012 shows that the respondent has notified claimant for acceptance and confirmation of the contract, adding that it has also been protocolled. Additionally, the litigants have confirmed the same. In this situation, the court will consider the existence of such contract as founded therefore ascertaining that the parties have entered into a legal contractual obligation.

Witness evidence

A witness is a natural person, whose duty is to provide the court with declarations concerning facts obtained through the use of senses (seeing, listening).¹ The witness differs from the expert in so far the nature of evidence is concerned. The witness does not offer its own opinion in relation to the facts, but rather verbally argues what it considers happened in the past. Only persons capable of providing information pursuant to facts relevant to dispute settlement may serve as witnesses.

The necessity and aim for the fair and right verification of facts has influenced the issuance of rules which regulate the obtainment and means of evidence, which also represents a general civic obligation.² However, evidence obtainment through witness listening is still the most disputed and questionable mean in the contested procedure.³

One must be over 14 years old to be eligible of becoming a witness in a contested procedure, whereas minors below that age can only be questioned as witnesses if their say is vital to dispute settlement. It is evident that the ability to serve as a witness is gained at the same age with legal capacity, as set out in Law No. 04/L-077 on Obligational Relationships.

It is not a rare occurrence for the courts in the Republic of Kosovo to propose the taking of evidence through witness hearing, without prior specifications as to which facts must be verified through such hearing. There have been cases in trade disputes, when despite the existence of scientific evidence, the taking of evidence through witnesses has been proposed without prior ascertainment as to what the witness is ought to prove. In respect to the facts which need to be established through witness listening, Article 340 of LCP stipulates that *"The party that suggests a witness should beforehand tell what the person will testify about."*

A witness has four main tasks in contested procedure:

The witness is obliged to respond positively to court's summoning letter;

The witness is obliged to tell the truth;

The witness must tell everything he/she knows concerning the facts it testifies about; and

The witness is obliged to answer the questions set out by the court and litigants, or litigants' representatives.

Insofar the legal obligation for testimony is concerned, there are some limitations. Based on Article 6(1) of the European Convention for Human Rights,⁴ the right to testimony must imply the inalienable right to an impartial and fair procedure. However, limiting this right through national legislation does not necessarily indicate its violation.

There are certain restrictions foreseen for particular persons in serving as witnesses, due to the general interest, whereas some specific people may refuse to testify due to their relationship with either of litigants. To better illustrate this, we will cite Article 341 of LCP which emphasizes that *"Witness cannot be a person if his/her testimony reveals an official secret or military secret until the competent body relieves him/her from the duty."*

There are, however, other people who are exempt of the obligation to give testimony, i.e., the lawyer, concerning facts he has been informed of through representing the party in procedure; the religious cleric, for the information the party has entrusted him with through confession; proxy representative, for the facts revealed through representing the party in procedure etc. In the event that the lawyer who has been entrusted with representing the client reveals information protected by the lawyer-client relationship, not only did he/she violate the dispositions within LCP, but also the Code of Professional Ethics for the Lawyers, and consequently he/she must be subject to disciplinary sanctions and procedures.

Witnesses are heard separately, without the presence of the witnesses who will be heard after. The possibility for hearing the witnesses in their own apartment is recognized in case they suffer from a disease which prevents them from being present at the court. The witness testifies on matters relevant for dispute settlement, namely matters for which the witness has been summoned to testify. After such testimony, the witness may be cross-examined from the judge, the parties and their representatives, in order for such testimony to be verified, complemented or clarified.⁵ The judge must not allow for

¹ Jaksic, Aleksandar, *GradzanskoProcesno Pravo*, Belgrade, 2010, pg. 406.

² Morina, Iset; Nikqi, Selim, *KOMENTAR, Ligji I Procedurës Kontestimore*, GIZ, Ministry of Justice, Pristina 2012, pg. 607.

³ Ostojic states that the power of hearing of witnesses must be considered only if the contested facts addressed by the witness may also be established through other evidences.

⁴ Which, according to Article 22 of the Constitution of Republic of Kosovo, is directly applied in the Republic of Kosovo.

⁵ Jaksic, Aleksandar, *GradzanskoProcesno Pravo*, Belgrade, 2010, pg. 411

suggestive questions to be addressed to the witness (questions whose wording leads to a specific type of answering) as well as questions which are beyond the disputed subject.

Expertise

Evidence obtainment through expertise is applied in cases when the facts which need to be clarified need professional knowledge lacked by the court. In the contested procedure, the necessity to engage experts in different scientific fields arises significantly often.

Based on Article 356 of LCP, the court, based on parties' propositions, may request an expertise for specific facts, each time the necessity for professional scientific knowledge is required.

It is worth noting that, different from LCP of 1977 which was applied in the Republic of Kosovo until July 2008, the current LCP does not provide for the so-called "superexpertise". Based on 1977's LCP, if there were contradictions between the experts' declarations, or if the expertise developed by the experts was self-contradictory or inconsistent with scientific rules, the court was entitled to order a superexpertise.

According to the LCP in force, should the data of experts differ substantially, or if their findings are unclear, incomplete or self-contradictory, and these deficiencies cannot be remedied by repeating the listening of those experts, it will order a repetition of expertise with the same or different experts. The expertise is always ordered through a decision issued by the court, which must, *inter alia*, determine: the contested object, the volume and content of expertise, the deadline for submission of opinion and conclusion etc.

Setting the object of expertise has a particular importance. We may often encounter a legal practice within the courts where issued decisions do not specify the object of expertise. These situations cause inconvenience even amongst the experts, as they cannot exceed their scope of expertise appointed by the court. It is worth noting that even experts sometimes provide assessment of legal issues which is entirely beyond their scope and must in no way be allowed. The primary and sole focus of experts is to offer their opinion regarding facts relevant for dispute settlement. Legal issues within contested procedure may only be weighed in by the court, and the latter is the only authoritative body to assess those matters. The Code of Civil Procedure of the Republic of Albania, exclusively stipulates through its Article 224/b that "it is not for the expert to offer a legal opinion".¹

The obtainment of evidence through expertise is often criticized in the legal doctrine and practice. Judges are often criticized for ordering expertise, not only for evaluating factual information, usually of a technical nature, but also for indirectly allocating the power of interpreting and assessing legal norms to be applied, hereby illegally delegating their competencies to the experts.²

Nonetheless, I consider that evidence obtainment through expertise is mandatory each time a dispute settlement is in need of professional knowledge in different fields of science. This way, for example, a judge does not possess professional knowledge to determine the intensity and duration of physical pain of a person injured in traffic. Therefore, we can conclude that despite the skepticism about expertise as a mean of evidence, it has been, and remains one of the most important means of evidence in contested procedure.

Hearing of witnesses

The hearing of witnesses is also considered a probative tool, regulated within LCP, disposition 373 through 378. The Code for Civil Procedure of the Republic of Albania also regulates this matter through articles 281 – 285.

Different from LCP, CCPr, in its Article 282, foresees that the court's statement of the case may be given verbally or in any procedural act signed personally by the party. LCP does not recognize a verbal statement.

LCP regulates the exact way for obtaining this evidence specifically and clearly. The law provides that should the party lack legal capacity, its legal representative must be questioned as a substitute. Whereas, concerning the legal entity, the person responsible of representing said entity is entitled to giving testimony, always according to the legal norms. In the event that the dispute is between numerous litigants, the court will, based on its discretion and reasonability, determine if all of them will be heard.

¹ Article 224/b (Law no.8812, dated 17.05.2001) of Civil Procedural Code of the Republic of Albania.

² Simoni, Alessandro et al, Veshtrim Krahases mbi Procedurën Civile, Tiranë 2006, pg.245.

For comparative purposes, we consider that it is worth according a critical review to Article 284 of the CCP of the Republic of Albania, according to which, the party cannot use notes prepared in advance while questioning, except in situations when given answers contain complex calculations which are hard to remember. In view of the difficulty to determine which data is "hard to remember", we consider that this disposition lacks "*ratio juris*".

Conclusion

General principles for evidence obtainment are foreseen in Articles 319 through 325 of LCP. Article 319 addresses the principle of addressing evidence by the parties, which makes LCP part of a majority of continental procedural systems. Based on this article, each party bears the burden of proof for those facts upon which it wished to base its claims. For the facts proven by legal presumptions, the party to whose favor such facts go is not obliged to provide evidence.

We must be particularly attentive towards recognizing the fact that the only issues to be verified in the contested procedure are those relevant for dispute settlement between litigants. Taking evidence irrelevant to dispute settlement will only delay the procedure and consequently, goes against the principle of efficiency, stipulated under Article 10 of LCP. Parties need to be cautious in such way as to only propose means adequate to evidence obtainment. Legal facts cannot be established through inadequate means. That goes to say that, for instance, psychological pain experienced by the litigant in disputes for immaterial damages cannot be verified through witness hearing, because that would be construed as inadequate. Concluding these facts, relevant to the procedure, will have to be completed through engaging experts in the field of psychiatry.

In light of the above, we may conclude that the general principle that concerns the obtainment of evidence by the court only allows for obtainment of evidence relevant to dispute settlement, which are also legally admissible. On the contrary, proposing evidence unrelated to the object of contest, will be found as inadmissible, because, not only does it fail to realize the purpose of assisting the court to issue a fair and impartial decision, but delays the legal procedure overall.

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Personal Development Peculiarities on Gender Perspective in Georgia

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Abstract

Receiving appropriate education and occupying a place in the labor market is not easy. The barriers that a person has to overcome can be solved systematically by personal development and joint efforts of universities or an organization. We must take any action that leads to success and act in spite of the fact that this action may not be a great pleasure. Everyone has aspirations. It is important for people to link these skills to the field of their activity. When you love your own job and you are prone to it, you have more chance of achieving success with less effort. Being successful is the need for any person, but not everyone can achieve it. People differ from each other by their goals, to what extent they are ready to overcome the barriers to achieving a goal, how they can survive problems, contradictions. Naturally, achieving a goal requires great work and support. Failures often happen while trying to succeed. At this time, it is necessary to overcome pessimism and it is important to develop optimism by analyzing the causes of the failure. 'Hard work' does not mean 'effective work'. The most important thing is to use the resources wisely and achieve the goal by effective work. Today there are many methods to help people discover their abilities, with the help of this method they improve their communication skills, increase their labor productivity and achieve success by spending less energy. One of these methods is Augusto Boal's method. What is young people's attitude to personal development, how much support do they feel from the university and what expectations do they have from their organizations, how well are they determined, what is their attitude towards life - positive or negative; how can they deal with stress, develop creative thinking, develop leadership skills? - These issues have become an interesting topic for our laboratory, which are functioning at the Faculty of Economics and Business at Ivane Javakishvili Tbilisi State University. The laboratory has conducted a number of studies, which have already been published in various magazines or at conferences. The studies focused on students' time budget, organizational culture and conflicts in an organization, as well as the assessment criteria for professors.

Keywords: Organization, Humane Resources Management, Personal Development, Gender.

Introduction

Receiving appropriate education and occupying a place in the labor market is not easy. The barriers that a person has to overcome can be solved systematically by personal development and joint efforts of universities or an organization (Gulua, Ekaterine, 2014) (Gulua, Ekaterine, 2011). We must take any action that leads to success and act in spite of the fact that this action may not be a great pleasure.

Everyone has aspirations. It is important for people to link these skills to the field of their activity. When you love your own job and you are prone to it, you have more chance of achieving success with less effort (Amkoladze, G; Gabrichidze, A; Giorgobiani, M; Zedgenidze M; Kharadze, N.; 2014). Being successful is the need for any person, but not everyone can achieve it. People differ from each other by their goals, to what extent they are ready to overcome

the barriers to achieving a goal, how they can survive problems, contradictions. Naturally, achieving a goal requires great work and also support.

Failures often happen while trying to succeed. At this time, it is necessary to overcome pessimism and it is important to develop optimism by analyzing the causes of the failure.

'Hard work' does not mean 'effective work' (Amkoladze, G; Gabrichidze, A; Giorgobiani, M; Lomsadze-Kutchava, M; Kharadze, N., 2014). The most important thing is to use the resources wisely and achieve the goal by

effective work. (Gulua, Ekaterine, 2012). Today there are many methods to help people discover their abilities, with the help of this method they improve their communication skills, increase their labor productivity and achieve success by spending less energy. (Gulua, Ekaterine, 2013). (Gulua, Ekaterine, 2012), One of these methods is Augusto Boal's method (Boal, Augusto, 2008).

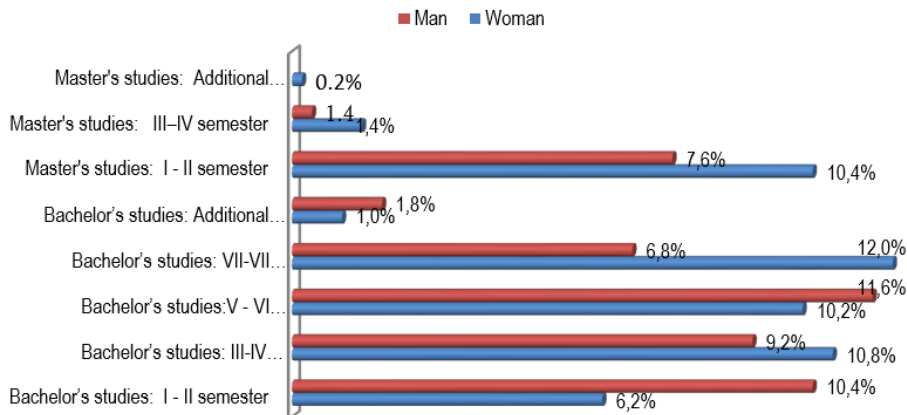
What is young people's attitude to personal development, how much support do they feel from the university

and what expectations do they have from their organizations, how well are they determined, what is their attitude towards life - positive or negative; how can they deal with stress, develop creative thinking, develop leadership skills? - These issues have become an interesting topic for our laboratory which is functioning at the Faculty of Economics and Business at Ivane Javakhishvili Tbilisi State University.

The laboratory has conducted a number of studies, which have already been published in various magazines or at conferences. The studies focused on students' time budget (Ekaterine, Gulua; Natalia, Kharadze, 2017), (Kharadze, Natalia; Gulua, Ekaterine, 2016), (Kharadze, Natalia; Natalia; Gulua, Ekaterine, 2017), (Kharadze, Gulua, Ekaterine; Duglaze, Davit, 2017), (Kharadze, Natalia; Gulua, Ekaterine, 2017); organizational culture (Gulua, Ekaterine; Kharadze, Natalia, 2014), (Gulua, Ekaterine; Kharadze, Natalia, 2018), and conflicts (Kharadze, Natalia; Gulua, Ekaterine, 2018), in an organization, as well as the assessment criteria for professors. (Kharadze, Natalia; Gulua, Ekaterine, 2018), (Gulua, Ekaterine, 2017), (Gulua, Ekaterine; Mikaberidze, Akaki, 2015). This time again our research object is TSU students. The questionnaire was designed which included 28 questions and 112 options for answer. 500 respondents were interviewed and the data was processed by the SPSS program. Several hypotheses have been developed and based on interesting results we have received some recommendations and made conclusions. Our laboratory will continue to study interesting issues in this direction. It will be desirable to involve foreign colleagues and implement joint projects.

The survey included 500 randomly selected students, out of which the first year students constitute 16.6% of the respondents. Among them females are 6,2% and men - 10,4; The second year students are 20%. Among them females - 10,8% and males - 9,2%; The third year students are 21.8%. Among them females - 10,2% and men - 11,6%; The fourth year students are 18.8%, females - 12% and males - 6,8%; Additional semester students are 2,8%, females - 1% and males - 1.8%; The first year students of the surveyed MA students constitute 18%, among them females are 10,4% and males - 7,6%; The second year MA students are 1,8%, among them females are 1.4% and males - 4%. The MA students of additional semesters are all females (2%) (see Diagram 1).

Diagram 1 Your studying semester:



As a result of the study, the majority of the respondents in women as well as in men are mostly employed in enterprise (private commercial) sector, particularly, 41.6% of the interviewed respondents are men and 35.8% are female

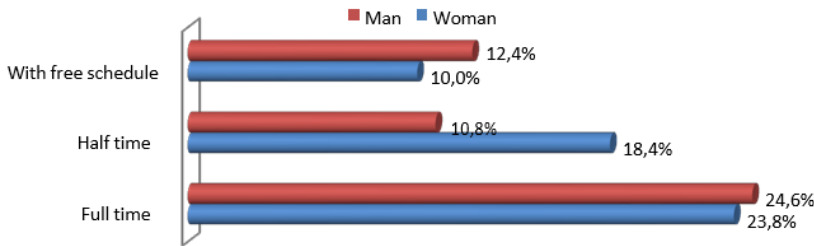
respondents. Followed by the state (public) sector where the respondents are distributed respectively : in the following proportions: 6,8% and 7,8% , the smallest number of respondents are represented in non-profit (non-commercial) sectors (see Schedule 1). These indicators may show that the government has been promoting private sector development recently in Georgia. Also, students' desire to work in the private sector is quite high.

Schedule 1. Place of your employment according to a sector

Place of your employment according to a sector	State (public)	Entrepreneurial (private, commercial)	Non-entrepreneurial (non-profit)	Total
Woman	7.8%	41.6%	2.8%	52.2%
Man	6.8%	35.8%	5.2%	47.8%
Total:	14.6%	77.4%	8.0%	100.0%

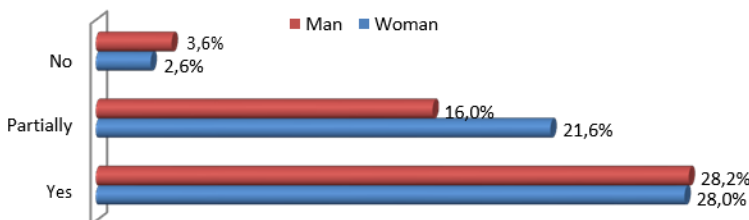
The time management of the employed students is quite difficult and it has been revealed in previous studies that were related to MA students. This study showed that even in the case of undergraduates, the level of full-time employees is high. In particular, 23.8% women and 24.6% men are employed fully in the stuff, At the half-rate, respectively, 18.4% and 10.8% , 10% and 12.4% -with a free schedule (See Diagram 2).

Diagram 2. Your employment type



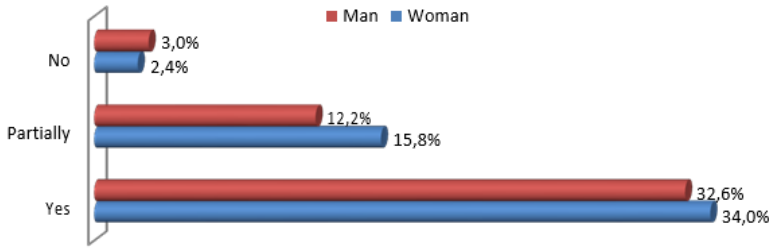
When it comes to employment, it is important to know the reason for students' choice and how much they are inclined to specific activity. Previous studies have shown that the main purpose of students employment was the material situation. The students agreed to a little payment to cover the tuition fees. This study showed that 28.0% of the women and 28% of the men report that they have a natural talent in their specialty and are prone to work, 21.6% women and 16,0% men are partially inclined towards their job, respectively, 2,6% and 3,6% admit that they do not have a natural inclination towards their activity (see Diagram 3). With little difference but still women are more likely to choose a work that they are prone to, this fact can be explained by many reasons, one of them is that men are still considered to be the main force of the family in Georgia, and, therefore, the latter are ready for any kind of activities.

Diagram 3. Do you feel you have a natural talent in your specialty



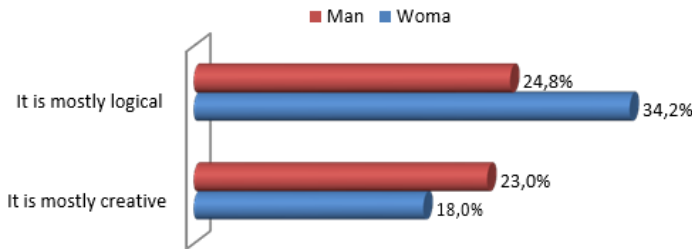
The inclination to the profession itself leads to love for it. It's a pleasure to do a lovely job. The research shows that 34% of the women and 32.6% of the men have love towards their profession, 15.8% women and 12.2% men "partly" love their profession. It can be considered as a good indicator that only 2,4% women and 3,0% men have no love for their profession, which means that they have made the right choice (see Diagram 4).

Diagram 4. Do you like you're your profession?



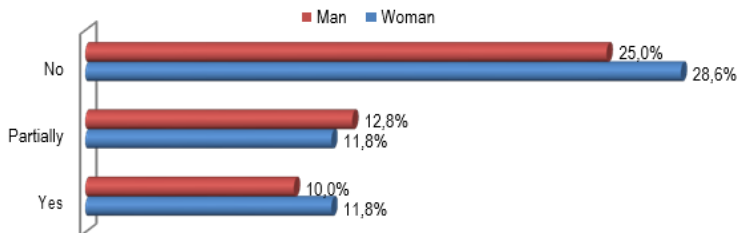
18% women of the respondents believe that their profession is largely creative and 23% men think the same way, while 34.2% women consider their profession as logical, this indicator in men is 24.8% (see Diagram 5).

Diagram 5. Your profession



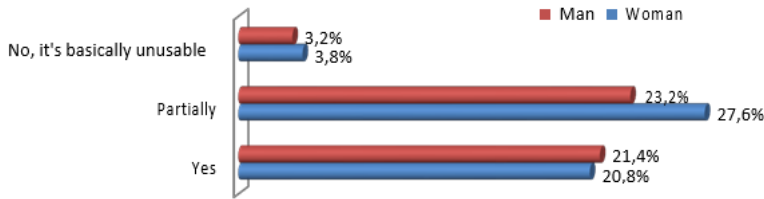
It is interesting to see if the respondents are employed by their specialty. The study showed that 28,6% female and 25% male respondents are employed by their specialty; 11,8% of the women and 12,8% of the men believe that they are partially employed by their specialty, 11,8% of the women and 10% of the men are not employed by the specialty. In this regard the difference of any substantive nature was not observed by gender (see Diagram 6).

Diagram 6. Are you employed by your specialty



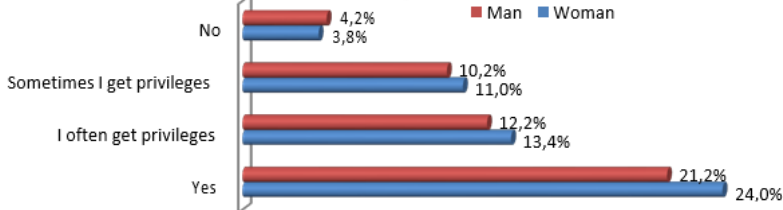
The majority of the respondents, as we have seen, are employed by their specialty. It is, therefore, interesting to see how the respondents are prepared to use theoretical knowledge in practice and whether they use their knowledge in practice. The common opinion that the university gives knowledge that they do not need in practice has been rejected. As a result of the research, 3,8% women and 3,2% men report that the theoretical knowledge which they received is mostly unusable, are partially utilized by 27.6% women and 23,2% men, the positive response was shown by 20.8% women and 21,4% men (see Diagram 7).

Diagram 7. Do you think you have theoretical knowledge that you will use in practice or are you using it now?



It is interesting to know what a supporting action plan is designed for employed students by organizations. Are they interested in taking care of young employees and in what way do they express it? The study has found that 24% women and 21.2% men are encouraged by the organization to combine working with studying, 13.4% women and 12.2% men often have the benefits, 11% women and 10,2% men responded "sometimes", a negative answer was recorded by 3.8% women and 4,2% men. No discrimination is observed in this regard (see Diagram 8).

Diagram 8. Does your organization help you with your study at the university?



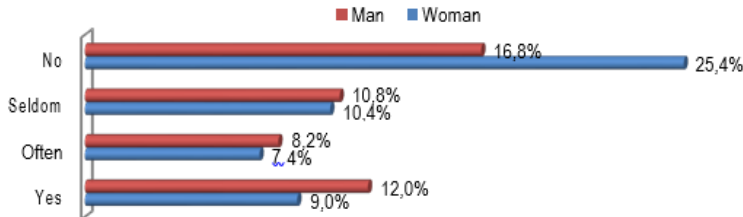
The study found that the individual development plan for employees in most organizations does not exist or is just written on the paper. Only 13.2% women and 15.4% men confirm the existence of such kind of plan, the formal nature of the plan is indicated by 15,2% women and 17% men, and those who have not heard about such a plan are 23.8% women and 15.4% men (see Diagram 9).

Diagram 9. Have you made your personal development plan with organization management?



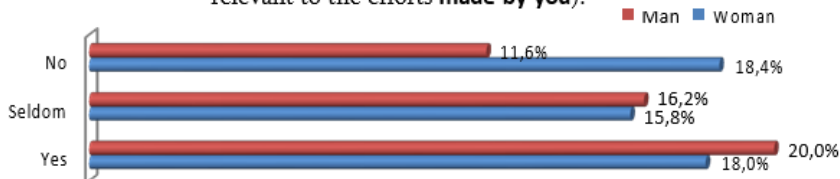
The fact that organizations do not have individual development plans for the staff, has also been proved by the fact that less attention is paid to raising their qualification by trainings. 25,4% women and 16.8% men indicate that their qualification raising is not funded by organization, answer "rarely" was indicated by 10,4% women and 10.8%; The answer "often" was indicated by 7,4% women and 8,2% men and a positive response only by 9.2% women and 12% men (see Diagram 10).

Diagram 10. Do you raise your qualification with your organization funding? (Trainings, paying training fee)



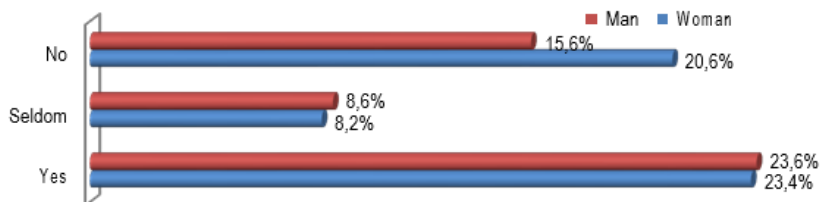
It is important to know what kind of payment policies are in the organization and whether the principle of fairness is protected. As the survey has shown 18% women and 20% men are satisfied with their own pay and consider that it are relevant to their work. The answer "rarely" was indicated by 15.8% women and 16,2% men, 18,4% women and 11,6% men are completely dissatisfied (see Diagram 11).

Diagram 11. Are you satisfied with your salary (Do you think it is relevant to the efforts made by you)?



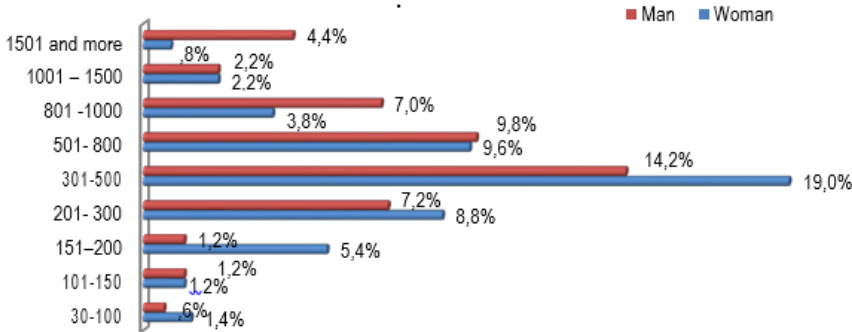
Regardless of the legislative requirement the overtime work to be paid, not to say anything about the moral side, unfortunately, the employer is less likely to pay it. 23.4% women and 23.6% men positively responded to this question, "rarely" and "never" were answered by 8.2% women and 20% men and 20.6% women and 15.6% men responded negatively to this question (see Diagram 12). Naturally, such an attitude towards young employees will cause a feeling of dissatisfaction and often makes them think they are victims of discrimination. The compensation level is also a problem.

Diagram 12. Have you received a compensation for working overtime?



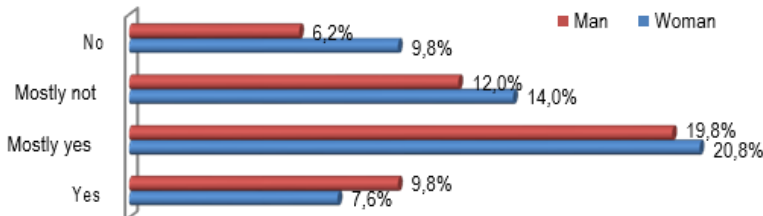
Under the current prices, when the national currency devaluation takes place, 1500 GEL is not enough quantity to support the family, pay taxes and eat properly. In spite of this, only 0.8% of women and 4.4% of the men reported that they are paid more than 1500 GEL (550 €). From 30 to 500 GEL, we can assume that, it is equivalent to slavery, if an employee works full-time, 49.2% women and 41.2% men confirmed to have this kind of salary (see Diagram 13). As we can see, the remuneration for existence is a destiny only for outstanding ones.

Diagram13. Your compensation is:



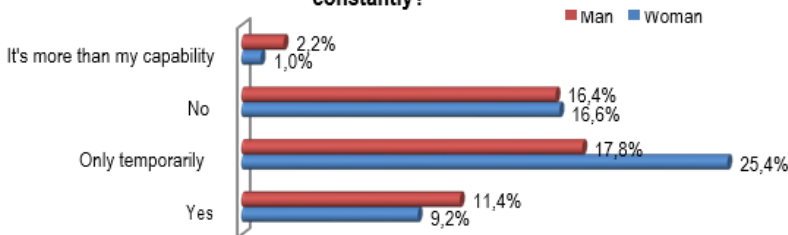
What is the feeling of young people in terms of realizing their own goals, what are their goals and if they realize their abilities? The survey found that 7,6% women and 9,8% men have a satisfactory attitude, mostly negative and categorical answer were given by 23,8% women and 18,2% men (see Diagram 14). Women's pessimism is slightly but still high. It is no surprise, in today's society, men have a much greater chance of progress than women and this trend is observed in all areas.

Diagram 14. Do you think that your organization is the place where you can realize your potential



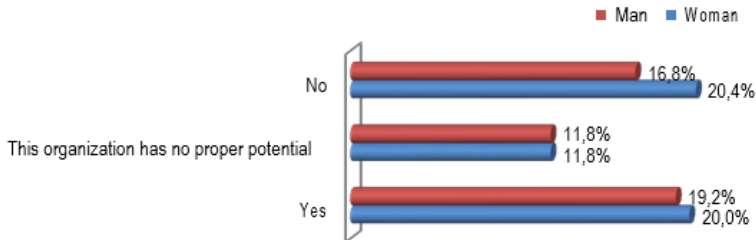
It is interesting to note that despite the above-mentioned position, people are unable to realize their capabilities, slightly but still most of the percentages indicate that they are willing to stay in the organization, namely 9,2% women and 11,4% men. It is strongly determined that 16,6% women and 16,4% men won't stay at the organization, 25,4% of the women and 17,8% of the men believe that it is a temporary job (see Diagram 15). Sadly, this tendency is not healthy, it's hard to work in the organization where you do not feel like a family member. This kind of attitude can affect their productivity.

Diagram15 . Do you want to stay in your organization to work constantly?



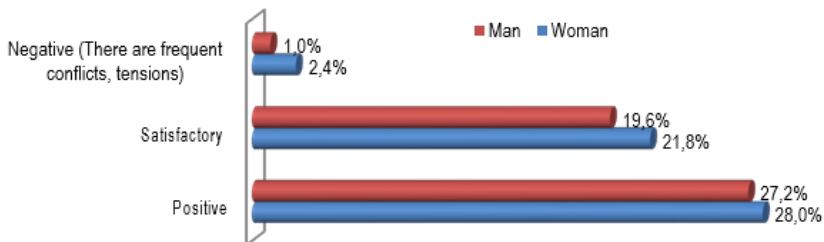
It is important to know how much the young people feel that their job motivates their career progression. The total hopelessness of career growth was observed by 20,4% women and 16,8% men, 11,8% of the women and 11,8% men say that the organization does not have the appropriate potential, 20% women and 19,2% of the men have a hope for career advancement (see Diagram 16).

Diagram 16. Do you believe in your organization you can reach the peak of your career?



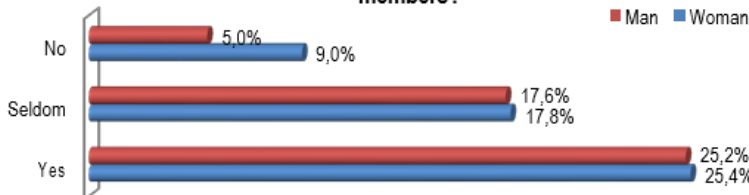
Labor productivity of any employee depends on the climate of the organization which is reflected on their relationships and causes tensions and conflicts or positive relationships. 28% women and 27.2% men indicate that there is a positive environment in the organization, 21.8% women and 19.6% men think that the environment is satisfactory, and only 2.4% women and 1% men think that there are negative and conflict situations in the organization (see Diagram 17).

Diagram 17. The relationships in your organization are



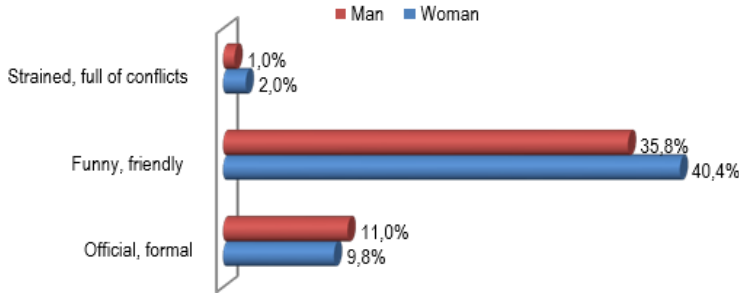
Non-formal relationships also have a positive effect on the improvement of organizational atmosphere. Rarely this attitude was observed by 26.8% women and 22.6% men, existence of formal relationships was reported by only 25.4% women and 25.2% men (see Diagram 18).

Diagram 18. Do you have informal relationships with organization members?



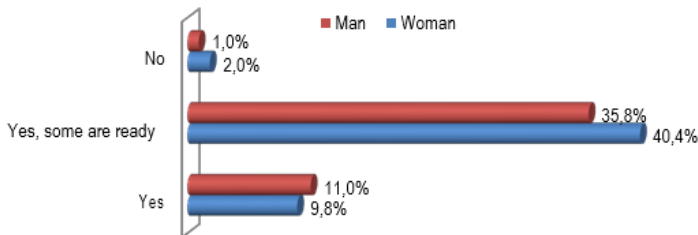
The official and formal relationship in the organization is reported by 9,8% of the women and 11% of the men, friendly relationships - by with 40.4% women and 35.8% men (see Diagram 19). Although the level of informal connections that lead to getting staff closer is not high, conflict situations are less frequent and such facts are indicated by 2% women and 1% men. As expected, women are more involved in conflict situations.

Diagram 19. Relationships while working in the organization are



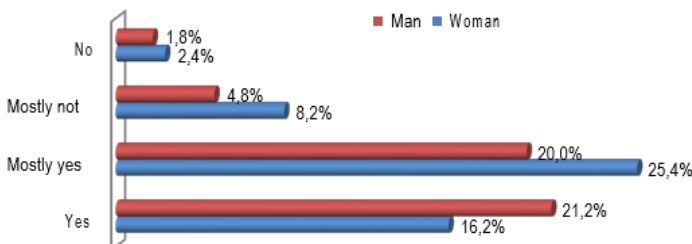
Without mutual aid and knowledge sharing it is impossible to develop a person as well as organization (see Diagram 20). 21% women and 18.2% men gave negative responses. 31.2% women and 29.6% men feel the support from the employees and the willingness to share their knowledge. In total this number is 59,8% of the interviewed respondents which is not alarming.

Diagram 20. Are colleagues ready to share their knowledge with you?



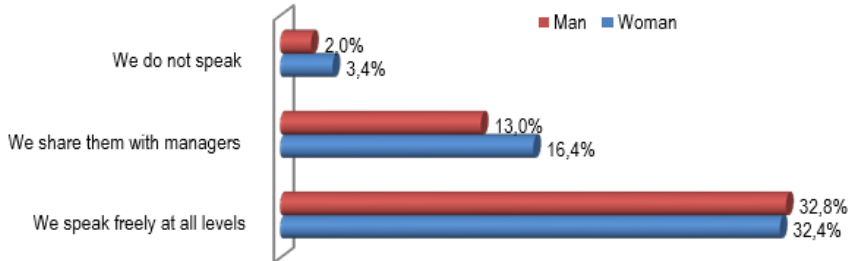
It is important for each member of the organization to feel safe and have a sense of justice (see Diagram 21) 21.2% women and 21.2% men have a strongly positive position and 2,4% women and 1,8% men have a strongly negative position. The rest of the "mostly yes" and "mostly not" answers I think are less sincere and it's hard to attach them to any position.

Diagram 21. Is your organizational situation fair?



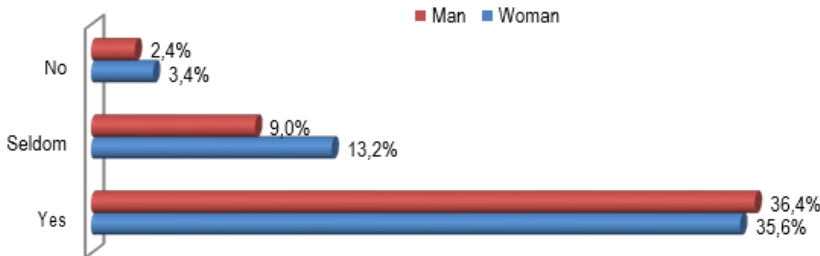
The silence on existing problems indicates an unhealthy environment (see Diagram 22). It is pleasant to say that only 3,4% women and 2% men are avoiding talking about the problem. 16,4% of the women and 13% of the men can easily talk to the manager about problems, 32,4% women and 32,2% men speak freely at all levels. Communicating with the manager seems to be much easier for the women and their communication skills are better.

Diagram 22. About the problems related to the case



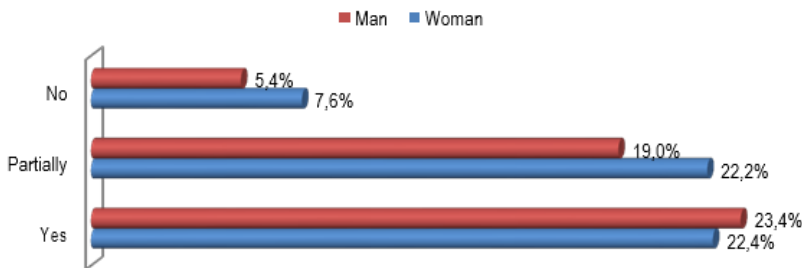
In any organization and establishment it is important for people to recognize each other's psychological recognition. Each member's expectation is the results of their work and their talents to be respected (See Diagram 23). Such approach and values increase employee's motivation which is positively reflected on the results of the organization and contributes to the growth of the person. It is pleasant to find that 35.6% female and 36.4% male respondents think that their talent in the organization is appreciated.

Diagram 23. Are talented people in your organization respected



As a result of the assessment of the survey, such an impression was made that respondents positively evaluated their jobs. However, the answer to some of the questions gave us a different picture (see Diagram 24). In particular, only 23.4% women and 22.4% men like their own job. This is less than the half of the interviewed respondents. As it seems a lot of work is needed to be done each employee to feel safe, secure and comfortable at work.

Diagram 24. Do you like your job?



The preliminary hypothesis has been verified by statistical methods. In particular, we used Pearson correlation analysis; the Chi-squared test for testifying the reliability of the connections between variables and the linear regression, in particular, the ANOVA test.

H1: Variable - Q28 (gender) affects variables:

Q11 (Is the environment in your organization fair?);

Q14 (With the management of the organization have you developed your personal development plan); Q22 (Are you satisfied with pay (Do you think that it is relevant to the effort you made)?

Q25 (The amount of pay).

The formed hypothesis suggested that gender (Q11) affects the perception of justice in the employer organizations (Q11), whether they have developed personal development plan with the help of the organization (Q14), gender affects payment (Q25), gender affects the perception that the payment is relevant to the effort made by an employee (Q22).

To prove the hypothesis we have introduced Pearson Correlative Analysis Test, which confirmed the existence of correlation between variables. However, the connection between **Q28**, Q11, Q14, Q22, variables is very weak (ranging from [-0,2 to 0.2]), while the connection between **Q28** and Q25 is relatively weak (ranging from [-0.5 to 0.5] (See Table 2)

Table 2. Correlations

		Q28	Q11	Q14	Q22	Q25
Q28	Pearson Correlation	1	-.128**	-.124**	-.112*	.216**
	Sig. (2-tailed)		.004	.005	.013	.000
	N	500	500	500	500	500
Q11	Pearson Correlation	-.128**	1	.260**	.402**	-.096*
	Sig. (2-tailed)	.004		.000	.000	.032
	N	500	500	500	500	500
Q14	Pearson Correlation	-.124**	.260**	1	.320**	-.155**
	Sig. (2-tailed)	.005	.000		.000	.001
	N	500	500	500	500	500
Q22	Pearson Correlation	-.112*	.402**	.320**	1	-.348**
	Sig. (2-tailed)	.013	.000	.000		.000
	N	500	500	500	500	500
Q25	Pearson Correlation	.216**	-.096*	-.155**	-.348**	1
	Sig. (2-tailed)	.000	.032	.001	.000	
	N	500	500	500	500	500

** . Correlation is significant at the 0.01 level (2-tailed).

* . Correlation is significant at the 0.05 level (2-tailed).

The Chi-squared test revealed that only two variables - the relationship between gender (Q28) and the amount of compensation (Q25) is reliable or is less than 0,05 (see Table 3).

Table 3. Q28 * Q25 Chi-Square Tests

Table Chi 3	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	35.547a	8	.000
Likelihood Ratio	37.957	8	.000
Linear-by-Linear Association	23.222	1	.000
N of Valid Cases	500		

cells (5.6%) have expected count less than 5. The minimum expected count is 4.78.

By the analysis of the linear regression the ANOVA test has shown that Q28, Q11, Q14, Q22, Q25 model is reliable, because the sigma is less than 0,005. This test has also revealed that the preferred one among dependent variables is the amount of the pay - Q25 variable (see Table 4. ANOVA).

Table 4. Linear Regression ANOVA^a

		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	7.869	4	1.967	8.331	.000 ^b
	Residual	116.889	495	.236		
	Total	124.758	499			

Dependent Variable: Q28

Predictors: (Constant), Q25, Q11, Q14, Q22

The fact that some of the women and the men among respondents, not so small in number, who think that they do not have a natural talent in their profession, hinders their development. It is important to work with adolescents in order to find out what aspirations they have and to develop young ones in this direction. As it seems in Georgia parents' influence is still big who make decisions instead of their children.

Lower than average negative attitude towards the profession was observed by both sexes. Naturally, this indicator can be caused by the lack of talent and inclination. This problem can be solved at the working place, if an employee gets interested in what part of the task has to be executed by the employee it will be more pleasant to do. Delegating process should be implemented by observing the rules.

It is important for the organization to take care of each employee's personal development plan and it should be done by a mutual agreement.

Sharing knowledge and experience should be developed as the culture and positive character of the organization.

The fact that a large part is not inclined towards activities that they are doing is not surprising, they have to work hard and spend extra time to perform the task. It is important for the organization to pay extra compensation for such individuals to increase their motivation.

Every employee should feel that their work is appreciated and they can be promoted on their professional career level. Without elaborating a career management policy an employee's personal development cannot be accomplished.

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José Agustín Blanco Barros (1922 – 2016) : Un Provinciano Universal

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Abstract

This article is part of an investigation about the life and work of the geographer and historian of the Colombian Caribbean José Agustín Blanco Barros. In this work, he realizes his initial intellectual formation in his Matria under the guidance of his father, José Agustín Blanco Vásquez, a philosopher and school teacher, of Eudist training at the Cartagena Seminary when he studied philosophy and with the Brothers of La Salle, Barranquilla. This served as the basis to become a protagonist of universal dimension.

Keywords: Provincial, Universal, Illustrated, Matria, Village

