ISSN: 2545 - 4323 ISSN: 2545-4331

VISION

INTERNATIONAL REFEREED SCIENTIFIC JOURNAL

IRSJV, Volume 2, Issue 2

Gostivar, Republic of Macedonia
September, 2017

International peer - reviewed journal which accepts articles in the fields of Social sciences in English and publishes two times a year (on March and September)

Vision International Refereed Scientific Journal is indexed and abstracted in following databases: Academia Social Science Index (ASOS).

Publisher - Editorial Office	International Vision University in Gostivar, Republic of Macedonia www.vizyon.edu.mk
	Copyright © All copyrights are reserved by International Vision University Printed in Macedonia
Frequency	Semi-annual
printed	1000 copies The Journal is published only in English.
Print ISSN	2545-4323
Electronic ISSN	2545-4331

VISION

INTERNATIONAL REFEREED SCIENTIFIC JOURNAL

Contact: journal@vizyon.edu.mk
web: www.visionjournal.edu.mk

CONTENTS

THE ROMAN EMPTIO-VENDITIO AS A MODERN EXPRESSION OF THE ELECTRONIC CONTRACTING
Prof. Kimo Chavdar PhD, Prof. Dushko Stojanovski PhD, LLM Natasha Pavlova 9

INTERNATIONAL JURISDICTION OVER DISPUTES ARISING OUT OF THE CONSUMER CONTRACTS IN THE EUROPEAN UNION LAW
Assoc. Prof. Mirjana Ristovska PhD, Prof. Natasa Pelivanova PhD 29

THE SCIENCE OF HADITH FROM IBN HALDUN'S PERSPECTIVE
Prof.Faredin Ebibi PhD, Assoc. Prof. Mensur Nuredin PhD 41

AN EVALUATION OF GENOCIDE-THE GENOCIDE CRIME
Assoc.Prof. Emina Karo PhD 49

FACING TERRORIST THREATS IN PEACE OPERATIONS THROUGH THE PRISM OF INTERNATIONAL LAW
Assoc. Prof. Hasan Oktay PhD, Vesna Poposka PhD Candidiate 61

APPLICATION OF THE COMPUTATIONAL GEOMETRY IN LINEAR OPTIMIZATION
Assoc. Prof. Muzafer Saračević PhD, Phd.Cand. Aybeyan Selimi 73

SOCIOLINGUSTICS AND YOUNG LEARNERS SOCIOLINGUISTIC FACTORS AFFECTING YOUNG LEARNERS IN LEARNING ENGLISH LANGUAGE AS A FOREIGN LANGUAGE
Phd.Cand. Arafat Useini 89

EDUCATIONAL MEASURES AS REPRESSIVE MEASURES FOR FIGHTING AND PREVENTING JUVENILE DELINQUENCY IN THE REPUBLIC OF MACEDONIA
Phd.Cand. Ersin Sulejmani 105

CYBER-TERRORISM AS A THREAT TO NATIONAL SECURITY
Phd.Cand. Jasmin Kalac 119

FAMILIES IN CRISIS
Phd.Cand. Müedin Kahveci 129

THE ROMAN EMPTIO-VENDITIO AS A MODERN EXPRESSION OF THE ELECTRONIC CONTRACTING

[*]Kimo Chavdar, [**]Dushko Stojanovski, [***]Natasha Pavlova [**] p. 9-27

September, 2017; 2 (2)

ABSTRACT

This paper analyzes the sales agreement or ‚emptio venditio" in Roman law, but from the aspect of the new modern age, the age of the Internet and the accessibility of the internet in every home. In that sense, the Electronic Contract is defined as an agreement presented and consummated entirely in an on-line environment; most often on the Internet. In order to form a contract several conditions must be met. In this paper as a part of the Electronic Contract the terms Electronic signing of the agreement and e-commerce are also analyzed together with the way these requirements are carried out in order to form a contract. The uniqueness of forming an electronic contract results in specific measures for the protection of intellectual property rights. A brief overview of the legislation in the Republic of Macedonia regarding the forming of agreements in electronic form is given at the end of the paper.

Key words: Electronic Contract, Electronic signing of the agreement, e-commerce, Intellectual Property Rights, Electronic Signature, Republic of Macedonia

[*]Prof. Kimo Chavdar PhD
[**]Prof. Dushko Stojanovski PhD
[***]LLM Natasha Pavlova
University American College Skopje

Article type:
1.01 Original scientific article

UDK: 347.451(0901)
347.451:004-027.18(497.7)

Date of received:
June 22, 2017

Date of acceptance:
July 15, 2017

Declaration of interest:
K.C., D.S., N.P. the authors reported no conflict of interest related to this article.

1. INTRODUCTION

Central and most important agreement in the supply of goods today is the sales agreement (emptio venditio in Roman law) by whom was made and until now is performed the transfer of the ownership rights on the goods. With the sales agreement, the man beside their daily needs satisfies the needs of durable nature, so we can eligible say that from the appearance of the commodity production this type of agreement follows the man as his shadow in his everyday life until these days.

The Roman Law as the most perfect of all known rights based of the private ownership, especially the Roman private law as part of the overall Roman law, largely developed, and in the period after the Punic wars precisely and detailed regulated the sales agreement. (Borkovski, Plesis, 2005)

The commodity production and the commodity trade represents the economic base of the Roman slave society and of the following socio-economic arrangements, and also respectively seen for the Republic of Macedonia starting from the arbitrarily socialist society until todays contemporary legal society as from the ideas of the socialism and all the subsequent new trends have led to a different regulation of the property relations. The commodity production and the commodity trade are appearing as a common ground of Roman private law and all the after it, respectively and our rights.

In this context, the agreement for sale as the most important and central agreement in our law basically has retained most of the basic characteristics that he had in the Roman private law, of course adapted to the new legal pattern and the contemporary life in today's legal society .

The historical development of the sales agreement is based on the Roman law, as the basis of any further legal development in each field of the law, and the modern trends in the development of the sales agreement will be considered starting from the independence of the Republic of Macedonia up to this day as a candidate for membership in the European

Union. The EU membership requires implementation of certain rules and regulations, so in the past as a basic legal regulator of signing of the sales agreement appeared the Law on obligations enacted in 2001(Cavdar, 2011) with changes and amendments, also amended several times in accordance with the recommendations from the European Union. According to those recommendations in our legal system were made a lot of changes and were adopted new laws, so the modern legal regulation of the sale agreement we can see through the Law on Consumer Protection (Official Gazette of RM no 38/2004,77/07; 103/08; 148/2011), Law on Electronic Commerce (Official Gazette of RM no 133/2007; 17/2011), followed by formation of certain agencies for their implementation, monitoring and sanctioning of their use.Of course we live in a modern, dynamic and open society, where the borders and the distance are not obstacles to buy, cooperate and conclude agreements with citizens of other countries. (Bendevski, 2007)

The revolution in the comprehending of the sales agreement caused explosive appearance of the Internet as the main channel of the distribution of the goods, services, and even of the managerial and professional work and this phenomenon defines the electronic commerce as a process of purchase, sale, transfer or exchange of the products, services or information via computer networks, including the Internet.

2. WHAT'S AN ELECTRONIC CONTRACT?

An "electronic" contract, also known as a "click-wrap", click-through", "web-wrap", "browse-wrap" or "point and click" contract, is an agreement presented and consummated entirely in an on-line environment; most often on the Internet. That's terms, generally have categorized online agreements into "clickwrap" agreements and "browsewrap" agreements. Click - wrap agreements, which require a user to check a box or click an icon to signify agreement with the terms, even when the terms appear in a separate hyperlinked Web page but where language accompanying the box or icon indicates that checking the box or clicking the icon indicates assent

to such terms. On the other hand, browsewrap agreements, which presents the terms passively to users in a hyperlink somewhere on a Web page, often at the very bottom of the page in small font, are often unenforceable because it usually cannot be proved the user knew the terms existed or even was aware of the hyperlink.(Stein, Lawrence, 2016)

The term, "wrap" is a misnomer and has nothing to do with the manner in which such agreements are physically presented. Click-wrap or "browse-wrap" agreements take their name from "shrink-wrap" agreements; written paper contracts that were included in the plastic shrink-wrapped packaging containing, most often, computer software. As discussed below, a significant similarity between click-wrap and shrink-wrap contracts relates to their manner of acceptance as legally binding agreements. Users of software purchased in shrink-wrapped packages have been held to have agreed to the terms of a shrinkwrap contract by virtue of opening the package and installing the software. Similarly, in some instances, the courts have held that the web user can be bound by an electronic contract by the simple act of downloading software or purchasing products or services on-line. In both cases, the end user may not necessarily have read, much less understood, the contract. The term "click-wrap" comes from the fact that in order to accept the terms of the contract on-line, the party must "click" with a mouse on an onscreen icon or box.

Electronic contracts are ubiquitous for anyone who wishes to access certain web sites, pay for products or services on-line or even obtain an account with an internet service provider ("ISP") to access the Internet. (Wittmann,2007)

2.1 Types of Click-Wrap Contracts

In an off-line contract, both parties typically indicate their agreement to the terms and conditions thereof by signing. On-line, only one of the parties (usually, the surfer or person using the computer), signifies acceptance by "signing" in the following ways:

1. Type and Click – the user must type "I accept" or other words in a specified area and then click "send";

2. Clicking an Icon – the user simply clicks an "I accept" icon to go to the requested page;

3. Scroll and Click – the user must scroll down the terms of the click-wrap contract and then click an icon marked "I accept" or "I agree".

One of the unique features of a click-wrap contract is that it is a one-sided, "take it-or-leave-it" proposition. Unlike a paper contract, where the parties may vigorously negotiate the terms of the agreement before signing, the user in the on-line environment has no bargaining power. The user must either accept the terms of the click-wrap agreement (which will typically be in favour of the proffering party) or not gain access to the desired webpage, product or service.

The lack of negotiation is partly due to the realities of on-line commerce: it is not logistically possible for the ISP or on-line service provider ("OSP") to negotiate with each and every user.

The main purposes of click-wrap Agreements are to:

1. ensure contractual certainty;
2. allow access to a particular web site or webpage;
3. download software;
4. purchase a product or service;
5. inform the user of proprietary material on the web site;
6. enumerate a web site's terms of use or service and privacy policy;
7. impose limitations on the use of downloaded material;
8. make it easier for the ISP or OSP to pursue users for violations or infringement;
9. limit the ISP's or OSP's liability for use of content, errors or problems associated with downloaded software, other products or services.

The click - wrap agreements are generally used in three instances: where a term of use must be accepted (with regard to regulating access to certain websites); where an exclusion clause is to be relied upon in an effort to deflect or limit liability; and in software licensing agreements. (Koornhof, 2012)

2.2 Browse-Wrap Agreements

"Browse-wrap" agreements, as distinct from "click-wrap" agreements, do not require the active consent of the user. Acceptance of a browse-wrap is implied from the user's browsing or other activity on the web site, even if the user has not reviewed the electronic contract. Browse-wrap agreements are typically found at the bottom of a webpage in the form of a link to another page on which the terms and conditions are posted. The user is not required to review the contract, much less access the page where it's located, in order to proceed.

3. ELECTRONIC SIGNING OF THE AGREEMENT AND E-COMMERCE

The 21st century is a time of expansive technical - technological development. The development of the information technology, enabled rapid expansion of the business around the world, thus are deleted or there are no trade barriers or boundaries.

The Internet allows numerous opportunities for business development through various economic activities such as advertising of the products and services, buying and selling products and services, entering new markets and internationalization of business, exchange business information, electronic mail and computer fax e-sales, e-payment, etc. But to use the Internet is necessary to have hardware to establish a connection to the Internet provaider to possess a basic level of knowledge of Computing and others. For all of that is required numerical population with sufficient financial capacity to purchase the necessary equipment and to pay the costs of connecting, and of course to be educated to perceive the capacities and the possibilities offered by the Internet.

3.1. E-commerce

Electronic commerce allows a completely new, revolutionary approach to conducting business. We live in a time where the monitoring and implementation of new technological developments and following of the new trends of trading has become imperative in the modern business world. The best and the most effective way that managers can improve performance and improve the performance of the company is through the implementation of new technologies and engage in electronic commerce. (Electronic trading,2007)

The introduction of electronic commerce requires reorganization and digitization of the business processes in line with the global trends and standards for electronic commerce (including defined standards for digital invoice and digital order). In Macedonia, the big companies are bringing solutions and are making an effort to digitize their existing business processes, while the small companies are implementing partial solutions to digitize only certain operations or parts of those operations. For bigger involvement of small and medium companies in the e-commerce and the online marketing, it is essential to be offered trainings for employees on how to reorganize and digitize the business processes, to accept the electronic documentation standards, and all it will create conditions for inclusion in electronic commerce and the organization of the marketing process through the Internet.

3.2 What is E-commerce?

Electronic commerce is an expression that contains two terms, which are explained below:

The first term “electronic” refers to asset (medium) through which the action is executed. There are many publications, regulations and considerations which this term means any way (form) of communication which excludes physical contact between participants in trade and

incorporate some form electronically. According to this concept in e-commerce trading would go through any of these means (media): phone, fax, telex, internet, intranet ... Unlike this broad understanding of the term "electronic", the second, narrower thinking and defining this expression includes only transactions that are conducted online, or through the use of the Internet as a medium. (Mihajlovski, 2010)

The second term "trade" refers to the action (transaction) which is conducted through certain electronic means. And here, there are different notions of the term. In one, indirect electronic commerce involves electronic ordering (purchase) of goods that have a material form, must be physically delivered and that depend on numerous external factors, such as the transport system and postal services.

The second, direct e-commerce means electronic ordering, payment and delivery of intangible (untouchable, digital) goods and services, such as for example computer programs or entertainment (music, movies, books). From the above expressed by defining the two notions of electronic commerce for the same we can draw a definition as follows:

The term e-commerce refers to transactions that are conducted online, and exclusively through the web-based applications for trade (transactions through electronic mail are excluded) and who accept goods and services in the material and the immaterial form.(Ibid)

3.3 How works e-commerce?

The e-commerce is based on the use of the Internet as a meansthrough which the seller and the buyer communicate and enter into the Purchase Agreement, i.e. the order and the payment of products and services. In order to make the order are used web-based software applications, known as the food basket (shopping cart), while for the payment are used special web portals for payment. Main means of payment are the credit and debit cards issued by different international organizations and electronic money as an electronic surrogate of banknotes used for electronic payments. The transaction is realized through special portals payment etc. payment

processors (payment processors). For identification of the buyer often are used the user name and password, while rarely are used more sophisticated forms of identification, such as for example digital certificates. However, for the safety of the transaction is required the seller's website to use system to encrypt transactions (Secure Socket Layer-SSL). Lately is increased the overall safety of transaction by using security code (secure code) of credit cards. (www.mio.gov.mk, 2010)

In the e-commerce re included more countries:

• vendor (online merchant)

• buyer (customer, client)

• banks (bank card issuer of the buyer card and bank service of the merchant), and

• payment processor as an institution that has served portal for payment.

The number of online retailers that can be enormous and the number of payment processors is lower. In fact, the online merchant can not receive orders and charge unless has a contract with the bank through which can charge for transactions that are carried over the Internet, while the bank must have a contract with the payment processor. This "background" way of functioning of the e-commerce increases the security when paying as the most sensitive part of the e-commerce.

c) Intellectual Property Rights in e-comerce

One of the foremost considerations that any company intending to commence ecommerce activities should bear in mind is the protection of its intellectual assets. The Internet is a boundless and unregulated medium and therefore the protection of intellectual property rights ("IPRs") is a challenge and a growing concern amongst most e-businesses. While there exist laws in India that protect IPRs in the physical world, the efficacy of these laws to safeguard these rights in e-commerce is uncertain. Some of the significant issues that arise with respect protecting IPRs in e-commerce are discussed hereunder.

1. *Determining the subject matter of protection*: With the advent of new technologies, new forms of IPRs are evolving and the challenge for any business would be in identifying how best its intellectual assets can be protected. For example, a software company would have to keep in mind that in order to patent its software, the software may have to be combined with physical objects for it to obtain a patent.

2. *Ascertaining novelty I originality:* Most intellectual property laws require that the work / mark / invention must be novel or original. However, the issue is whether publication or use of a work I invention I mark in electronic form on the Internet would hinder a subsequent novelty or originality claim in an IPR application for the work / invention / mark. An e-commerce company would have to devote attention to satisfying the parameters of intellectual property protection including originality requirements in its works to preclude any infringement actions from third parties who own similar IPRs.

3. *Enforcing IPRs:* As will be discussed under the "Jurisdiction" issue, it is difficult to adjudicate and decide cyber-disputes. The Internet makes the duplication, or dissemination of IPR- protected works easy and instantaneous and its anonymous environment makes it virtually impossible to detect the infringer. Moreover, infringing material may be available at a particular location for only a very short period of time.11 A company must also keep in mind that since IPRs are inherently territorial in nature, it may be difficult to adjudge as to whether the IPR in a work or invention is infringed, if it is published or used over the Internet, which is intrinsically boundless in nature. For example, if 'Company A' has a trademark registered in India for software products, but a web portal based in the US uses the same trademark for marketing either software products or for marketing some other goods, it may become difficult for Company A to sue for infringement. Moreover, due to differences in laws of different nations, what constitutes infringement in one country may not constitute infringement in another. Further, even if Company A succeeds in proving an infringement action, since the IPR that it owns is only valid for India, the

scope of remedies that may be available to Company A would be territorial and not global. Thus, the web-portal may be restrained from displaying its site in India or may have to put sufficient disclaimer's on its website. In order to restrain infringement in other countries, Company A may need to file proceedings those countries also. This process may prove to be time-consuming and expensive for the aggrieved Company.

In light of certain technology driven mechanisms such as electronic copyright management systems ("ECMS") and other digital technologies that are evolving to prevent infringement, the recent World Intellectual Property Organisation ("WIPO") Copyright Treaty12 explicitly mandates that all contracting parties to the treaty shall have to provide adequate legal remedies against actions intended to circumvent the effective technological measures that may used by authors to prevent infringement of their works.13 However, these mechanisms may not be commercially viable and their use may also depend on international inter- operability standards, as well as privacy concerns.

4. *Preventing unauthorised hyperlinking and meta tagging:* The judiciary in many countries is grappling with issues concerning infringement of IPRs arising from hyperlinking and meta tagging activities. Courts in certain jurisdictions have held that hyperlinking, especially deep-linking may constitute copyright infringement, whereas meta tagging may constitute trademark infringement. For example, Company A's websiteprovides an unauthorised link to Company B's website, or if Company A's website uses meta-tags that are similar to Company B's trademarks, Company A could be sued for violating Company B's IPRs.

5. *Protection against unfair competition:* Protection against unfair competition covers a broad scope of issues relevant for electronic commerce. So far, electronic commerce has not been subject to specific regulations dealing with matters of unfair competition. Companies on the Internet, have to constantly adapt to and use the particular technical features of the Internet, such as its interactivity and support of multimedia applications,

for their marketing practices. Problems may arise with regard to the use of certain marketing practices such as (i) Interactive marketing practices (ii) spamming (discussed under the "Privacy and Data Protection" section) and (iii) immersive marketing. Further, questions regarding the territorial applicability of such standards would also arise.

3.4 Regulations on e-commerce in Republic of Macedonia

Law on Electronic Commerce (Official Gazette of RM no 133/2007; 17/2011;)

Macedonia relatively late adopted the Law on Electronic Commerce, in 2007 year. This is due to the fact that R. of Macedonia undertakes to harmonize the national legislation with the EU regulations and the EU Directive on e-commerce was adopted in 2000 year. Partial reason for the delay lies in the fact that there was a negative conflict of jurisdiction over which ministry is responsible to prepare the law. The need to bring this law was even greater, considering that in practice there was e-commerce in smaller size which included several Macedonian companies, banks, ISPs, and customers whose number day by day was increasing. The working in low-regulation of transactions, which could easily lead to negative consequences on those who participated in the e-commerce and the potential users and general development of e-commerce in the RM.

The goal with this law was set to introduce a legal framework for the development of the electronic commerce by providing legal certainty in the business relations.

At the same time, the law was supposed to allow the definition of the conditions for security and safety in performing services of the information society (including e-commerce) and the protection of consumers who use such services. The law regulates the basic principles for providing information society services, in particular related to electronic commerce, the responsibilities of providers of information society services, commercial communication and rules concerning the conclusion of contracts in electronic form. The rationale of the law states that it is fully compliant

with the EU Directive on e-commerce. If you perform a comparative analysis and can really conclude it. The Law does not contain substantive provisions beyond those contained in the Directive. The E-Commerce in Macedonia is regulated by a single legal act, which does not mean that other regulations determine the performance of online retailers.

3.5 Other relevant national regulations

In Macedonia there and applicable regulations relevant to electronic commerce. Some of these Provisions go complement or overlap with the provisions of the Law on Electronic Commerce.

1. The Law on Electronic Data and Electronic Signature - give legal validity and evidential force of the data in electronic form and the electronical legal signature and payment operations. The existence and the application of the provisions of this law allows [is, legally, an electronic trading before the adoption of the Law on Trade.(Official Gazette of RM – no 98/08: 34/2001 ; 148/2011)

2. The Law on electronic communications - this law, among other things, sets rules for electronic communication and work of ISPs as a segment of electronic commerce. The provisions of the Law on Electronic Commerce concerning unsolicited (unwanted) commercial communications (spam) and responsibilities of service providers of information society contained in the Law on Electronic Communications. (Official Gazette of RM – no 13/2005;14/2007; 55/2007; 98/2008; 83/10; 13/12; 59/12 ;23/13)

3. The Trade Law - sets the conditions and the manner of conducting of trade on internal and external market, thereby providing a basis for e-commerce. This law of very general and insufficient way defines the electronic commerce, letting to be upgraded by other regulations.(Official Gazette of RM – no 28/2004, 84/2005, 25/2007, 87/2008, 42/2010, 48/2010, 24/2011, 166/2012, 70/2013, 119/2013, 120/2013, 187/2013, 38/2014, 41/2014, 138/2014, 88/2015, 192/2015 ; 6/2016)

4. The Law on Consumer Protection - elaborates in detailed the

rights and the obligations of the parties - the trader and the consumer - the contract concluded at a distance. In this
group of contracts are included all contracts in which is used a medium for distant communication (at the conclusion of the contract there is no physical presence of the parties).(Official Gazette of RM – no 38/3004; 77/07; 103/08; 148/2011)

5. Payment Operations Law - This law, among other things, regulates the manner and conditions for issuing electronic money as a payment tool used to make payments online, including the conditions for the establishment of electronic money issuer and the rights and obligations of publisher and owner of the electronic money.

6. The Penalty code- several members of this law are related to cybercrime and its various manifestations. These crimes can be committed in the context of electronic commerce, especially by the seller and the buyer.

3.6 Electronic Signature

A generally accepted definition of electronic signature is that ... "Electronic signature is a string of data in electronic form contained or logically associated with other data in electronic form and is intended to determine the authenticity of the data and the identity of the signatory."
The electronic signature is a technology whose application in the system of electronic things are possible to verify the authenticity of the signer, to protect the integrity of the transmitted data and the irrevocability of the electronic signature of the date of the message or the document. So, analogue to the use of the handwritten signatures in the standard system, the electronic signature is used in the electronic system.(http://e-biznisi.net/, 2014)

The importance of the electronic signature is especially in the electronic commerce. Analogueto the signing of contracts in written form, the electronic signature in electronic contracts means to authenticate the parties. Because of its importance in the national legislation are enacted laws to regulate the electronic signatures in the context of trade agreements.

4. ELECTRONIC CONTRACTING IN RM

The agreements may be made electronically, or in electronic form. The offer and the acceptance of the offer may be provided electronically or in electronic form. The agreements concluded by electronic means shall not be adjudicated because it is made by email, or in electronic form. When the validity and the conclusion of the agreement requires the signature of the person will be deemed that this requirement is met by an electronic message signed with an electronic signature in accordance with the regulations on the electronic signatures. The providers of the information society are obliged to the recipient of the service before the conclusion of the contract, in a clear, understandable and straightforward way to provide him the following informations:

- Various technical procedures to follow to conclude the agreement,
- The content of the contract,
- The general provisions as a part of the agreement,
- Whether the signed contract will be archived by the service provider and whether it will be available,
- The technical means for identifying and correcting input errors before making the order, and
- The languages offered for the conclusion of the agreement.

The service provider should give all relevant codes of good practice on which he is signer and the informations on how these codes can be used electronically.

The provisions contained in the agreements in electronic form concluded by the providers of information society services must be made by available to the users of the service in a way that will allowto store and reproduce them. The recipient of the service when placing an order electronically shall ask the service provider to submit a confirmation for the order in a separate e-mail without delay and electronically. The service provider shall provide the recipient of the service appropriate, effective and accessible technical means allowing him to identify and correct input data

before you make the order, unless the parties are not taken by consumers and are differently agreed.

The order and the confirmation shall be deemed as received when they are accessible for the parties. The agreement in electronic form shall be deemed as concluded at the time when the bidder will receive an electronic message containing a statement that the recipient accepts the contents of the agreement.

The offer and the acceptance shall be deemed received when they become accessible for the parties.

The provisions of the trade or the section for electronic signing of agreement are not valid and the same time point that the conclusion of electronic agreements is not permitted in the following cases:

- Governed by the regulations for family and inheritance,
- That create or transfer rights of real property, except the rental rights
- For which the law requires the involvement of courts, notariesor similar professions
- For given guarantee and for further security, taken by persons that are acting for purposes outside their trade, business or profession.(Mihajlovski, 2010)

5. CONCLUSION

Basis of the preparation of this text was the term of the sales agreement, which was founded in the Roman law (emptio venditio) and which has a solid foundation for its upgrade in the later bourgeois social orders, socialist social administration, as well as the legal regulation in today's Macedonian legislation. Certainly the contemporary understanding characteristic of the later social orders, made appropriate changes to the classic understanding of this agreement.

The everyday development of the society and the increasing of the application of the technology in every sphere of the human life caused

modernization and increasing of the technological development. So invoking to the huge advantages of using the technology including the electronic communication, we have witnessed the insertion of the same in every segment of our everyday business.

The sales agreement is one of the most important contracts in the daily trading, so over time with the development of the technology it is up to date with the changes and the needs of the new Internet era. So the sales agreement through the electronic commerce, electronic contracting and the electronic signature, follows the modern trends of development of the business.

The electronic commerce (e-commerce / e-business) allows a completely new, revolutionary approach to conducting of the business. We live in a time where the monitoring and the implementation of new technological developments and following the new trends of trading has become imperative in the modern business world. The best and most effective way in which the managers can improve the performance of the company is through the implementation of new technologies and engage in the electronic commerce. Theimplementation and the introduction of new rules and principles in the business since the introduction of the same until today is subjectof daily changes, criticism and skepticism when introducing them. But following the statistics and research related to this issue the implementation of electronic commerce came across a very positive attitude, and also greatly affirmed my thesis that the modern way of trade and sales agreement have seen through the introduction of e-commerce, a large number of Macedonian citizens and legal entities to benefit from the 21 first century, the century of Internet technology, and also shorten the time spend on the traditional trading and bargaining.

Consequently they tend to a complete change of the system of business, inserting the electronic communication in every segment. So indisputable is the fact that consequently the large corporations need to cut the high cost of contracting “Face to Face” and the introduction of e-contracts certified with the electronic signatures.

All of this is news to us and has a number of small companies that

are skeptical in the introduction of full electronic communication in the daily business operations. In the preparation of this thesis a great benefit was the survey entitled "Representation of the electronic contracting and sales through Internet in the daily trading in R. Of Macedonia" as well as interviews and discussions with people that are executing their trade strictly through Internet. The overall conclusion is that the Internet brought a new revolution in every aspect of the human life, but mostly in the business. Consciously or subconsciously as we need amortization, modernization and regular maintenance of the objects, materials and office supplies, it is also necessary a change, modernization and adaptation of the legal provisions, ranging from the domestic legislation, and consequently the introduction and the adaptation of the international legislation. As a country with candidate member status in the European Union over the past years we have adopted and embraced many directives, instructions and prepared new laws, organizations, councils and etc..

REFERENCES:

1. Bendevski, T. (2017) *Characteristics and specific solutions of the Convention on Contracts for the International Sale of Goods* - Legal journal " Lawyer" Skopje
2. Borkovski,E. Plesis, P. (2005)- *Roman law*- Oxford university press
3. *Cavdar, K. (2011) Trade Law –University American College Skopje – Skopje*
4. *Cavdar, K. (2012) Commentary on the law of Obligation Relations – ,,Akademik,, Skopje*
5. *Convention on the International Sale of Goods of the United Nations(2010) – United nations publication New York*
6. *Electronic trading (2007): Electronic business in international trade - Institute for International Political System Beograd,*
7. http://e-biznisi.net

8. http://www.mio.gov.mk/files/pdf/dokumenti/Analiza_e-trgovija_29.11.10.pdf
9. *http://www.mio.gov.mk/files/pdf/dokumenti/Analiza_e-trgovija_29.11.10.pdf*
10. Koornhof GJ P. - *The Enforceability of Incorporated Terms in Electronic Agreements* -SPECULUM JURIS -Western Cape
11. *Mihajlovski,S. (2010) - Virtual e-commerce ,e-business and e-banking is more than reality - Novi Sad*
12. *Stein R.J.and Lawrence J.A. (2016) - Clickwrap, Browsewrap and Mixed Media Contracts: A Few Words Can Go a Long Way - The Licensing journal - New Yoirk*
13. Whaley J Douglas(2005) - *„Problems and Materials on Commercial Law",* eight edition, Aspen publishers,
14. Wittmann,J.(2007) *Electronic contracts* Federated Press Vancouver, BC
15. *Official Gazette of RM – no 28/2004, 84/2005, 25/2007, 87/2008, 42/2010, 48/2010, 24/2011, 166/2012, 70/2013, 119/2013, 120/2013, 187/2013, 38/2014, 41/2014, 138/2014, 88/2015, 192/2015 ; 6/2016*
16. *Official Gazette of RM – no 38/3004; 77/07; 103/08; 148/2011*
17. *Official Gazette of RM no 133/2007; 17/2011;*
18. *Official Gazette of RM no 38/2004,77/07; 103/08; 148/2011*
19. *Official Gazette of RM no. 18/2001, 4/2002, 5/003, 161/09*

INTERNATIONAL JURISDICTION OVER DISPUTES ARISING OUT OF THE CONSUMER CONTRACTS IN THE EUROPEAN UNION LAW

*Mirjana Ristovska, **Natasa Pelivanova, p. 29-40

September, 2017; 2 (2)

ABSTRACT

As a result of globalization processes, the increased regional integration and the Internet development, the cross-border transactions are among the most common transactions concluded nowadays. Consumers conclude international consumer contracts very often without being aware of it. Consequently, new legal norms have been developed, aiming to protect consumers' rights. Essentially, the main objective of these norms is to protect the consumer as a contracting party, which is in unequal position in relation to the trader, since he does not possess the necessary knowledge and has sufficient funds, in comparison with the trader.

This paper analyzes the norms of jurisdiction in disputes arising out of the consumer contracts with a foreign element contained in: Regulation (EU) no. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judicial decisions in civil and commercial matters (Brussels I Regulation - recast) as well as, in the Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judicial decisions in civil and commercial matters (Brussels I Regulation). The main objective of this paper is to research and find out does the norms contained in above mention EU acts are protecting the consumers in sufficient way. To reach this objective the following methods were applied: historical method, method of analysis, normative method, comparative method, case law and Internet research.

Keywords: consumer contract, jurisdiction, Brussels I Regulation (recast).

***Mirjana Ristovska PhD**

Assistant Professor, Kliment Ohridski University-Bitola
e-mail: mimaristovska@yahoo.co.uk

****Natasa Pelivanova PhD**

Full Professor, Kliment Ohridski University-Bitola
e-mail: n_pelivanova@yahoo.com

UDK: 341.61:336.5(4-672EY)

Article type:

1.02 General scientific articles

Date of received:

June 15, 2017

Date of acceptance:

July 24, 2017

Declaration of interest:

The author reported no conflict of interest related to this article.

1. INTRODUCTION

The consumer cross-border right of entry to justice represents a predominantly topical issue in the legal theory and case-law area. European private international law, when designs the provisions for determining international jurisdiction over disputes arising out of the consumer contracts with a foreign element, applies the legal theory of "weaker party", i.e. assumes that the consumer is generally weaker in the consumer contract and therefore, special protection is needed. As a result of that, in the determination of the international jurisdiction for the consumer contracts disputes with a foreign element in the European Union law, the following instruments play a significant role:

a) the party autonomy limitation during the selection of an internationally competent court, especially if it concerns an adhesive consumer contract; and

b) special international jurisdiction - the court of the country in which the consumer's domicile is located is competent.

The consumer's domicile court jurisdiction has two objectives: a) to ensure the application of the imperative positive material norms in the country in which the consumer has domicile or b) to provide a more favorable court for the consumer which is more suited due to physical proximity, language, availability of legal advice and procedural law that is applicable.

The European model for determining international jurisdiction for consumer contracts disputes also takes into account the development of electronic commerce and protects consumers who conclude electronic consumer contracts. In that view, the European Union private international law is an overall and sophisticated system of provisions, which is applied as a protective model to consumer contracts with a foreign element.

2. DETERMINATION OF THE INTERNATIONAL JURISDICTION OVER DISPUTES ARISING OUT OF THE CONSUMER CONTRACTS

The Article 18 of the Brussels I Regulation-recast (Regulation (EU) No 1215/2012) determines the international jurisdiction over consumer contracts covered by the provision of Article 17:

"1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled.

2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.

3. This Article shall not affect the right to bring a counterclaim in the court in which, in accordance with this Section, the original claim is pending."

The Brussels I Regulation (recast) provisions concerning the international jurisdiction over consumer contracts are simple and sufficient, in the sense that the consumer has a choice, while the other contracting party – the trader has no choice.

Namely, the consumer may initiate litigation against the trader either in the courts of the Member State in which the trader has a domicile or in the Member State courts where the consumer is domiciled. Basically, the consumer is allowed to bring the proceedings in the most convenient court for him. (Psodorov, 2003:87) The Brussels I Regulation (recast), in Article 18, paragraph 1, regulates international and local competence. (Sajko, 2009:388) Thus, if the consumer is a natural person with Macedonian citizenship and with a domicile in a certain Member State, he can initiate litigation against the trader in the courts located in that Member State.

The first alternative given to the consumer to initiate litigation practically is corresponding with Article 4 of the revised Regulation, while the second possibility represents a stunning example of international jurisdiction, justified by the need of the consumer procedural protection. If

the trader is domiciled in a Member State A and has a subsidiary or branch in a Member State B and the dispute has arisen in connection with the operation of the subsidiary or branch, the consumer, according to Article 18 paragraph 1 and paragraph 3, has a possibility to choose to initiate litigation either in the courts of these two Member States, or in the court of the Member State where he is domiciled.

This provision has introduced certain changes in relation with the provision of Article 16 paragraph 1 of the Brussels I Regulation, in terms of increased and improved consumer protection. Namely, according to the new provision of Article 18 paragraph 1, the consumer is protected, regardless of whether the defendant has a domicile in a Member State or in a third state that is not EU member. Whereas, in the line with the Brussels I Regulation, the consumer was protected only if the trader, as a contracting party, had or was assumed to have a domicile in a Member State, pursuant to Article 15 S 2.(Schlosser, 1979: 161) Accordingly, in the cases where the trader had a domicile in a state which is not an EU member and has no subsidiary, agency or other enterprise in EU Member State in respect of whose operations the dispute had arisen, the Member State national provisions for international jurisdiction were applying instead of the Brussels I Regulation provisions.

In accordance with the amendments introduced by the revised Regulation, its "external effect" is practically expanded to all foreign traders which direct their business and trade activities towards EU Member States. So, the traders domiciled in a third country may be sued in any EU Member State. In this case, the Brussels I Regulation (recast) protective provisions will be applied.

If the consumer changes his domicile to another Member State subsequently to the contract conclusion, there is a dilemma whether he can elect to bring proceedings between the courts of the State of his previous domicile and the courts of the State of his new domicile. According to the Brussels Convention, as a Brussels I Regulation predecessor, the consumer could make a choice only for the contracts referred to in Article 13, paragraph 1, items 1 and 2, but not for the contracts covered by the point 3.

Since the Brussels I Regulation (recast) provisions of Article 17 (1) point (a) and point (b) are identical to the abovementioned provisions of the Brussels Convention, it is clear that the consumer has the right

to choose between the courts of the old or new domicile Member State. (Arnt,2007:320) For the third type of contracts covered by point (c), the determining factor is no longer "the place where the consumer took the necessary steps for the contract concluding", but "whether the place in which the other party has taken trade or professional activities is located or not located in the Member State in which the consumer has a domicile." In view of that, it can be concluded that, in the cases covered by Article 17 paragraph 1 point (c), the consumer should have the right to choose between the court of the old and the new Member State of the domicile, provided that the other contracting party has overstepped trade or professional activities in both Member States and the contract is covered with the field of these activities in both States.

The trader may bring proceeding against the consumer only in the Member State in which the consumer is domiciled. This provision is identical to Article 4 of the Brussels I Regulation (recast). *Ratio legis* for this provision is the fact that there is no other alternative for the trader. Therefore, the only place where a procedure may be brought against a consumer whose contract is covered by Section 4 of the Brussels I Regulation (recast) is in the Member State where the consumer is domiciled. This kind of procedural consumers protection combined with the available choice for consumer according to Article 18 (1) represents a key factor for the EU consumer protection in respect of international jurisdiction.

The European Court of Justice case-law along the same line as the positive law. In the case **Bertrand v. Paul Ott KG** the Court stated that *"this provision must be construed restrictively to meet the objectives of Section 4 to protect the economically weaker party in the consumer contract."*

3. PROROGATION OF JURISDICTION OVER DISPUTES ARISING OUT OF THE CONSUMER CONTRACTS

The party autonomy principle is allowed for determination of the international jurisdiction over disputes arising out of the consumer contracts. Namely, the Article 19 of the Brussels I Regulation (recast) determines when and under what conditions, the consumer and the trader can draft the prorogation clause:

"The provisions of this Section may be departed from only by an agreement:

(1) which is entered into after the dispute has arisen;

(2) which allows the consumer to bring proceedings in courts other than those indicated in this Section; or

(3) which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State."

An identical provision was also contained in Article 17 of the Brussels I Regulation, Article 15 of the Brussels Convention and Article 15 of the Lugano Convention of 1988 and 2007.

In the Section 4 of the Brussels I Regulation (recast) there is no specific provision regarding the form in which the prorogation agreement between the consumer and the trader should be concluded. Also, Article 19 does not contain an explicit provision that determines that a prorogation agreement should meet the conditions provided by Article 25. However, although not explicitly foreseen, the prorogation agreement on consumer disputes must meet the formal requirements laid down in the provision of Article 25 to the extent permitted under Article 19.(Arnt,2007:320).

On the other hand, the substantial validity of the prorogation agreement on disputes arising out of the consumer contracts is assessed in accordance with the national law of the court which is competent in the specific consumer dispute.

The provision of Article 19 is a key provision for consumer protection and it is in complementary correlation with Article 3 and Article 6 of the Council Directive 93/13/EEC on unfair terms in consumer contracts.

Choice of court agreements on consumer contract disputes

According to the Article 19 of the Brussels I Regulation (recast), the provisions in Section 4 may be waived, on the basis of a prorogation

agreement, only in three cases, determined by the Article itself. Accordingly, it is a closed list. In the case **Océano Grupo Editorial SA and Salvat Editores** the European Court of Justice faced a legal situation in which two Spanish companies entered into contracts with a large number of consumers with a domicile in Spain for the sale of encyclopedias in installments. Since the case was purely national, the Brussels Convention was not applicable. However, the Court's ruling, in this case, is of great importance in order to understand European consumer protection, in the general sense of the word. The Court noted as follows:

"It follows that where a jurisdiction clause is included, without being individually negotiated, in a contract between a consumer and a seller or supplier within the meaning of the Directive and where it confers exclusive jurisdiction on a court in the territorial jurisdiction of which the seller or supplier has his principal place of business, it must be regarded as unfair within the meaning of Article 3 of the Directive in so far as it causes, contrary to the requirement of good faith, a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.

As to the question of whether a court seised of a dispute concerning a contract between a seller or supplier and a consumer may determine of its own motion whether a term of the contract is unfair, it should be noted that the system of protection introduced by the Directive is based on the idea that the consumer is in a weak position vis-à-vis the seller or supplier, as regards both his bargaining power and his level of knowledge. This leads to the consumer agreeing to terms drawn up in advance by the seller or supplier without being able to influence the content of the terms."

According to the European Union private international law three types of prorogation agreements on disputes arising out of the consumer contracts are permitted: a) a prorogation compromise; (b) prorogation clause for jurisdiction, which extend the choice of the consumer and (c) a clause on jurisdiction under national law.

The choice of court agreement on consumer contract disputes has a legal force only if it is concluded after the occurrence of the dispute.

Accordingly, the prorogation agreements that were concluded before the dispute arises, which in practice is very common considering the fact that the prorogation clause is the standard part of the consumer contract have no legal force. Thus, Article 19 paragraph 1 of the Brussels I Regulation (recast) applies only if the consumer accepts the prorogation agreement after the dispute arises, *post litem natam*. Due to the inequality of the contracting parties in the consumer contracts, the right to conclude a prorogation agreement in this type of contracts is limited in an explicit manner.

Following the general objective for consumer protection, the provision in Article 19 paragraph 1 item (2) of the revised Regulation allows the consumer and trader to conclude a prorogation agreement even before the dispute arises, in the cases when: a) the international jurisdiction of a court which is not covered by Article 18 is determined and b) the chosen court is in favor of the consumer. Accordingly, only the consumer may bring proceedings against the trader in the courts not covered by Article 18. The trader has not that right.

The third type of jurisdiction clauses permitted under Article 19 of the Brussels I Regulation (recast) are provided in point 3. This provision applies in an exceptional situation in which the consumer and trader have a domicile or habitual residence in the same Member State at the time of contract concluding and later the consumer moves to another Member State. So, in this case the prorogation agreement is concluded between the consumer and the trader before the dispute arises.

This provision has been analyzed with particular attention by Peter Schlosser in his Report, for the purposes of the Brussels I Regulation (Schlosser, 1979: 122) :

"In substance, the new Article 14 closely follows the existing Article 14, while extending it to actions arising from all consumer contracts. The rearrangement of the text is merely a rewording due to the availability of a convenient description for one party to the contract, the ' consumer which was better placed at the beginning of the text so as to make it more easily comprehensible. The Working Party s decision means in substance that, as in the case with the existing Article 14 the consumer may sue in the courts of his new State of domicile if he moves to another Community State

after concluding the contract out of which an action subsequently arises. This only becomes practical, however, in the case of the instalment sales and credit contracts referred to in points (1) and (2) of the first paragraph of Article 13. For actions arising out' of other consumer contracts the new Section 4 will in virtually all cases cease to be applicable if the consumer transfers his domicile to another State after conclusion of the contract. This is because the steps necessary for the conclusion of the contract will almost always not have been taken in the new State of domicile. The cross-frontier advertising requirement also ensures that the special provisions will in practice not applicable to contracts between two persons neither of whom is acting in a professional or trading capacity."

Tacit jurisdiction agreements on consumer contracts disputes

The Article 26 of the Brussels I Regulation refers to tacit prorogation, stating that:

"2. In matters referred to in Sections 3, 4 or 5 where the policy-holder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the defendant, the court shall, before assuming jurisdiction under paragraph 1, ensure that the defendant is informed of his right to contest the jurisdiction of the court and of the consequences of entering or not entering an appearance."

So, it is explicitly confirmed that the tacit international jurisdiction covers the disputes arising out of the consumer contract. As an additional protection mechanism in this provision, a subjective element has been introduced, that is, the consumer in this case must be informed previously about the rights and consequences of the establishment, i.e. the non-establishment of the tacit international jurisdiction of a particular court. In this sense, the court is obliged to assess whether the consumer is informed, that is, the court must not disclose this fact in discretion.

4. CONCLUSION

Mechanisms that reflect the theory of a "weaker party" in the context of determining international jurisdiction over disputes arising out of the consumer contracts are contained in the European Union private international law acts, through the application of the so-called "Double rules system:"

first, the consumer may bring a lawsuit against the trader in the Member State courts where he is domiciled or in the Member State courts where the trader is domiciled;

secondly, the trader may bring a lawsuit against the consumer solely in a court of the Member State in which the consumer's domicile is located;

thirdly, limiting the party autonomy in choice of court clauses in consumer contracts.

It can be concluded that the Brussels I Regulation (recast) does not provide for a single international jurisdiction for consumer contracts. The contracting parties may, under certain circumstances, derogate the provisions provided for in Section 4, which means that the party autonomy is allowed with certain limitations. The Brussels legal regime for consumer protection represents an overall and sophisticated system of provisions. These provisions are considered as a protective mechanism in respect of consumer contracts with a foreign element, which establish a balance between the legal interests of consumers and the legal security of traders.

5. BIBLIOGRAPHY

1. Arnt Nielsen Peter, Jurisdiction in consumer contracts in Brussels I Regulation on Jurisdiction and Recognition in Civil and Commercial Matters, Sellier, European Law Publisher, 2007.
2. Case 150/77, Judgment of the Court of 21 June 1978. - Bertrand v Paul Ott KG. - Reference for a preliminary ruling: Cour de cassation - France. - Sale of goods on instalment credit terms.
3. Judgment of the Court of 27 June 2000. - Océano Grupo Editorial SA v Roció Murciano Quintero (C-240/98) and Salvat Editores SA v José M. Sánchez Alcón Prades (C-241/98), José Luis Copano Badillo (C-242/98), Mohammed Berroane (C-243/98) and Emilio Viñas Feliú (C-244/98). - Reference for a preliminary ruling: Juzgado de Primera Instancia nº 35 de Barcelona - Spain. - Directive 93/13/EEC - Unfair terms in consumer contracts - Jurisdiction clause - Power of the national court to examine of its own motion whether that clause is unfair. - Joined cases C-240/98 to C-244/98. European Court reports 2000 P I-04941.
4. Psodorov Dragan, Private international law aspects of the consumer protection in the European Union Law with the short review of the domestic legislation, Revija za Evropsko pravo,broj 1-3, Godina V, Kragujevac, 2003.
5. Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Official Journal L 351 , 20/12/2012
6. Sajko Krešimir, Međunarodno privatno pravo, Zagreb, 2009, p. 388.
7. Schlosser Peter, Report on the Convention on the Association of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland to the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters and to the Protocol on its interpretation by the Court of Justice (Signed at Luxembourg, 9 October 1978), No C 59/72 Official Journal of the European Communities 5. 3. 1979.op.cit., 511, para 161.

THE SCIENCE OF HADITH FROM IBN HALDUN'S PERSPECTIVE

*Faredin Ebibi, **Mensur Nuredin, p. 41-48

September, 2017; 2 (2)

ABSTRACT

The general structure of Hadith Science is rich in multiple branches and discipline. One of its major branches is dealing with the treatment of abrogation and what is abrogated. As an abrogation process is permitted in the Islamic Legislation (Shari'ah) and comes in the sense of facilitating and having mercy on believers.

It is fact that the Islamic religion takes into consideration the interest and convenience of the believer as a subject who is charged with the transfer and application of divine Message norms. ***"We do not abrogate any of our arguments or forget it, nor bring it even more useful than it or similar to it. Did you not know that Allah is All-Powerful for all things? "(Qur'an, 2: 106)***

In the case of confrontation of arguments between denial and affirmation and the inability to compromise or approximate the meaning between them, through interpretation or progress, the last argument is in the role of abrogator.

Knowing this discipline is important, meanwhile, it is a serious discipline. In this context, Zuhriu said: "What is the mere prayer of the Islamic jurisprudence (Islam) is the knowledge of the anointing .hadith of the Prophet (sallallaahu alayhi wa sallam)" (En-nuajmi, 2004)

Keywords: Hadith, Perspective, Ibn Haldun.

***Prof.Faredin Ebibi PhD,**
lecturer in subjects Hadith and Sociology and dean of Faculty of Islamic Sciences,.

E-mail: faredinebibi@fshi.edu.mk

****Assoc. Prof. Mensur Nuredin, PhD**
International Vision University, Faculty of Law, Republic of Macedonia
e-mail:
mensur@viziyon.edu.mk

Article type:
1.02 General scientific articles

UDK: 348:28

Date of received:
June 05, 2017

Date of acceptance:
July 18, 2017

Declaration of interest:
M.N., F.E., the authors reported no conflict of interest related to this article.

1. INTRODUCTION

The scientific and multi-dimensional contribution of Ibn Haldun is undisputed. Especially in humanities, in "Ilmu-l-imran" (sociology), in history, philosophy, geography, literature, arabology, etc., his contribution is very pronounced Based on the scientific activity of this Islamic scholar, it becomes clear that this scholar also had profound knowledge in religious sciences; in the sciences of the Qur'an, hadith, fiqh, Islamic history, etc. hence the tendency of this article lies in that of pointing out Ibn Haldun's scientific investment and his contribution to the science of Hadith. Like all the other scholars, Ibn Haldun has left precious footprints in treating the limbs of this science.

Below will be presented the chronology of Ibn Haldun's treatises concerning the branches respectively the scientific disciplines of the science of Hadith.

1.1. Ibn Haldun and the branches of the science of Hadith

In the "Mukadatim Ibn Haldun", which is considered Ibn Haldun's masterpiece, he has spoken extensively for many disciplines belonging to the science of Hadith. Within the branches of the science of Hadith, as it is stated, it is also a dignified and profound study of the "senedes" respectively of the verse of the narrators of the hadiths. He talked about the complete knowledge about the hadiths on whose basis should be based on "senede". For the full criteria that must have accepted hadith . According to him it is imanente the exploration of the reliability and standardization of the Hadith of the Messenger of Allah (sallallaahu 'alayhi wa sallam).

Continued efforts in this discourse should be deep approaches to the means of study to reach the conclusion assumed to be the most true variant of the transmission of hadiths. Such an assertion according to Ibn al-Haldun cannot be achieved until the narrators of hadith have been studied in some respects; in terms of their righteousness, punctuality, being safe, honest, worthy, capable, etc. such affinities must necessarily be accepted by the competent dieticians of this proven field and of scientific qualities, who were licensed with the consensus to make the assessment, respectively the devaluation of the narrators of hadith (al-Xher'hu ve-t-a'dil) . The positive

and negative assessment of the narrators of the hadiths, on the other hand, is evidence for us if the hadeeth can be accepted or refused. He also spoke about the ranks and levels of the narrators from the "Companions" and the "tabi", for the differences and for their superior aspects, for the non-interruption, or the termination of the narrator's verse. As could be the defect in transmitting hadith from the transmitter who had no real chance to have met the transmitter from which the transmission was referred to. Hadith not been transmitted with elements that adversely affect his acceptance, etc. (Ibn Haldun, 1984).

1.2. Use of terminology

Ibn Haldun also talked about the terminology used by muhaddīnīs (the scholars of hadith), the codification and leveling of hadīths such as "sahih, hasan, daif, mursel, munkati, mu'dal, "Shadh", "garib" and so on. It has been said that scholars of hadith have set criteria and standards for each category of humans. He underlined the dilemmas and contradictions of the most eminent imams of this field, the language they have used, the harmonization of their approaches and approaches in this area, the way of their interaction, the advanced means of accepting and transmitting hadiths. For the findings, dilemmas and harmonization of attitudes regarding the acceptance or rejection of the narrations of hadiths. It has emphasized the fact of using terminology in the content of the texts of hadiths; "Garib", "mushkil", "tas'hif", "mufterik", "muhtelif" etc. This terminology, as Ibn Haldun underlined, has made a great deal of access and serious attention to the vast majority of Hadith scholars (muhaddithines). (Ibn Haldun, 1984).

1.3. The study of hadith from a provincial perspective

The study of hadith during the "salaf" period of the "Companions" and "tabiyyahs" - as Ibn Halduni underlined - was based on the basis of the provincial principles of the most prominent scholars of the era of hadith when they lived, those of Hijaz (Mecca-Medina), Basra, Kufa, Iraq, Sham, Egypt, and so on.

The most dignified, meticulous, most accurate and standardized approach to the study of the "sened" of hadith from the aspect of imposing criteria and the acceptance of hadith was the scholars of

Hijaz. The bearer of that methodology was later the well-known scholar and scholar, the imam of Medina - Malik, Imam Shafi'i, Imam Ahmad, and so on. (Ibn Haldun, 1984).

1.4. The Origins of Shari'a Science

The Shariah sciences at this time release according to Ibn al-Haldun were based on verbal narrations of the "Salaf" from the "Companions" and "tabiyyahs". The scholars and scholars who followed them were to make ivory and exploration of authentic ahadith (saheehah). In this context, Malik had compiled the "al-Muvatta" deed in which he laid the foundations of shari'a-based provisions based on hadiths for which there was the concience of their authenticity. Whose codification had made them on the basis of the principles of selection according to the structure of fiqh science. Introducing hadiths transmitted through different ways with various "senede". The same hadith had been introduced in the chapter but with other transmitters. Depending on the meaning of the word of hadith, the same hadith has been used in various chapters.

Ibn Haldun also spoke of the developments of the period of Bukhari, considered the leader and imam of all the "muhaddithines," who had made the (tahrixhin) of hadiths according to the principles of the fiqh science's structure. According to Ibn al-Haldun, this erudite of the science of hadith had filed hadiths according to the chaplain of the chapters, so that he had introduced the means of transmitting hadith from transmitters of Hijaz, Iraq, Sham. It was based on broadcasts that existed consensus about their authenticity. Bukhari, according to Ibn al-Haldun, repeated the hadeeth in the chapters in accordance with the meaning of the content of the hadith of the corresponding chapter. As it is stated, Ibn Haldun asserts that Bukhari's summary has included 9200 hadiths, 3000 of which he repeated. Then he talked about the fact that after the Bukhari appeared Muslim, who had compiled a collection known by his name, which he had done similar to the principles of Bukhari, was based on narrations for which there was a consensus on their authenticity but had not done the recitation of hadith as al-Bukhari, not including the latter all the authentic hadiths (saheehah) in his collection. For the fact that many other Authors of Hadith (saheehah)

who fulfilled the criteria of Bukhari and Muslim have presented them in their summaries, which the two previous authors did not include in their summaries. Then he also talked about collections known as "Sunen" that of Abu Dawud, Tirmidhi and Nisai. It has been said that in comparison with the two behind-the-scenes authors (Bukhari-Muslim) these were more tolerant in terms of conditionality. According to him, in his summaries, these had recorded hadiths of authentic category (sahih) and of "hasen" category. In the sense of expanding as much as the space of sealing on the basis of prophetic hadith. These works, according to him, are widely known in the broader Islamic opinion as a summary (basic sources) of Hadith, namely the Sunnah. On the other hand, Ibn Halduni underlined the fact that many Islamic scholars (muhad-dithian) have designed capital works in various fields known as "Ulum al-hadith - limbs, discipline, or the science of hadith. He emphasized the contribution of Abu Abdullaah al-Hakim. The most eminent among the "muteehhirins" has put Abu Amir Ibn Salah and his al-Mukaddim work on the mouth. He then talked about Nevevi's scientific contribution that left behind this great scholar of the science of hadith.

He has also underlined that the hadiths of Bukhari's summary are of the highest degree from the aspect of their authenticity, so as he concluded it was not easy for those who dealt with the explanation and commentary of hadiths of Bukhari's compilation. By transmitting the findings of many of his teachers, Ibn Haldun has underlined that the explanation, or commentary of the Bukhari summary is a matter of religious dimension in the sense that no one has so far managed to make its commentary on the level that she deserves. And it can be understood that Bukhari's collection continues to be the subject of exploration of many enigmatic aspects with scientific effects.

At that time, according to Ibn al-Haldun, the hadiths were ranked in authentic (sahih), hasan, daif, ma'lul, and so on. The hadith scholars knew the hadith through the streets and the "seneds" of the broadcast. So if the hadith was transmitted outside the relevant standards, it was alarmed that the hadeeth had undergone changes. In this context Ibn Haldun mentioned the case of Bukhari on the occasion when the people of Baghdad wanted to try them by asking questions about hadiths with changed senes.

He replied that with these hadiths "senede" I do not know warning them of changing the "senedeve". (Ibn Haldun, 1984)

Ibn Haldun's capacity in religious sciences

Although internationally Ibn Halduni is known as the founder of contemporary sociology and as a proven historian, the record tells that he was a prominent expert in religious sciences. The autobiography of the Messenger of Allaah (sallallaahu alayhi wa sallam) and his teachings were manifested in all pores of life, not far from Ibn Haldun's thinking. Ibn Haldun's spiritual leader continued to be Imam Malik b. Anas. As noted in his biography, Ibn Halduni has six consecutive mandates to administer the tribunal in Egypt. As the juridical school (medhhab) is known maliki belongs to the direction of hadith. To be a judge in accordance with the standards of this juridical direction, the judge should have thorough knowledge of the science of Hadith (Sunnah).

The one who studied his thoughts clearly notes the close ties between Ibn Haldun's thoughts and the general political system, the ruling system in particular, and his connections to the Sunnah and the Qur'an. So when Ibn Haldun speaks about historical thought about urbanism (ilmu-l-imran) or political thought, it is based directly on the Qur'an, the Sunnah, and the prophets' narratives. From here it is clearly seen that the story of the Messenger of Allaah (sallallaahu 'alayhi wa sallam) had the proper extension of the opinion of Ibn Haldun. From the point of argumentation, referral, or comparison, Ibn al-Haldun always invites in the practical application and in the incarnation of all that the Messenger of Allah (salallaahu 'alaihi wa-l-em) communicated.

Conclusion

As a conclusion from what was emphasized above it can be concluded:

1. Speaking of the disciplines or limbs of the science of Hadith, Ibn Haldun has ascertained the fact that they are multifaceted and very numerous. Of them he mentioned the recognition of the discipline "Nasihi vel mensuh", the knowledge of the channels of transmission, the accuracy of the narrators and their righteousness, the recognition of the discipline "al-xhaehu ve-t-a'dil", the division of hadiths.

2. Ibn al-Haldun's studies of Hadith Science were based on many sources with a special emphasis on the work of Shaf'i "Er-risale" in Hafidh Abdullah's al-Kifahat fi-l-hadith "b. Zubair, in that of al-Bukhari 'al-Jamiu-s-ahih' of Hafiz b. al-Hajjaj, Tirmidhi, Nisai, Darimi, Dimeshki and others.

3. In addition to the many sciences in the work of Ibn al-Haldun al-Mukaddima, there has also been an approach to Hadith Science.

4. His existence in Egypt as a court administrator speaks of Ibn Haldun as a judge necessarily having profound knowledge of the Science of Hadith, which has made it suitable for judges.

BIBLIOGRAPY

1. Abdurrahman, Abu Zayd, Ibn Haldun, Mukaddimenu Ibn Haldun: Daru-l-kalem, Beirut, Lebanon, Fifth Edition, 1984, 440.

2. Al-Askalani, Ahmed b. B. Haxher, Fef'hu-l-bari sherrhu sahihu-l-buhari: Daru-l-ma'rife, Bejrut, 1379.

3. Al -Vad, Sulejha, Mesadiru Ibn Haldun fi-l-mukaddimedi ulumu-l-kur'an ve-l-hadith en-nemuthexhen: Algeria, 2014, 131.

4. En-nuajmi, Abu Hafs Mahmud b. Ahmed, Tejsiru mustaaleha-l-hadith: Mektebetu-l-mearif li-n-ash-ve-t-evzi, tenth publication, 2004/1425, 14, 21.

5. Es-sejuti, Abdurrahman b. Abi Beker, Tedribu-r-avi fi sher'hi-n-evevi: Daru-t-ibaa.

6. This is a bitch, Hajruddin b. Mahmud, al-I'lam: Daru-l-ilm lil melayin, fifteenth edition, 2002.

AN EVALUATION OF GENOCIDE-THE GENOCIDE CRIME

*Emina Karo, p. 49-59

September, 2017; 2 (2)

ABSTRACT

Genocide crime was through the history of humanity. Genocide crime is known as a crime of crimes,and internationally wrongful act. Because crime's intent is to destroy group of people in whole or in part. Unfortunately, this crime is continuing with increasing and becomes one of the main crimes of nowadays. Therefore there is a constant need to deal with this crime. This crime needs to be seen as a big problem in the world and to be taken as a interdisciplinary crime. It is obligation for international community, international organizations and law to take more active role in this field as well. This crime has a specific challenges for a convintion. Genocide Convention should be more wide-reaching, especially about some crimes, commited to acultural and social groups. State responsability for genocide must be involved in national legislations, without exceptions.

This study provides reflections on Genocide Convention adopted in 1948, the genocide trials and implementations, punishing genocidaries, evaluating the genocidial situation.

Key words: Genocide, Genocide Convention, International Law, Court Cases

***Assoc.Prof. Emina Karo PhD**

International Vision University, Faculty of Law, Republic of Macedonia

e-mail:
emina.karo@vizyon.edu.mk

Article type:
UDK: 341.485:341.645

Article type:
1.02 General scientific articles

Date of received:
June 29, 2017

Date of acceptance:
July 25, 2017

Declaration of interest:
The author reported no conflict of interest related to this article.

1. INTRODUCTION

During the history the genocide crime is based on the religious papers, with a lot of examples as a Egyptian pharaohs against Jews, on the Middle East against the Muslims, cases in North and South America, India and examples from near past as Cambodia, Bosnia and Herzegovina, Ruanda (Drino, Londrc:2016:175). Currently there is a frightening example of Arakan's Muslims in Burma. The crime of genocide caused substantial damages to humanity. Because of that, this crime needs to be examined by large number of researchers and theorists.

According with the recent changes, there are various different concepts of genocide. Some of examples are: the urban crime (urbicide), the environmental massacre (ecocide), the political crime (politicide), the female massacre (femicide), etc.(G. Basiç, 2015:102-105).

Considering the future tasks for national and international law which percious genocide as a crime, it is important to underline the fundamental and universal duty of law which sees genocide as a crime. This task is to limit human behavior in accordance with organizational or legal system of consequences.

Father of the Genocide Convention is the Polish-Jewish jurist *Raphael Lemkin*. Lemkin remains obscure in the history of international law. For the evolution of the genocide concept therewere discourses, one was a social ontology of "groupism" prevalent in the Eastern European context in which Lemkin was raised. The second was the western legal tradition of international law critical of conquest, exploitative occupations and aggressive wars that target civilians (A. Dirk Moses, 2010:22).

Genocide crime was declared as international crime by the General Assembly of the United Nations with Convention on the Prevention and Punishment of the Crime of Genocide (so called Genocide Convetion) adopted on 9 December 1948(M. Koca: 2010:7).

Article 2 of the Genocide Convention provides list of acts which might to lead genocide. (UN:1948).

> *1.Killing members of the group; 2. Causing serious bodily or mental harm to members of the group; 3.Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; 4. Imposing measures intended to prevent births within the group; 5.Forcibly transferring children of the group to another group.(UN:1948).*

The Convention genocide has a three specific elements. First one is group (national, ethnic, religion, national groups, but social or cultural groups are not included. Second one is list of acts in Article 2 and *dolus special* – special intent to destroy a group. Mens rea and special intent to destroy a group are looked at separetly. All of the acts has a distinct consequences. For example forcibly transfering children of the group to another group si typically biological genocide.

Genocide is a crime based on "dehumanise of the victims." So in this crime, the victim is not targeted because of his individual characteristics or character, but just because belongs to a group (B. Petrovic, D.Jovasevic, 2010: 235).

Customarry rules of genocide impose erga omnes obligation, furthermore, those rules now form part of *ius cogens* or the body of premptory norms; it means that states may not be derogated from these rules by international agreement (G. Getsadze, 2010:4).

The definition of genocide in Article 2 of the Convention, was unchanged adopted by international court organization such International Criminal Court for Rwanda, the International Criminal Court for the Former Yugoslavia and most recently in development of genocide as a legal norm has been establishment adds the elements of crime ofthe International Criminal Court Statute adopted at the 1998 Rome Conference.

The influence of the favorable atmosphere created by the duties of the Nuremberg and Tokyo courts, was asscelator for establishing a permanent criminal court (C. A. Ekşi: 2004:4). The proceedings of the former Yugoslavia and Rwanda Courts, made a very good contribution to the reasoning of genocide crime.

One of the element for sucesuful international criminal law are the effective santicons and their complience for crimes such as genocide, crimes against humanity and war crimes that profoundly affect the international community (Y.Aksar, 2003:163).

The importance of the Genocide Convention probably can be found not so much in its contemporary potential to adres satrocities, something that is largely superseded by more modern texts, but historic contribution to the struggle for accountability and the protection of human rights (W. A. Schabas, 2010:34)

A.Weiss-Wendt defines genocide as intricately linked to the idea of the modern state, despite a body of scholarship that questions that link. Non – state actors such as radical political parties or armed militias are usuallty

incorporated into the governing structure and therefore rarely preform on their own. The state may deliberately use them as proxies to obfuscate the decision-making process and thus to shift responsability for the crimes commited.

2. METHODOLOGY AND SCOPE

In this study literature reserach and court decisions were examined. Study does not include any empirical research methods. The research is based on the Genocide Convention, other documents adopted by the United Nations. Besides the other documents, international courts caseses related to this crime will be analyzed. Study will be focus on the limited number of cases. After that will be made general assesment of the genocide crime.

3. AN ANALYSIS OF GENOCIDE

Genocide was drafted as a crime under international law, not as a crime against international law in its draft and contractual texts. This distinction is very important. Because it is organized as a crime under international law, it reveals the responsibility of natural persons. If it had been regulated as a crime against international law, it would not be possible to impose any liability or accusation on the individual, since the natural persons were not considered to be the subject of international law. Because, in developing international law, although there are trends in the way that real persons become international ones, the international legal personality of real persons is not fully accepted yet. For this reason, the act of genocide is organized as a crime according to international law, and on this account, real persons will be able to avoid punishment.

The problems that constitute the genocide's essence transcend the consideration of the fate of individual victim groups or a particular perpetrator-victim relationship. Alleviating all of these problems, even if not eliminated, depends on the further development of international law, which constitutes the basis of all human rights, including the rights of potential or genuine victims of genocide.

Genocide crime compared to other international crimes, has a unique and special character. This means that the genocide crime is different. Establishing a pyramid-like hierarchy among international crimes and placing genocide on top of the crime may be disrespectful to the victims first of all to privatize the victims' sufferings according to legal principles (C.Fourent, 2007:1).

It is also a fact that the crime of genocide is an act based on the destruction of groups of people, which makes the existence of mankind in danger. Since a certain group is aimed to be removed from the world, that'means humanity and civilization as a whole will be destroyed (Tezcan, Erdem, Önok, 2006:51).

4. GENOCIDE IN THE TRIAL

By the time genocide was applied for the first time by international criminal tribunals, courts found themselves confronted not only by the weighty historic legacy that marked its inception but also by the range of emotional and political connotations it had been charged with since (T. Forster, 2012:7)

The Nuremberg and Tokyo Courts are the first such courts to be established in this way and have set an example for subsequent judgments and for the establishment of other courts. In fact, when the authorities do not apply within the scope of a coherence in the case of a series of mass murders that have reached the highest point of the genocide, the unpunished criminal group can obtain the impulse necessary to repeat the crime against the same or a new victim.

Ad hoc courts are very important for international criminal law. Some of the cases like Ruanda Court *Akayesu Case which was a first judical* decision for a genocide crime by an interanational tribunal, that decision forcibly transfering children of the group to another group as act is not only taken, at the same time threats of the forced transfer are evaluated (V. N. Akün:2004: 63).

Examples of cases contribute to the understanding of the material element (actus reus) also. It is clear that, membership responsibility in the group is not sufficient for this position to be established alone. Some actions

according with plan and realizing must be carried out. Here direct and indirect participation is sufficient (Cryer, Friman, Robinson, Wilmshurst, 2009:306).

During the international trials, courts taken into account that people were killed, apart from perpetrator's special intent to destroy (T, Alpyavuz, 2009: 55).

It has been argued that in the genocide cases the level of the spiritual element expressed as special intend must be "dolus specialis". In fact, some writers claim that mens rea is both general and special, and some writers argue that special intend is a separate element. In this regard, the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunals for Rwanda also stated that the mens rea was a purely intentional act, not a separate element of private custody.

The Cambodian case shows that the destruction intended for such groups not covered by the current definition does not necessarily differ in its quantitative or qualitative dimension in comparison to the destruction intended for groups taht fall within the enumarated group types. In terms of the damage intended and caused there is little to differentiate between the treatment of groups fall within or outside the definition of the crime. Yet, the legal qualification strongly differs.(T. Forster, 2012: 223).

Many interpreters of the crime of genocide have foreseen the crime of genocide as a plan, or at least a joint activity, through which the criminally involved individuals or groups participate through their relations. Contrary to this view, ICTY in case the Prosecutor vs Goran Jelisic noted: "that existence of a plan or policy, is not legal ingredient of the crime". (Jelisic Case No:IT-95-10-T:1999:48). But sometimes existence of plan or policy are required(A. Casesse, 2008:140).

If the group destroyed evidences are unnecessary. If one of the acts constituting the crime of genocide is proved to be accompanied by a special intent element, the perpetrator can be tried and punished for the crime of genocide (Mitrovic Case No:-X-KR-05/24-1: 2009).

When the crime of genocide is tackled, there is also evidence that the person charged with the intent to destroy a criminally committed group is one whose intent is to destroy the national, ethnic, racial and religious groups (Trbic Case No: -X-KR-07/386:2010).

Ad hoc courts have taken the term killing synonymously with killing or registered murder (there is also an area left for intentional homicide, as the saying that killing criminal elements may change by causing death)(W. Schabas, 2009:98).

International criminal courts need to make decisions based on compelling legal arguments. Applying general principles to law is an effective way to strengthen legal causality (F.Radimondo, 2008:74).

5. STATE AND INDIVIDUAL RESPONSABILITY IN CRIME OF GENOCIDE

The rapid developement of international criminal law, its institutions and the resulting jurisprudence have initiated a more conscious approach to international crimes in general and genocide, in particular (T. Forster, 2012: 221). The international law has established mechanisms, which are helpful for invoking state responsability.

Responsability of individuals and their punishment for international crimes became one of the fundamental principles for responsibility for internationally wrongful acts. The "shield" of state was taken from indviduals. For international crimes both state and individual become equally responsible (G. Getsadze, 2010:70).

Even though the crime of genocide is seen as possessing characteristics of a collective crime, criminal responsability for it can be attributed to individuals.

For instance, from practical perspective, individual responsability may influence subsequent determination on state responsability. Fact, that individual responsability can influence and lead to state responsability, does not mean that responsability of the state for genocide might be proven without proving individual liability of this crime (G. Getsadze, 2010:9).

In the *Gelisic case* about the existence plan or politics of genocide, Former Yugoslavia Court stated that individuals' crimes of genocide would occur theoretically possible, without having to be organized or planned by a state or similar entity(Değirmenci,2007:97).

For example, a state is responsible for an act of genocide committed by its de jure organs, say a military unit, even if these organs act ultra vires or in contravention

of instructions.82 In such a case the state leadership would not possess genocidal intent – far from it – but the state would still be responsible for the commission of genocide. The issue does get more complicated when we are dealing with de facto control as a basis for attribution, which will be dealt with in more detail below, but the same principle still applies. It is the fact of control that is dispositive, not any shared intent, the proof of which would be even more difficult than establishing the individual criminal responsibility of the direct perpetrators(M. Milanovic, 2006:568).

Unfortunately, the International Court of Justice developed such a high threshold for state responsability that it has been considered a pyrrhic victory. It only covers the most serious acts of state responsability and requires a very high standard of proof. The Court limited itself to an analysis which heavily drew from international criminal law when it considered the violation of the Convention. It dealt with state responsability, not with criminal responsability, but factually applied criminal law standards and thereby missed part of the obligation under the Convention (A.Seibert, Fohr, 2010: 258).

6. CONCLUSION

When we deal with the latest developments, the Genocide Convention has a some deficinceies. This means that is need to make some additions to this contract by United Nations. Such as culture crime and political crime can be good examples.

The Genocide Convention restricted the concept of genocide to the destruction of “national, ethnic, religious and racial” groups. The Statute of International Criminal Court reproduced this definition. Many states have used this definition in their national legislation, others have changed the definition of genocide in their national legislation, making it too broad or too narrow in response to international law. First, many national laws have expanded the groups to be protected; for example, political groups, social groups and various other groups that are not included in the convention.

Secondly, several states have broadened the category of genocide protection so that it can be defined according to criteria of choice. Finally, there are also states that do not extend or even narrow the definition of genocide in their national legislation. Some examples like Bolivia removed racial groups from the genocide act, El Salvador and the Czech Republic ethnic groups and Nicaragua removed racial and nacional group.

This means that Convention should be more wide-reaching, but some of

the more crucial points like groups etc. Must be forbidden for removing from Convention by the states in their national legislations.

The genocide is a matter to be dealt with by different sciences. According to encountered events this kind of crime can not be limited with one science. Regulations about genocide on the international level have not been effective enough. Recent observations in Bosnia and Herzegovina, Rwanda and the latest in Arakan confirm this finding. For this reason, the UN Genocide Convention needs to be expanded with new provisions. For example, ethnic cleansing should be considered as a crime of genocide.

Genocide convention is very important document for state responsability. This directed for International Criminal justice and his responsability of the states for genocide. *It was deficient because ICTY and ICTR statutes involve just individual criminal responsability.*

Especially crimes like genocide, commited by individuals or the state to international courts and uristidiction need to be empowered. State responsability for genocide is very problematic, stil states are able to claim against other state, which has commmited genocide.

Justice is the basis of the freedom, welfare, prosperity and eqality. But to get justice is a possible just with fail trial. It's the best instrument for stoping this crime of crimes and destroying of the groups and civilazitions in the whole.

7. BIBLIOGRAPHY

1. Antonio Cassese, International Criminal Law, (2008), Second Edition, Oxford University Press.
2. Alexander Zahar, Göran Sluiter, International Criminal Law, (2008), A Critical Introduction, Oxford University Press.
3. Anja, Seibert-Fohr, "The ICJ Judgment in the Bosnian Genocide Case and Beyond: A Need to Reconceptualise?",(2010), The Genocide Convention Sixty Yeras After İts Adoption, Ed. Christoh Safferling, Eckart Conze, T.M.C. Asser Press
4. Anton Weiss-Wendt, "The State and Genocide"(2010), The Genocide Convention Sixty Yeras After İts Adoption, Ed. Christoh Safferling, Eckart Conze, T.M.C. Asser Press
5. A. Dirk Moses, Raphael Lemkin, Culture and The Concept of Genocide, (2010), The Oxford Handbook of Genocide Studies, Edited by Donald Bloxham and A. Dirk Moses,
6. Borislav Petrovic, Jovasevic Dragan, Medjunarodno Krivicno Pravo,(2010),Pravni fakultet Univerziteta u Sarajevu, Sarajevo.
7. Canan Ateş Ekşi, Uluslararası Ceza Mahkemesinin İnsanlığa Karşı Suçlar Üzerindeki Yargı Yetkisi,(2004), Seçkin Yayınevi.
8. Caroline Fourent, The Crime of Destruction the Law of Genocide, (2007), Their Impact of Collective Memory, Asgahate Publishing.
9. Dzevad Drino, Benjamina Londrc, " Da li je ratno razaranje gradova zlocin genocida? (2016) Prilozi historiji urbanog razvoja Bosne i Hercegovine u 20. stoljecu, UMHIS, Sarajevo.
10. Frank Chalk, Redefining Genocide, Genocide: Conceptual and Historical Dimensions,(1977), ed. George J. Andreopoulos, Philadelphia: University of Pennsylvania Press.
11. Fabian O, Raimondo, General Principles of Law in the Decisions of International Criminal Courts and Tribunals,(2008),Leiden, Boston, Martinius Nijhoff Publishers.

12. Giorgi Getsadze, International Criminal Law (2010), Danger to Replace State Responsibility by Individual Criminal Liability in Crime of Genocide, Lambert Academic Publishing.

13. Goran Başiç, "Stories of Sexualized War Violence after the Bosnian War" (2015), Femicide. Targeting of Women in Conflict. A Global Issue That Demands Action. V.III, Lund Univeristy, Sweden.

14. Yusuf Aksar, Uluslararası Ceza Mahkemesi ve Uluslararası Ceza Usul Hukuku, (2003), Birinci Baskı, Seçkin, Ankara.

15. Mahmut Koca, "Türk Ceza Kanununda Soykırım Suçu",(2010), Türkiye Adalet Akademisi Dergisi.

16. Milan Milanovic, "State Responsability for Genocide",(2006), The European Journal of International Law V,17 No.3.

17. Olgun Değirmenci: "Uluslararası Ceza Mahkemelerinin Kararları Işığında Mukayeseli Hukukta ve Türk Hukukunda Soykırım Suçu (TCK m.76)",(2007) No: 70,TBB Journal.

18. Rafael Lemkin, Axis Rule in Occupied Europe: Laws of Occupation**,** Analysis of Government, Proposal for Redress,(1944), Washington, Carnegie Endowment for World Peace.

19. Robert Cryer, Hakan Friman, Darryl Robinson, Elizabeth Wilmshurst, An Introduction to International Criminal Law and Procedure (2009), Fourth Edition, Cambridge Press.

20. Semin Töner Şen, Uluslararası Hukukta Soykırım, Etnik ve Saldırı (2010) İstanbul, XII, Levha Yayıncılık.

21. Thomas Forster, The Khmer Rouge and the Crime of Genocide (2012), Dike, Zürich.

22. Tolgahan Alpyavuz, "Soykırım Suçu", Journal of Naval Science and Engineering, 2009, Vol.5, No: 1. Tuzla, Istanbul.

23. Tezcan, Erdem, Önok, 5237 Sayılı Türk Ceza Kanuna Göre Teorik ve Praktik Ceza Özel Hukuku, (2006), Seçkin, Ankara.

24. The United Nations, Convention on The Prevention of the crime of Genocide(1948), also known as the 1948 Genocide Convention.

25. Verda Neslihan Akün: "Uluslararası Hukukta ve Türk Hukuku'nda Soykırım (Jenosid) Suçu",2004, Y.24, MHB.

26. William A. Schabas, An Introduction to the International Criminal Court, (2009), Cambridge University Press, Third Edition.

27. William A. Schabas, "Genocide in International Law and International Relations Prior to 1948"(2010), The Genocide Convention Sixty Yeras After İts Adoption, Ed. Christoh Safferling, Eckart Conze, T.M.C. Asser Press

28. Court of Bosnia and Herzegovina, Prosecutor's Office of Bosnia and Herzegovina, v Petar Mitrovic, First Instance Verdict,(2009), Case No: X-KR-05/24-1.

29. Court of Bosnia and Herzegovina, Prosecutor's Office of Bosnia and Herzegovina, v Milorad Trbic, First Instance Verdict, (2010), Case No: X-KR-07/386.

30. Internatıonal Criminal Court of Yugoslavia, The Prosecutor v. Goran Jelisic, Case No. IT-95-10-T, (1999) Trial Chamber Judgment

FACING TERRORIST THREATS IN PEACE OPERATIONS THROUGH THE PRISM OF INTERNATIONAL LAW

*Hasan Oktay, **Vesna Poposka, p. 61-71

September, 2017; 2 (2)

ABSTRACT

During the long period of self-determination of the peoples and decolonization struggles, terrorism was perceived as a tactic of the weaker side. Nowadays, it is the tactic of asymmetric warfare, recognized as a key security priority to be addressed by both EU and NATO. Peace operations are conducted in different context and with different mandate. Mandate gives the legal base for enacting, especially for those situations that are not completely legally clear, or urge case by case approach. Peace operations can be divided into two main clusters: peace enforcement missions and peace keeping missions. This qualification gives the predominant notion upon the use of force allowed and the applicable law, but it does not provide answers by itself, especially for dealing with counterterrorist threats that pretty often occur within peace operations.

One of the key anchors are the rules for the use of force, since peace operations have pretty often transitional role, and using extra force on micro level can lead to endangering the whole mission on macro level, but there is still lack of comprehensive legal approach. This paper aims to respond the challenge.

Key words: law, terrorism, lethal force, peace operations

;

*Assoc. Prof. Hasan Oktay PhD
International Vision University, Faculty of Law, Macedonia

e-mail:
hasan.oktay@vizyon.edu.mk

**Vesna Poposka, PhD Candidiate
International Vision University, Faculty of Law, Macedonia

e-mail:
vesna.poposka@vizyon.edu.mk

Article type:
1.02 General scientific articles

UDK: 325.86:341.785

Date of received:
July 01, 2017

Date of acceptance:
August 05, 2017

Declaration of interest:
H.O., V.P., the authors reported no conflict of interest related to this article..

1. INTRODUCTION

"Terrorism has been described variously as both a tactic and strategy; a crime and a holy duty; a justified reaction to oppression and an inexcusable abomination. Obviously, a lot depends on whose point of view is being represented. Terrorism has often been an effective tactic for the weaker side in a conflict. As an asymmetric form of conflict, it confers coercive power with many of the advantages of military force at a fraction of the cost. Due to the secretive nature and small size of terrorist organizations, they often offer opponents no clear organization to defend against or to deter" (Terrorism-research.com, 2017). This means that different legal approach has to be applied.

On the other hand, terrorists- both individuals or organizations have not been recognized as subjects of international law. Transnational terrorist activities led to the opening of additional questions, such as the questions of jurisdiction and attribution when considered for criminal and prevention matters. The accurate inclusive environment in which counterterrorist operations are conducted is tough to be simplified to a unique solution and a framework that "fits them all". In the most cases, counterterrorist operations include an allowance for a use of lethal force, that gives utmost sensitivity of the problem and the need for special knowledge and skills of the people that should operationalize orders. After the 9/11 events, the approach to terrorism has changed rapidly. For a first time, terrorist attacks were approached as an act of war.(Cassese, 2005). During the long period of self-determination of the peoples and decolonization struggles, terrorism was perceived as a tactic of the weaker side. Nowadays, it is the tactic of asymmetric warfare, recognized as a key security priority to be addressed by both EU and NATO. Not any country in the world remained immune from this developing security threat. No matter if the basics were religious fundamentalism or ideas of separatism, acts of terrorism are reported on daily bases around the world, all of them bringing different challenges to be faced by the authorities.

2. METHODOLOGY AND SCOPE

The social sciences research spectrum and the legal methods have been applied. The study does not include any empirical research methods. The examination of the treaties is limited to the International Covenant on Civil, Political and Rights (ICCPR), and European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), American convention on human rights· African Charter on Human and Peoples' Rights, as well as the UN Charter and ICJ statute. Other treaties related to the topic arise from the international humanitarian law as separate legal branch.

The state practices will focus on a restricted number of cases in the peace operations on the Middle East, conducted generally by European states and the USA, within the NATO/UN framework.

3. ANALYSIS OF LEGAL DOCUMENTS

There are many different legal documents that address specific forms of terrorism, but not a single comprehensive understanding of the issue. From the state practice, a few approaches can be extracted:

1. Dealing up with terrorism as a crime
2. Dealing up with terrorism in the context of internal armed conflict
3. Dealing up with terrorism as an act of war

For peace operations, counter terrorist operations and the use of force allowed is usually prescribed by the mandate. However, on a micro level, strict Rules of engagement shall be defined in order the whole mission not to be endangered.

Mandate for peace mission is settled by the UN Charter:

The Charter gives the UN Security Council primary responsibility for the maintenance of international peace and security. In fulfilling this responsibility, the Council may adopt a range of measures, including the establishment of a UN peacekeeping operation (UN,1945).

- Chapter VI deals with the "Pacific Settlement of Disputes
- Chapter VII contains provisions related to "Action with Respect to

the Peace, Breaches of the Peace and Acts of Aggression'.

- Chapter VIII of the Charter provides for the involvement of regional arrangements and agencies in the maintenance of international peace and security provided such activities are consistent with the purposes and principles outlined in Chapter I of the Charter.

That's why, a few concepts must be taken into consideration before acting:

- Sources of law
- International public law scheme
- The content of IHL and IHRL
- Main documents, applicability and scope
- IHRL limitations and derogations
- Applicability of international human rights law to armed conflicts
- Extraterritorial application of international human rights law
- The relationship between international humanitarian law and international human rights law
- Human rights and peace operations
- Human rights and serious security situations

This text aims to approach the key founding elements of all the concepts mentioned above.

4. SOURCES OF INTERNATIONAL LAW AND LAW MAKING

Article 38, from the ICJ (International Court of Justice) statute, defines the sources of international law as following (Charter of the United Nations and statute of the International Court of Justice, 2015):

"1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

b. international custom, as evidence of a general practice accepted as law;

c. the general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

This is the general starting point of every legal analysis in the context of international law (Shaw, 2008).

5. INTERANTIONAL HUMAN RIGHST LAW V.S. INTERNATIONAL HUMANITARIAN LAW

International public law shall be divided in two general regimes: Law applicable in peace (IHRL) and Law applicable in war or its equivalent (LOAC/ IHL). LOAC referees to ius ad bellum aspect- the right to "go to war", and IHL refers to ius in bello aspect- the law to be used in war, although they are often used as synonyms. The mutual content of the both regimes, is the concept of protection. The main content of IHL is protection of

1) Combatants:

Soldiers/officers

Others (participants in hostilities)

2) Non-combatants:

Soldiers hors de combat (Sick, wounded, surrendered, POWs)

3) Civilians

- The 4 principles must be taken into consideration: humanity, distinction, military necessity and proportionality

In IHRL (International Human Rights Law), protection means a guarantee for all persons within the jurisdiction of a State (regardless of citizenship) against abuse of power of State authorities, or failure by State authorities to ensure human rights (mainly speaking about civil and political rights) as well as granting ius standi in iudico for the individuals against the states, in order the universality that is achieved as a common value to be maintained.

The main source of IHRL are the main IHRL documents, such as, for example:

The General Treatie (Bair, 2005):

- International Covenant on Civil and Political Rights (UN,1966)
- International Covenant on Economic, Social and Cultural Rights (UN,1966)

The Regional Treaties

- European Convention on Human Rights and Fundamental Freedoms (CoE,1950)
- American convention on human rights (OAS,1969)
- African Charter on Human and Peoples' Rights (OAU,1981)

The Special Treaties, such as for example:

- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- United Nations Convention against Torture (1984)

The starting point for IHRL regime is the idea to prevent states from arbitrary actions against individuals, under the notion that rights that arise from IHRL instruments, are always in power, since IHRL is considered to be lex generalis.

- Art.1, ECHR: The High Contracting parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention.
- Art. 2, ICCPR: Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant…

There are two types of restriction: Limitations and Derogations. Usually their regime shall be defined by the instrument itself. The European Convention on Human Rights provides the most detailed regime above this issue.

Limitations are defined as:

- Prescribed by law
- Necessary in a democratic society
- In the interests of national security, territorial integrity or public safety
- For the protection of public order, health or morals
- For the protection of the rights and freedoms of others
- Ex: Right to respect for privacy and family life, Right to assembly

Article 15 labeled as "Derogation in time of emergency" states that

"…In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision…".

In this manner, convention clearly states that no derogation is applicable on the peremptory norms of the international law, such as the right to life.

On the other hand, main IHL documents are the Geneva Conventions and Additional Protocols, but also specific conventions related to:

- Victims of Armed Conflicts
- Methods and Means of Warfare
- Naval and Air warfare
- Cultural Property

However, LOAC/ IHL are designed to deal up with acting of states, or in such cases when attribution is possible. The international law is missing a coherent legal framework for dealing up with modern terrorism.

Pretty often, there are situations in which both regimes apply, or protect the same type of rights.

This has implications on the allowance of the use of deadly force, especially in counterterrorist operations, and implications for the interpretation of the principles of necessity and proportionality.

Such situations are most typical for peace enforcing and peace keeping missions. In such situations, which legal regime will prevail in which moment, is determinate on case by case analysis.

6. THE EFFECTIVE CONTROL TEST

Generally speaking, the effective control over territory is the prelaminar concept to be taken into consideration, speaking about applicable legal regime.

The International Court of Justice first affirmed the applicability of international human rights law during armed conflicts in its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons:

"The Court observes that the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency." (ICJ,Reports 1996)

In the 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (the 2004 Wall Advisory Opinion), the Court confirmed the applicability of international human rights law to situations of military occupation (ICJ, 2004) A year later, the Court delivered a binding judgment in the case Democratic Republic of the Congo v. Uganda where it applied international human rights law to an occupation citing the findings from its 2004 Wall Advisory Opinion.

"The Court first recalls that it had occasion to address the issues of the relationship between international humanitarian law and international human rights law and of the applicability of international human rights law instruments outside national territory in its Advisory Opinion of 9 July 2004 on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory…It thus concluded that both branches of international law, namely international human rights law and international humanitarian law, would have to be taken into consideration. The Court further concluded that international human rights instruments are applicable 'in respect of acts done by a State in the exercise of its jurisdiction outside its own territory', particularly in occupied territories" (ICJ,2000).

The European Court of Human Rights also refers to the effective control of a territory for the application the European Convention, although does not

speak in one voice- the Bankovic case as an exception.

The Inter American Commission of Human Rights has taken the following position:

"In principle, the inquiry turns not on the presumed victim's nationality or presence within a particular geographic area, but on whether, under the specific circumstances, the State observed the rights of a person subject to its authority and control."

The relationship between international humanitarian law and international human rights law can be considered through three prisms:

- The lex specialis approach
- The Complementary and Harmonious approach
- The interpretive approach

The three approaches are taking into consideration the combination of IHL/ IHRL.

(See further: on Human rights and peace operations- the Al Skeini case against the UK in front of the ECHR; On human rights and serious security situations -Case of Finogenov and others v.s Russia).

7. CONCLUSION

The complexity of the modern society has to be understood. The effects of globalization are yet to arrive, although they have changed the world as it has been known so far. The law and legal order have to adapt quickly to the changes that arrive, so they can anticipate positive changes instead of trying to deal up with dangerous precedents. In the meanwhile, the current legal knowledge shall be applied in the most appropriate way, in order negative precedents not to be formed.

The role of the media and influence of the public opinion in the decision making processes should not be underestimated. However, for the purpose of the protection of the right to life, it can be used as an advantage, if both journalist and non-governmental organization keep to urge for transparency, democratization and due process of law.

Holistic approach in peace operations is the only way to make the efforts effective. That' s why, for the challenge of dealing with counterterrorist threats in peace operations, two general notions must be kept in mind:

- Case by case approach is needed for dealing with the complex security environment.
- A balance between security needs and human rights needs is essential, but though to be reached.

8. BILBIOGRAPHY

1. *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice (ICJ), 9 July 2004, available at: http://www.refworld.org/cases,ICJ,414ad9a719.html

2. Bair, J. (2005). *The International Covenant on Civil and Political Rights and its (first) optional protocol.* Frankfurt am Main: P. Lang.

3. *Case Concering Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda); Request for the Indication of Provisional Measures*, International Court of Justice (ICJ), 1 July 2000, available at: http://www.refworld.org/cases,ICJ,3ae6b6e14.html

4. *Cassese, A. (2005). International law.* Oxford: Oxford University Press.

5. *Charter of the United Nations and statute of the International Court of Justice. (2015). New York, NY: United Nations Publications*

6. Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: http://www.refworld.org/docid/3ae6b3b04.html

7. International Court of Justice Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, available at: http://www.refworld.org/cases,ICJ,4b2913d62.html

8. Organization of American States (OAS), *American Convention on Human Rights, "Pact of San Jose", Costa Rica*, 22 November 1969, available at: http://www.refworld.org/docid/3ae6b36510.html

9. Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/ LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at: http://www.refworld.org/docid/3ae6b3630.htm

10. Shaw, M. (2008). *International law*. Cambridge: Cambridge University Press.

11. Terrorism-research.com. (2017). *Terrorism Research - What is Terrorism?*. [online] Available at: http://www.terrorism-research.com/

12. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: http://www.refworld.org/docid/3ae6b36c0.html

13. UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: http://www.refworld.org/docid/3ae6b3aa0.html

14. UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at: http://www.refworld.org/docid/3ae6b3940.html

15. UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: http://www.refworld.org/docid/3ae6b3a94.html

APPLICATION OF THE COMPUTATIONAL GEOMETRY IN LINEAR OPTIMIZATION

[*]Muzafer Saračević, [**]Aybeyan Selimi, p. 73-88

September, 2017; 2 (2)

ABSTRACT

Computers have an important role in the automated construction and production of various items and objects today. The production process is a mathematical model that develops methods for the best outcome. These models are formulated as the maximization or minimization of some target function along with given constraints and can also be observed as problems of computational geometry. Computational geometry develops efficient algorithms for optimizing these models. Computer models can be created based on objects that really exist or some imaginary object. In practice, experimenting with created models is make with imaginary objects because experimenting with them is easier than with a real object. In this paper, is given prune and search algorithm which is represents an example relation between linear programming and computational geometry.

Keywords: linear programming, feasible region, optimization, convex polygon.

[*]**Assoc. Prof. Muzafer Saračević PhD**

International University Novi Pazar, Novi Pazar – Serbia

e - posta: muzafers@uninp.edu.rs

[**]**Phd.Cand. Aybeyan Selimi**

International Vision University, Faculty of Informatic, Gostivar - Macedonia

e-mail: aybeyan.selim@vizyon.edu.mk

Article type:
1.02 General scientific articles

UDK: 519.852

Date of received:
July 5, 2017

Date of acceptance:
August 10, 2017

Declaration of interest:
M.S, A.S., the authors reported no conflict of interest related to this article..

1. INTRODUCTION

Linear programming is a branch of mathematics that deals with the technique for the optimization of a linear objective function, subject to linear equality and linear inequality constraints. The problem of linear programming is introduced from Leonid Kantorovich in 1939 as a method of solving the problem expenditures and returns to the army and increase losses incurred by the enemy. Also, in the United States, linear programming was developed during the Second World War primarily for problems of military logistics, such as optimizing the transportation of military and equipment to convoys. Linear programming as mathematical model is used in field of computational geometry. Computational geometry is a part of the field of algorithms and deals with the development and analysis of efficient algorithms and the structure of data suitable for geometric problems. As synthesis of geometry and computer sciences, computational geometry develops thanks to problems and applications, first of all in computer graphics, computer vision, robotics, databases, geographic information systems, Computer Aided Design / Computer Aided Manufacturing (CAD/CAM) systems, molecular biology, etc. Some of the concrete applications are applications in virtual reality, planning of movement, drug design, fluid dynamics, etc. The field of computer geometry usually deals with problems in the Euclidean plane or space and implies the availability of elementary operations such as: checking whether the point belong to line or circle, checking intersection of the lines or line segments [de Berg et al., 2008 :2]. In the introductory section we will give an overview of the optimization, focusing especially on convex optimization.

The mathematical problem of optimization, or just the problem of optimization, is problem from the following form

$$\min f(x) \tag{1.1}$$

Subject to $f_i(x) \le b_i \quad i = 1,...m$

The vector $x = \left(x_1, ..., x_n\right)^T$ is a optimization variable of problem, the function $f : \mathbb{R}^n \to \mathbb{R}$ is the objective function, the functions $f_i : \mathbb{R}^n \to \mathbb{R}$, $i = 1, ..., m$, are the (inequality) constraint functions, and the constants $b_1, ..., b_m$ are the limits, or bounds, for the constraints. A vector x^* is called optimal, or a solution of the problem (1.1), if it has the smallest objective value among all vectors that satisfy the constraints: $\forall z \in \mathbb{R}^n$ with $f_1(z) \le b_1, ..., f_m(z) \le b_m$ we have $f(z) \ge f\left(x^*\right)$. A set $X = \left\{z \mid f_i\left(z\right) \le b_i, i = 1, 2, ..., m\right\}$ is called feasible region of problem (1.1), and $z \in X$ is feasible point. If $X = \varnothing$ than the problem (1.1) is called infeasible optimization problem. If the objective function of problem (1.1) is unbounded than the (1.1) is unconstrained optimization problem. Usually the families or classes of the optimization problems are characterized with the certain forms of objective function and the functions of constraints. As a special case, the optimization problem (1.1) is a problem of linear programming if the objective function f and the functions of constraints $f_1, ..., f_m$ are linear, that is, the equations

$$\begin{aligned} f\left(\alpha x + \beta y\right) &= \alpha f(x) + \beta f(y) \\ f_i\left(\alpha x + \beta y\right) &= \alpha f_i(x) + \beta f_i(y) \end{aligned} \tag{1.2}$$

for any $x, y \in X \subseteq \mathbb{R}^n$ and any $\alpha, \beta \in \mathbb{R}$. The convex programming problem is the one in which the objective function and the functions of constraints are convex functions, which means that the inequalities hold

$$\begin{aligned} f\left(\alpha x + \beta y\right) &\le \alpha f(x) + \beta f(y) \\ f_i\left(\alpha x + \beta y\right) &\le \alpha f_i(x) + \beta f_i(y) \end{aligned} \tag{1.3}$$

for any $x, y \in X \subseteq \mathbb{R}^n$ and any $\alpha, \beta \in \mathbb{R}$ such that $\alpha + \beta = 1$, $\alpha \ge 0$, $\beta \ge 0$. If we compare (1.3) and (1.2) we can see that convexity is more general than linearity, equality is replaced by inequality, and the inequality must apply only to certain values of α and β. Since the problem of linear programming is simultaneously the problem of convex programming, we can consider convex programming as a generalization of linear programming [Boyd et al, 2005 :8].

The solving method of optimization problem is an algorithm that calculates the solution of the problem to a certain accuracy. The efficiency of these algorithms, that is, the ability to solve the optimization problem (1.1), varies greatly and depends on factors such as certain types of objective function. The solving of problem (1.1) means that one of the following four conditions is fulfilled:

- The optimal solution of (1.1) is found
- It's shown that (1.1) is unbounded from the down on X
- It's proved that $x^* = \inf_{x \in X} f(x)$ doesn't exist
- It's proved that (1.1) is infeasible problem.

2. CONCEPTUALLY AND METHODOLOGICALLY DETERMINATION

The research methodology consists of three sections: Preliminaries, Algorithm and Application.

2.1 Preliminaries

Linear programming is an optimization problem which maximizes a linear objective function under linear inequality constraints:

$$\max f(x_1, x_2, ..., x_n) = c_1 x_1 + c_2 x_2 + ... + c_n x_n \tag{2.1}$$

$$\text{Subject to} \quad \begin{aligned} &a_{11}x_1 + a_{12}x_2 + ... + a_{1n}x_n \le b_1 \\ &a_{21}x_1 + a_{22}x_2 + ... + a_{2n}x_n \le b_2 \\ &\quad ... \qquad\qquad ... \\ &a_{m1}x_1 + a_{m2}x_2 + ... + a_{mn}x_n \le b_m \end{aligned} \tag{2.2}$$

$$x_1 \ge 0, x_2 \ge 0, ..., x_n \ge 0 \tag{2.3}$$

The objective function (2.1) is linear, where c_j, $j = 1, 2, ..., n$ are coefficients x_j, $j = 1, 2, ..., n$ are structural variables of objective function. The opti-

mization problem (2.1) – (2.3) can be written on matrix form as a

$$\begin{aligned} & \max f = c^T x \\ \text{Subject to} \quad & Ax \le b \\ & x \ge 0 \end{aligned} \tag{2.4}$$

$S = \{x \mid x \in \mathbb{R}^n, Ax \ge b, x \ge 0\}$ is set of possible solutions (feasible region) of problem (2.4). Feasible solution $x^* \in S$ for which $f(x) \le f(x^*), \forall x \in S$ is optimal solution of problem (2.4), while $f(x^*)$ is the optimal value of objective function.

Definition 2.1 The set $C \subseteq \mathbb{R}^n$ is convex if the line segment between any two points from C completely lies in C, for any $x_1, x_2 \in C$ and any $\theta,\ (0 \le \theta \le 1)$ we have $\theta x_1 + (1-\theta)x_2 \in C$.

Definition 2.2 A hyper-plane is a set of the form

$$\{x \mid a^T x = b\},$$

where $a \in \mathbb{R}^n$, $a \ne 0$ and $b \in \mathbb{R}$.

Definition 2.3 A closed halfspace is a set of the form

$$\{x \mid a^T x \le b\},$$

where where $a \ne 0$, *i.e.*, the solution set of one (nontrivial) linear inequality.

Definition 2.4 A polyhedron is the solution set of a finite number of linear equalities and inequalities:

$$\{x \mid a^T x \le b,\ c^T x = d\}$$

where $a, c \in \mathbb{R}^n$, $a, c \ne 0$ and $b, d \in \mathbb{R}$.

From definition we obtain that the polyhedron is intersection of a finite number of half-spaces and hyper-planes. Hyper-plane, halfspace and polyhedron are convex sets. A bounded polyhedron is called a polytope. Optimization problem which minimized the linear objective function is the dual problem of (2.4) and can be written in the form

$$\begin{aligned} & \min f = b^T \lambda \\ \text{Subject to} \quad & A^T \lambda \geq c \\ & \lambda \geq 0 \end{aligned} \tag{2.5}$$

2.2 Linear Programming in Computational Geometry

Often in the application of computational geometry, the problems of linear programming appear [Dyer, 1995 :346]. In computational geometry, randomized algorithms are used that give the possibility of treating geometric problems in the general case [Seidel, 1991 :424]. Let $f(x_1, x_2, ..., x_n)$ is objective function of LP problem an let half-space of LP problem is defined by non-zero vector $a_i = \{a_{i1}, a_{i2}, ..., a_{in}\}$ and real number b_i such that $s_i = \{x | a_i^T x \leq b_i\}$ for $i = 1, 2, ..., n$. We partition the set of half-spaces into three sets S^-, S^0 and S^+ such that $s_i \in S^-$ if $a_i^T x < 0$, $s_i \in S^0$ if $a_i^T x = 0$ and $s_i \in S^+$ if $a_i^T x > 0$.

Definition 2.5 $P(L) = \bigcap_{i=1}^{n} s_i$ is the feasible domain of LP problem, and the range of LP problem is

$$\Sigma(L) = \bigcap_{s \in S^0} s .$$

If $P(L) \neq \varnothing$ we said LP problem is feasible, and if $P(L) = \varnothing$ than LP problem is infeasible. A linear programming problem in two dimensions is one which involves only two variables, x_1 and x_2 where each constraint is a half-plane in E^2 [Chen et al. 2002 :158]. In this paper is given the prune-and-search paradigm algorithm who solves a linear program defined by n half-planes in time O(n). The global structure of the algorithm follows the search step who decreases the range of possible solutions, and a prune step eliminates data which is irrelevant in this range [Imai, 1991 :12]. After a

search and a prune step, we simply recur with the smaller set of data until the problem becomes trivial. A prune step is typically straightforward, while search steps require the sophistication for design. The main purpose in a search step is to decrease the range of possible solutions in a way that allows us to eliminate a proportional amount of the data. Thus, a search step consists of two steps which may be iterated a constant number of times: first, we find a suitable test, and second, we answer this test. In our case, a test comes as a vertical line, and we decide on which side of this line we are going to continue the search for a solution. Let with D we denote the set of data (n elements) and with E the range which contain all solutions [Edelsbrunner, 1987 :214]. Bellow is given the algorithm for LP problem in two dimension.

Algorithm 2.1 (Prune-and-search):

if the size of D is at most some constant **then**

Use a trivial procedure to solve the problem.

else

SEARCH: Iterate the following two steps some constant number of

times:

FIND_TEST: Find an appropriate test t.

BISECT: Decrease the range E which contains all solutions by

answering the test t.

PRUNE: Eliminate some subset of D which is irrelevant in E.

RECUR: Repeat the computation for the new sets D and E.

endif.

3. RESULTS

In this section we make the analysis for steps in Algorithm 2.1 and we give a solution of the numerical example with algorithm. To this end, we will look first **the selection problem:** Given a set $S = \{a_1, a_2, \ldots, a_n\}$ of n elements on which a linear ordering is defined, and an integer k, $1 \le k \le n$, find the k-th smallest element in the set. The concept of the prune-and-search paradigm in selection problem consist the following steps:

- $S = \{a_1, a_2, \ldots, a_n\}$ is a set of n elements
- With $p \in S$, the set S is partitioned into 3 subsets S_1, S_2, S_3:
  - $S_1 = \{ a_i \mid a_i < p , 1 \le i \le n\}$
  - $S_2 = \{ a_i \mid a_i = p , 1 \le i \le n \}$
  - $S_3 = \{ a_i \mid a_i > p , 1 \le i \le n \}$
- For partitioned subsets we have this three cases:
  - If $|S_1| \ge k$, then the k–th smallest element of S is in S_1, prune away S_2 and S_3.
  - Else, if $|S_1| + |S_2| \ge k$, then p is the k–th smallest element of S.
  - Else, the k–th smallest element of S is the $(k - |S_1| - |S_2|)$ –th smallest element in S_3, prune away S_1 and S_2.

Let see how the prune-and-search paradigm can be used for develop a linear-time algorithm for the two-dimensional linear programming problem [Megiddo,1984 : 119]. A general two-dimensional LP problem with inequality constraints is given as follows

$$\min c_1 x_1 + c_2 x_2 \tag{3.1}$$

$$\text{Subject to} \qquad a_{i1} x_1 + a_{i2} x_2 + a_{i0} \le 0 \qquad i = 1, 2, \ldots, n$$

The problem is solved if one can illustrate the feasible region satisfying the inequality constraints in the (x_1, x_2)–plane, who represent a convex polygon (see Figure 2.1). Here, instead of considering the problem in this general form, we restrict our attention to the following problem

$$\min y \qquad (3.2)$$

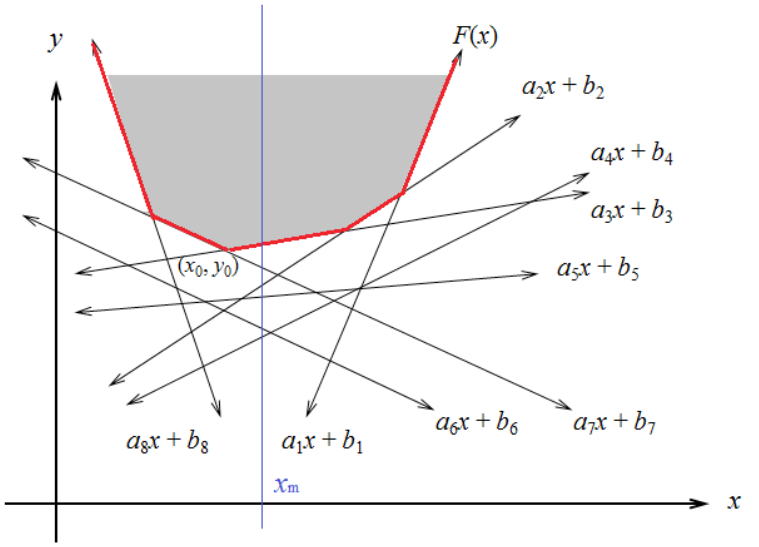
$$\text{Subject to} \qquad a_i x + y + b_i \le 0 \qquad i = 1,2,...,n$$

This is a special problem for linear-time algorithm for the general two-dimensional problem, which is simpler structure for better exhibit the essence of the prune-and-search technique. Figure 2.1 depicts this restricted problem for $n = 8$. Let the problem is defined as above, we define a function $f(x)$ by

$$f(x) = \max\{a_i x + b_i \mid i = 1, 2,..., n\}.$$

Minimizing of $f(x)$ is equivalent to LP problem. The graph of $y = f(x)$ is drawn in red lines in Figure 2.1 an represent a convex function.

Figure 2.1 A two dimensional LP problem



Let we choose the point x_m on x – axis. If $x_0 < x_m$ and the intersection of $a_3x + b_3$ and $a_2x + b_2$ is greater than x_m, then one of these two constraints is always smaller than the other for $x < x_m$. Thus, this constraint can be deleted.

It is similar for $x_0 > x_m$. Let $y_m = f(x_m) = \max_{1 \le i \le n}\{a_i x_m + b_i\}$ and suppose an x_m is known. How do we know whether $x_0 < x_m$ or $x_0 > x_m$? To get answer this question we must look two cases.

- **Case 1:** y_m is on only one constraint and let g denote the slope of this constraint.
  - If $g > 0$, then $x_0 < x_m$.
  - If $g < 0$, then $x_0 > x_m$.
- **Case 2:** y_m is the intersection of several constraints and $g_{\max} = \max_{1 \le i \le n} \{a_i \mid a_i x_m + b_i = f(x_m)\}$ is maximal slope and $g_{\min} = \min_{1 \le i \le n} \{a_i \mid a_i x_m + b_i = f(x_m)\}$ is minimal slop of constraints.
  - If $g_{\min} > 0$, $g_{\max} > 0$, then $x_0 < x_m$
  - If $g_{\min} < 0$, $g_{\max} < 0$, then $x_0 > x_m$
  - If $g_{\min} < 0$, $g_{\max} > 0$, then (x_m, y_m) is the optimal solution.

Now the question arises as to how to choose x_m? Arbitrarily must be grouped the n constraints into n / 2 pairs. For each pair, must be found their intersection. Among these n /2 intersections, must be choose the median of their x-coordinates as x_m.

The prune – and – search approach with Input: $S : a_i x + b_i$, $i = 1, 2, \ldots, n$ (constraints) and Output: the value x_0 such that y is minimized at x_0 subject to the above constraints, consist the following steps.

- Step 1: If S contains no more than two constraints, solve this problem by a brute force method.
- Step 2: Divide S into $n/2$ pairs of constraints randomly. For each pair of constraints $a_i x + b_i$ and $a_j x + b_j$, find the intersection p_{ij} of them and denote its x-value as x_{ij}.
- Step 3: Among the x_{ij}'s, find the median x_m.
- Step 4: Determine $y_m = f(x_m) = \max_{1 \le i \le n} \{a_i x_m + b_i\}$

  $g_{\min} = \min_{1 \le i \le n} \{a_i \mid a_i x_m + b_i = f(x_m)\}$

  $g_{\max} = \max_{1 \le i \le n} \{a_i \mid a_i x_m + b_i = f(x_m)\}$
- Step 5:

Case 5a: If $g_{\min}$ and $g_{\max}$ are not of the same sign, y_m is the solution and exit.

Case 5b: otherwise, $x_0 < x_m$, if $g_{\min} > 0$, and $x_0 > x_m$, if $g_{\min} < 0$.

- Step 6:

Case 6a: If $x_0 < x_m$, for each pair of constraints whose x-coordinate intersection is larger than x_m, prune away the constraint which is always smaller than the other for $x \le x_m$.

Case 6b: If $x_0 > x_m$, do similarly.

Let S denote the set of remaining constraints. Go to Step 2.

There are totally $\lfloor n/2 \rfloor$ intersections. Thus, $\lfloor n/4 \rfloor$ constraints are pruned away for each iteration.

Time complexity: T(n) = T(3n/4)+O(n) = O(n) [Megiddo, 1983 :762]

The general two-variable linear programming problem solution is a procedure of finding piece - wise linear convex function of the x – axis [Preparata et al. 1985 :293]. The problem (3.1) can be transformed by setting $Y = c_1x_1 + c_2x_2$ and $X = x$ as follows

$$\min Y \qquad (3.3)$$

$$\text{Subject to} \qquad \alpha_i X + \beta_i Y + a_{i0} \le 0 \qquad i = 1,2,...,n$$

where $\alpha_i = (a_{i1} - (c_1/c_2))a_{i2}$ and $\beta_i = a_{i2}/c_2$. Depending upon whether β_i is zero, negative or positive we partition the index set on three subsets I_0, I_-, I_+ respectively. All constraints whose index is in I_0 are vertical lines and determines the feasible intervals for X as follows

$$u_1 \le X \le u_2$$
$$u_1 = \max\{-a_{i0}/\alpha_i \mid i \in I_0,\ \alpha_i < 0\}$$
$$u_2 = \min\{-a_{i0}/\alpha_i \mid i \in I_0,\ \alpha_i > 0\}$$

In the other hand letting $-(\alpha_i / \beta_i) \triangleq \delta_i$ and $-(a_{i0} / \beta_i) \triangleq \gamma_i$ all constraints on I+ are of the form

$$Y \le \delta_i X + \gamma_i \qquad i \in I_+$$

so that collectively define a piece – wise linear upward – convex function F+ (x) of the form

$$F_+(x) \triangleq \min_{i \in I_+} \left(\delta_i X + \gamma_i \right)$$

.

Similarly the constraints in I – defines piece-wise linear downward – convex functions F– (x) of the form

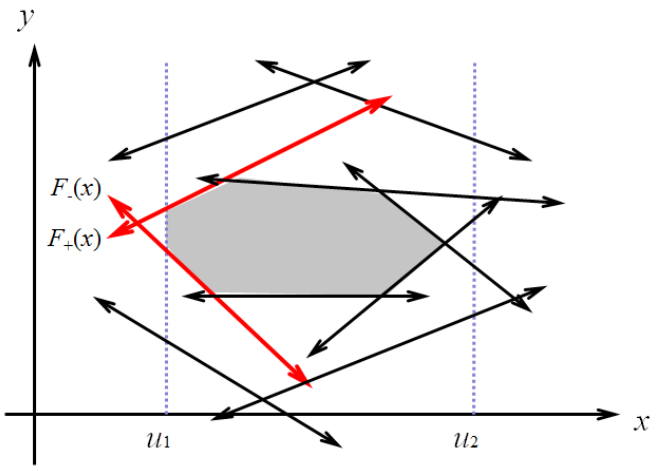
$$. \quad F_-(x) \triangleq \max_{i \in I_-} \left(\delta_i X + \gamma_i \right)$$

In this way we obtain the transformed constraint $F_-(x) \le Y \le F_+(x)$, and since we have minimizing LP problem $F_-(x)$ is our objective function. The problem is

$$\text{Subject to} \qquad \begin{array}{l} \min F_-(x) \\ F_-(X) \le F_+(X) \\ u_1 \le X \le u_2 \end{array} .$$

Let $H(x) = F_-(x) - F_+(x)$.

Figure 2. 2 Ilustration $F_-(x)$, $F_+(x)$, u_1 and u_2 in the reformulation of the LP problem



If we know $x_0 < x_m$, then $a_1x + b_1$ can be deleted because $a_1x + b_1 < a_2x + b_2$ for $x < x_m$.

Define:

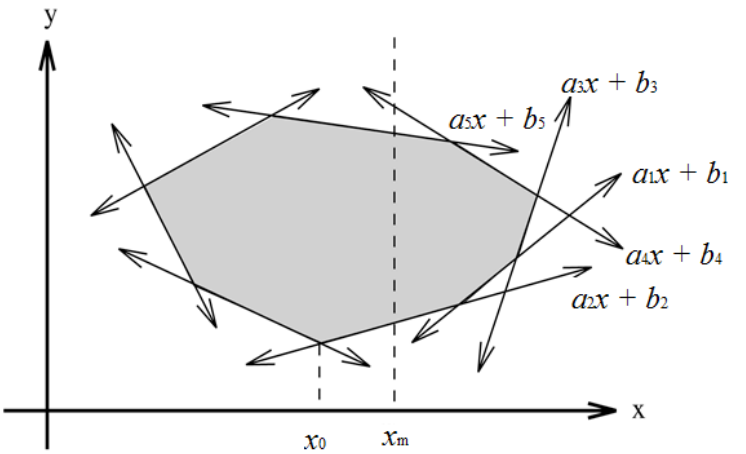
$$g_{\min} = \min \{a_i \mid i \in I_-, a_i x_m + b_i = F_-(x_m)\}, \text{ minimal slope}$$

$$g_{\max} = \max \{a_i \mid i \in I_-, a_i x_m + b_i = F_-(x_m)\}, \text{ maximal slope}$$

$$h_{\min} = \min \{a_i \mid i \in I_+, a_i x_m + b_i = F_+(x_m)\}, \text{ minimal slope}$$

$$h_{\max} = \max \{a_i \mid i \in I_+, a_i x_m + b_i = F_+(x_m)\}, \text{ maximal slope}$$

Figure 2. 2 Ilustration of possible cases for $F_-(x) > F_+(x)$



- **Case 1:** If $F(x_m) \le 0$, then x_m is feasible.
  - If $g_{\min} > 0$, $g_{\max} > 0$, then $x_0 < x_m$.
  - If $g_{\min} < 0$, $g_{\max} < 0$, then $x_0 > x_m$.
  - If $g_{\min} < 0$, $g_{\max} > 0$, then x_m is the optimum solution.
- **Case 2:** If $F(x_m) > 0$, x_m is infeasible.
  - If $g_{\min} > h_{\max}$, then $x_0 < x_m$.
  - If $g_{\min} < h_{\max}$, then $x_0 > x_m$.
  - If $g_{\min} \le h_{\max}$, and $g_{\max} \ge h_{\min}$, then no feasible solution exists.

The prune – and – search approach for general two variable LP problem with Input: $I_-: y \ge a_i x + b_i$, $i = 1, 2, \ldots, n_1$ $I_+: y \le a_i x + b_i$, $i = n_1+1, n_1+2, \ldots, n$, $a \le x \le b$ (constraints) and Output: the value x_0 such that y is minimized at x_0 subject to the above constraints, consist the following steps.

- Step 1: Arrange the constraints in I_1 and I_2 into arbitrary disjoint pairs respectively. For each pair, if $a_i x + b_i$ is parallel to $a_j x + b_j$, eliminate $a_i x + b_i$ if $b_i < b_j$ for $i, j \in I_-$ or $b_i > b_j$ for $i, j \in I_+$. Otherwise, find the intersection p_{ij} of $y = a_i x + b_i$ and $y = a_j x + b_j$. Let the x-coordinate of p_{ij} be x_{ij}.

- Step 2: Find the median x_m of x_{ij}'s (at most $\lfloor n/2 \rfloor$ points).

- Step 3:

  - If x_m is optimal, report this and exit.
  - f no feasible solution exists, report this and exit.
  - Otherwise, determine whether the optimum solution lies to the left, or right, of x_m.

- Step 4: Discard at least 1/4 of the constraints. Go to Step 1.

The general approach given on this paper by Megiddo is applied for minimum enclosing circle of n point set.

4. CONCLUSION & DISCUSSION

Linear programming as a central problem in the discrete-algorithm study plays a very important role in solving numerous combinatorial optimization problems. Because of its various applications in many areas, the problem of linear programming is gaining great attention in the field of computational geometry. Linear programming can also be viewed as computational geometry problems in which the feasible region is the cross-section of the half-spaces determined by their constraints. For these problems, the target function is minimized or maximized in the convex polyhedron field. There are several known problems in computational geometry such as the smallest circle, extreme point, farthest point that are closely connected from the n points in the plane. These problems are considered as problems of linear programming with n variables and in the end dimension $\mathbb{R}^2$ consists of finding a point P which is a convex combination of other n points from $\mathbb{R}^2$. Another problem of computational geometry that is serious for O (n) is the problem of finding the smallest circle enclosing n given points in the plane. In the end we can conclude that the linear programming give good basis for further investigation in the low dimensional space treated in computational geometry.

5. REFERENCES:

1. Boyd Stephen., Vandenberghe Lieven., *Convex Optimization*, Cambridge University Press, 2004
2. Danny Z. Chen , Jinhui Xu Two-variable linear programming in parallel, Computational Geometry 21 (2002) 155–165
3. F.P. Preparata, M.I. Shamos, Computational Geometry: An Introduction, Springer, Berlin, 1985.
4. H. Edelsbrunner, Algorithms in Combinatorial Geometry, Springer, New York, 1987
5. Hiroshi Imai, Computational Geometry and Linear Programming, Algorithms & Architectures: Proceedings of the Second NEC Research Symposium, (1991), 9 – 28
6. M.E. Dyer, A parallel algorithm for linear programming in fixed dimension, in: Proc. of 11th Annual Symp. on Computational Geometry, 1995, pp. 345–349.
7. Mark de Berg , Otfried Cheong, Marc van Kreveld, Mark Overmars, Computational Geometry Algorithms and Applications, Springer-Verlag Berlin Heidelberg, 2008
8. Nimrod Megiddo, Linear programming in linear time when the dimension is fixed, J. ACM 31 (1) (1984) 114–127.
9. Nimrod Megiddo, Linear programming in linear time when the dimension is fixed, J. ACM 31 (1) (1984) 114–127.
10. Nimrod Megiddo, Linear time algorithms for linear programming in R^3 and related problems, SIAM Journal of Computation 12 (4) (1983) 759–776.
11. R. Seidel, Small-dimensional linear programming and convex hulls made easy, Discrete Computational Geometry. 6 (1991) 423–434.

SOCIOLINGUSTICS AND YOUNG LEARNERS SOCIOLINGUISTIC FACTORS AFFECTING YOUNG LEARNERS IN LEARNING ENGLISH LANGUAGE AS A FOREIGN LANGUAGE

*Arafat Useini, p. 89-104

September, 2017; 2 (2)

ABSTRACT

Young Learners in general can be defined as learners in Primary School aging 9-10 years old who are learning English as a Foreign Language. Sociolinguistics is the study of a language to social factors including differences of regional, class and occupational dialect, gender differenced and bilingualism. In this study the relation between language and society will be analyzed and discussed - a branch of both linguistics and sociology. Furthermore, we will specify how the Young Learners learn the English Language using the most effective skills of children's productive use-reading and writing in relation to Sociolinguistics and what are their optimum age of learning, their categories, the advantages of early acquisition of the Second language. A research was applied to check at what size the group of Young Learners' handwriting have improved and in the following, the Social Background Questionnaire was administered to check out at what extend their social background affect to the improvement of their writing. The children have their own characteristics and they are different from adults. They cover their way of thinking, their aptitude. To give the best quality the teachers should know to understand them well.

Keyword: Young Leaners, Sociolinguistics, writing, reading, English as a Foreign Language

***Phd.Cand.Arafat Useini**

International Vision University in Gostivar, Macedonia

e-mail:
arafat.usein@vizyon.edu.mk

Article type:
1.02 General scientific articles

UDK: 37.091.3:811.11T243-053.4

Date of received:
July 2, 2017

Date of acceptance:
August 6, 2017

Declaration of interest:
The author reported no conflict of interest related to this article.

1. INTRODUCTION

Language is one of the most powerful emblems of social behavior. In the normal transfer of information through language, we use language to send vital social messages about who we are, where we come from, and who we associate with. It is often shocking to realize how extensively we may judge a person's background, character, and intentions based simply upon the person's language, dialect, or, in some instances, even the choice of a single word (Wolfram,1991). Sociolinguistics is the study of language in its social context an the study of social life through linguistics (Coupland and Jaworski,1997). The sociology of language deals with mainly broad issues concerning the relationship of language and society. Sociolinguistics is the field that studies the relation between language and society, between the uses of language and the social structures in which the users of language live. It is a field of study that assures that human society is made up of many related patterns and behaviours (Spolsky,1998).

The sociology of language examines interaction between two aspects of behaviours, the use of language and the social organization of behaviour. Briefly put, the sociology of language focuses upon the entire gamut of topics related to social organization of language behaviour, including not only language usage but also language attitudes and overt behaviours toward language and toward language users (Fishman, 1927)

In this study we will look up at features of Young Learners of how they learn the second language in early ages, what are their interests for learning, how they develop themselves in reading and writing in English language etc.

2. RESEARCH METHOGOLOGY

A research methodology is supported by the literature review. Data collection consist of a research applied to check the learners at what size have the group of Young Learners' handwriting have improved. The Social Background Questionnaire was administered to check at what extend does their social background affect for the improvement of their writing.

YOUNG LEARNERS

A child is defined as anyone who has not reached their 18th birthday irrespective of the age of majority in the country where the child is, or their home country (United Nations Convention on the Rights of the Child, 1989). Primary school pupils are children between 6 – 10 years old.

The definition of Young learner (YL) are the children between the ages of about 5 years old to 12 years old. In the British educational system and those in many others countries, this corresponds roughly with the years spent in the primary or elementary stages of formal education before the transition to secondary school. The upper age limit is a convenient one since in many other countries, too, the age of 11 or 12 brings a change from one type of school to a different one or from one department to another within a single institution. Children at about the age of 11 or 12 begin to change in their approaches to many aspects of life and learning including the learning of a foreign language.

As Rivers points out young children "love to imitate, mime" .They are uninhibited in acting out roles, they enjoy repetition because it gives them a sense of assurance and achievement. Young children are physically active. Action songs, dramatization, the colouring and drawing of a pictures, manipulating real objects and puppets, action games likes "Simon Says" etc. are very expressive activities for the young child.

Kindergarten children are set to name things, a fundamental kind of control over and relationship with their environment. Therefore for children of kindergarten activities are lexical with structural items playing a purely incidental a formulaic role.

Language Content

Materials and subject to be used for young children are those which with potential rather than intrinsic. Child things to hold, drop, throw or carry, things to build with, to colour, to wear, to give and take, to hide and find are what matter when the child is growing experimentally in relationship to his environment. The need to name things is best benefitted by learning lexical sets-parts of the body, clothes, furniture, food, toys and animals etc. and this manipulative appeal are supplied by simple drawings and colouring activities.

The natural development patterns of primary school child is suggesting an initial concern for naming things - nouns-and identifying where things are -prepositions - and doing things - verbs - opens up the world of action on role playing.

When there is the sex role stereotyping of the maturing young child - little girls are by nature more interested in dolls and kitchens, little boys are more interested in boats and trains and lorries.

Young learner is put into the position of thinking in English from the very start far more readily than the older beginner. The foreign language grows with him as an active part of his thinking talking and having first encountered English in its oral form he is never likely to regard the spoken word as inferior to print.

YOUNG CHILDREN LEARNING ENGLISH LANGUAGE

The learning of English by young children is by no means as common as at later stages and the nature of the younger learner probably affects content and methods more than with each groups.

THE OPTIMUM STARTING AGE

A second even a third language can be acquired from the earliest ages, without seeming effort or retardation of the mother tongue. This occurs to all normal children, irrespective of levels of intelligence in a situation, therefore, when two or more languages are in natural use, they are best acquired together from the cradle.

Most school experiments determined that starting a foreign language at the age of 8-9 on the one hand does not fail to catch teachable moment and on the other gives time for the basic mother tongue skills to have been firmly established. Ideally a child should not be taught to read and write English before he is literate in his mother tongue and the basic concepts of his first language are normally useful to those of another.

DIFFERENT CATEGORIES OF YOUNG LEARNERS

English for Young Learners (EYL) is a convenient blanket term often used to cover English Language Teaching and Learning to children in a wide variety of situations. The unifying characteristic is that the English being learned is not the native or predominant home-language of the learners.

English as a Foreign Language (EFL)

English as a Foreign Language EFL is usually taken to mean the learning and teaching of the language is situations where the use of English outside the instructional situation is not institutionalized in society.

In countries like Holland, Denmark or Israel, English is

used in such a wide-spread way and is to be found so readily; in the local media" that young learners can have a quite an extensive contact with it day to day. In cases like this, school learning and natural exposure can be seen to interact positively in the language development of most young learners.

English as a Second Language (ESL)

English as a Second Language is the term used in countries in which English is officially acknowledged to have an important role alongside the local language for the official business of the state and as the medium for at least some sectors of the educational system. India and Pakistan are often seen as the emblems of this role for English.

English as an Additional Language (EAL)

In countries like Britain, Australia and the United States, English as an Additional Language (EAL) rather than ESL is the currently favoured term for the objectives for English learning that are important for the many children whose predominant home language is not English, but who find themselves in situations where English is the medium for education and for transactions and interactions in society at large.

Children in this type of situation are "exposed to a lot of English outside the school but it is also true to say that for these Young Learners, English is often addressed as a particular issue within the school and given special attention for part of the school day or school week.

ADVANTAGES OF EARLY ACQUISITION OF SECOND LANGUAGE

Languages appear to be acquired informally and mastered to native like proficiency in the early years before about age 6 whereas they appear to be learned with conscious effort and mastered to non-native like proficiency after about age 14. The first six years or so may be considered a critical period for language acquisition, especially for phonology and basic syntax (Scovel, 1988). Neurologically the brain functions of the young children are more plastic than those of older people ("Development of Laterality " chap. 12). Socio-psychologically, young children enjoy all ten favorable conditions for language acquisition, whereas, older people enjoy only a few ("Critical Period(s) for Language acquisition "chap. 8).

The ten conditions are:

1. Children have a compelling need to communicate .
2. The language they are acquiring is their main means of communication.
3. Children are exposed to speech for much of their working time.
4. Children easily identify with their speech models .
5. Children have imitative impulses.
6. Children are not inhibited in trying out incorrect utterances.
7. Family members tolerate, even delight in children's "cute errors".
8. Adults gear their speech to children's levels.
9. Speech is used in a concrete way, in a context of here and now.

10. Children's main activities in real life are acquiring language(s) and gaining knowledge about the world.

All of these conditions are available to young children whether they acquire one or two languages.

BASIC PRINCIPLES

The principles bellow are basic in two senses: they are deliberately uncontroversial and they are rooted in what can we know about young children.

1. **Linguistic development**: Two potential features of the 8 year old argue for an initial emphasis on aural-oral skills:

- Children of this age spent most of their lives dependent solely on these skills as a means of communication and learning;

-Reading and writing skills may not be fully established in the native language.

2. **Attention span**: Children find it difficult to concentrate for long periods on any single activity.

3. **Memory**: Young children seem to have poor long - term memories.

4. **Cognitive development**: Children of this age are not yet at a stage when they are fully capable of handling abstract concepts, of analytical reasoning. They acquire the grammar of their native language through an inductive process, and it is logical that foreign language teaching follows the same principle.

The four features discussed so far have negative characteristics. The fifth feature has a positive feature.

5. **Curiosity**: For children, the world is fascinating place and one

source of that fascination is difference. They are eager to know about everything which happens around them.

TWO BASIC SKILLS

There are two basic skills which Young Learners learn a language at the beginning of the courses: reading and writing.

Reading is a complex process and sometimes is astonishing how children manage to do so well at such a young age. It involves "decoding" or working out the meaning of unknown words on the page and in the light of their past experience, making sense of the whole. Children's ability to read in a foreign language is even more remarkable, but is often underestimated and sometimes underutilized.

3. READING

Children who have learned what reading is about can read a certain number of words by sight (see figure 1). Once they have seen a word five, twenty or perhaps thirty times (the number depends on their maturity and ability) they can recognize it and read it by themselves without having to decode it or to be told how to read it. This is called "sight recognition".

To decode words children use clues often unconsciously from several methods, combining them in the most economical way to get information.

Clues to reading

Shape of the word

Length
Letters above or below the line
_rp___, i ,
Initial and/or final letter
MQ0; uOt
Letter pattern within the word
ptoy'l

Sound of the word

Based on letter/sound knowledge (phonics)
The sound of a word is worked out and possibly related to previous oral experience

Position of the word in the structure

Prediction of unrecognized word from previous use of spoken language

From context

Information obtained from the text gives clues to the unrecognized word

From the illustration

Illustration backs up text by providing the clues

Reading Program

Children who have already learned to read in their mother tongue on language of instruction have understood the technical features of written language and the communicative nature of reading. They have also developed sufficient muscular - coordination of eye and hand movements to read print. For these children, learning to read in English involves merely transferring their First Language reading skills and applying them, when relevant, to reading in Second English (Dunn, 1983).

Children whose First language is written in Roman script, for example, French, Dutch, etc. learn to read in English quickly, if motivated. If they have an oral knowledge of the language used in early books they quickly pass through the stage of reading word by word to reading in phrases, with good pronunciation, intonation and stress.

Young Children at this age are learning new things all the

times. Some may be learning another form of reading in learning to read music. Also the fact that they have already developed sufficient muscular control of their eye movement to be able to read print means that they quickly adjust to different eye movements. Some children when they have acquired sight recognition of about fifty to seventy words, start developing their own personal decoding. Provided they are given plenty of language and reading experience, these children go on to become good decoders.

WRITING

A second most valuable skill that Young Learners use at the beginning of the course is writing. Children generally enjoy writing,they are often all, at an age when their experience of writing in their mother tongue is still very limited so that any kind of activity even copying, has a certain important value for them.

Right-handers

Generally Young Learners while writing hold the pencil between the thumb and first finger providing additional support. The other two fingers can rest lightly on the paper. Normally, the pencil is placed on the paper in opposition between about ten or eleven on a clock that is about 45º to the left of the upright.

Left - Handers

Children who write with the left hand hold the pencil in the same way as a right - hander. Children, except that the grip should be further away from the point to enable student children to see what they have written and the unsharpened end should point towards the body. This position helps to avoid the natural inclination of the left-hander to push the hand of the body at a steep slow towards the body in order to enable the hand to pull away from writing.

Hand Writing Size

Young children can't write letters as small as some adult can as they do not have fine enough muscular control. To write them very large is also difficult for young children, as this also requires well developed muscular control. For young children who already write

first language in another script, first hand writing should be 5 mm in size. Gradually as children grow in competence, the size can be reduced to 4 mm in size.

THE SOCIAL BACKGROUND QUESTIONNAIRE

The social background questionnaire was applied to Young Learners of fourth grade of "Mustafa Kemal Ataturk" Primary School in Gostivar, Macedonia. This questionnaire aims to get some data about the children and their parents. Having information about their parents will provide us with some clues about their social background. Sixteen student were participated in this questionnaire which of them eight boys and eight girls. Their age average age is nine.

THE RESULTS OF THE SOCIAL BACKGROUND QUESTIONNAIRE

As mentioned before, sixteen young learners were participated in this social background questionnaire.

Question 1: Refers to the students names.

Question 2: Refers to their ages. 14 of them are nine years old whereas 2 of them are ten years old.

Question 3: Refers to their father's job and educational level. There are different responds such as teacher, merchant, agriculture, free worker, TV repairer etc.

Question 4: Refers to their mother's job and educational level. Most of them are house wives whereas one is a teacher, one is a tailor and a nurse.

Question 5: Refers about their number of sisters and brothers. They do not have crowded families. The average number of their family members is 5. It is important to mention that the students' parents income level is middle.

APPLICATION OF STUDENT'S HANDWRITING

As it has been mentioned before, young children can not write letters as small as adults do, as, they do not have enough muscular control and to write them very large is also very difficult for young children as also this requires well developed muscular control. So the aim of the study will be whether the young children have enough muscular control while writing and which hand do the young learners write with. Whether the young learners have enough well muscular control or not have been defined by adding points:

A - The leaner has fine enough muscular control.
B - The learner has fine but not enough muscular control
C - The learner doesn't have muscular control.

The young learners were asked to write the sentences written in the blackboard shown as in example:

Dilara is a girl
An orange is not yellow
I am nine years old.

THE RESULTS OF THEIR HANDWRITING

Under the categorizing of their handwriting, all of the children were right-handers.

Four of the children do not have muscular control.

Six of them with fine but not enough muscular control, whereas:

Six of the children have with fine and with enough muscular control, in other words six of them have a fine handwriting and with the correct size of letters**.**

ADDITIONAL INFORMATION ABOUT THE CLASS

I have had an opportunity to observe the class of young learners of fourth grade of "Mustafa Kemal Ataturk" Primary School in Gostivar for 2 days. As mentioned before the number of learners who participated the questionnaire was 16. The children in the class were quite ambitious in learning, asking many questions during the lesson.

Young learners mostly preferred their native language, while learning the English Language. They have been learning the target

language by seeing and joining the lesson. Such as they see the picture of apple and if they touch the object they can not easily forget the name of objects. The children were very interested in naming things or if they had a dialogue about greetings, they were acting out in front of the green board.

At the end of the lesson student were given project work such as occupations. Student draws a doctor drawing or s/he cuts a picture of a doctor and writes what he is. When students learn the names of objects by project work they mostly don't forget.

The young learners were taught that we use (s) for singular objects mostly through lots of examples. There the target language is taught inductively. They were also learning about interactions between two or more people through dialogues. Apologizes, requests, greetings were all taught through dialogues. Their accomplishment was very important for the language learning. For example when they learned "days of week" they gave a color for each day and they made a timetable and point each day to its color (e.g. red Monday, blue Tuesday, etc).

They easily learned things by listening and repeating but they often forgot in short time. They all enjoy writings of every kinds, even copying paragraphs, songs, poem were very attractive for them. In the class during the teaching process the most learners were quiet - they were quite aware of teachers' and their own role.

RELATION TO SOCIOLINGUISTICS

As Hudson (1980) defines the sociolinguistics as "the study of language in relation to the society" it has become an important part of language teaching and linguistics.

The latest approaches to language teaching focus not only conveying the vocabulary and grammar rules of a language but also teaching social aspects of language such as language varieties, social and individual differences etc. Under this subject we can make a correlation between individual differences, sociolinguistic and Young Learners.

Young Learners have different learning styles. Also learners have different handwriting because of their ability or having enough muscular control. Maybe it is because learners' socio cultural background affect their learning and hand writing.

4. CONCLUSION

In this study was aimed to give some information and useful comments about The Young Learners and their handwriting. Here we aimed to make a research over their handwriting as well. We know that some of Young Learners can not have fine enough muscular control of their handwriting. By examining the students of average age of 9 years, it was found that four of them did not have muscular control. We also included a questionnaire for their social background. It was shown that those learners who did not have fine handwriting were the children of those parent's of low education status. Maybe this affects their writing.

We learned that Young Learners enjoy writing, they also enjoy copying writing from an example, especially if it has some purpose, like making cards for games, writing invitations etc. It gives them a chance to reproduce something by themselves which does not need any correction by a teacher. It is also a creative experience for them, as handwriting in itself is a form of creative expression.

Children learn much from each others' work and more often is learned from other children's ideas of presentation, design and layout then from explanations given by the teacher.

The children have their own characteristics and styles, which are different from adults. The characteristics cover their ways of thinking, their attitude, their aptitude, their capability. They also help to the children's ways of learning the language. This of course influence to the ways of teaching them. In order to give the best quality of teaching English to children, the teacher's should know and understand them well.

We saw that young children acquire one or more languages informally and to native proficiency, whereas adults learn languages with a conscious effort and to non - native proficiency. But it has been observed that children acquiring their first language easily and well, yet the learning of a second language particularly in an educational setting often meets with great difficulty and sometimes failure. We should therefore be able to learn something from systematic study of that first language learning experience.

5. REFERENCES

1. Brown , H. Douglass(1994)Principles Of Language Learning And Teaching. Prentice-Hall Regent.
2. Coupland, Nicolas And Jaworski, Adam (1997) A Reader And Coursebook (Palgrave Modern Linguistics) Palgrave Macmillan.
3. Dunn, Opal (1984) Developing English With Young Learners. Ilustration Macmillan Publishers Ltd.
4. Spolsky, Bernard (1998) Sociolinguistics , Oxford University Press.
5. Rixon, Shelagh (1999) Young Learners Of English , Some Research Perspectives
6. Hudson , R.a (1980) Sociolinguistics, Cambridge University Press.
7. Broughton,G.brumfit,C.flavell,G. Hill, P. Pancas, A.(1980) Teaching English As A Foreign Language. Routledge Education Books.
8. Taylor, Insup & Taylor, Martin (1990) Psycholinguistics, Learning And Using Language.prentice - Hall Inc.
9. Nunan, David (1992), Research Methods In Language Teaching. Cambridge University Press.
10. Byrne, Donn(1998) Focus On The Classroom. Modern English Publications.
11. Wolfram, Walt. (1991) Dialects and American English. Englewood Cliffs, NJ: Prentice Hall
12. Walt Wolfram http://www.linguisticsociety.org/resource/sociolinguistics
13. https://www.teachingenglish.org.uk/sites/teacheng/files/2739BCYLTPosterno%20crops_AW%201.pdf.

EDUCATIONAL MEASURES AS REPRESSIVE MEASURES FOR FIGHTING AND PREVENTING JUVENILE DELINQUENCY IN THE REPUBLIC OF MACEDONIA

*Ersin Sulejmani , p. 105-118

September, 2017; 2 (2)

ABSTRACT

Juvenile delinquency, as a negative phenomenon, today is an international social problem that every country is faced with, the Republic of Macedonia as well. The process of fighting and preventing juvenile delinquency has a special importance in a society of a country because juveniles are the future of a healthy nation. Thus, without a healthy youth we do not have a healthy society.

Crime in general and juvenile crime in particular is an occurrence dependent on many causes and factors, which are also associated with the general socio-economic circumstances of a particular region or even a society. For this reason, specific and adequate measures are to be taken towards this category by the state institutions, nongovernmental institutions but also by the society itself.

This phenomenon should be also evaluated in multidimensional terms, since the treatment of crime is a complex phenomenon and in a way related to all human categories, from juveniles to adults as perpetrators of criminal acts. This is because we are dealing with common environments, lifestyle, activity, education, where necessarily, these causes and factors constrain each other.

Keywords:Juvenile delinquency, Republic of Macedonia, fighting and prevention, society, factors.

* **Phd.Cand. Ersin Sulejmani**
International University Vision, Faculty of Law Gostivar,Republic of Macedonia

e-mail: ersin.suleymani@vizyon.edu.mk

Article type:
1.02 General scientific articles

UDK: 343,85-053.6:37.04

Date of received:
June 8, 2017

Date of acceptance:
July 18, 2017

Declaration of interest:
The author reported no conflict of interest related to this article.

1. 1. INTRODUCTION

Like any other country, the Republic of Macedonia as well, for a more efficient way of fighting and prevention of juvenile delinquency uses its punitive policy through the application of various measures by the country's institutions. It is known that during the development of human society different tools and methods were used to fight crime. Measures used to fight crime including juvenile delinquency are diverse.

The Criminal Code of the Republic of Macedonia in Article 71 says: "Criminal sanctions may not be applied against a juvenile who at the time of perpetration of the crime has not reached fourteen years (child)" (Criminal Code of the Republic of Macedonia,1996). Article 72 paragraph 1 says: "A juvenile who at the time of perpetration of the crime has reached fourteen years, but has not reached sixteen years (younger juvenile), may be sentenced only to educational measures". In certain conditions, security measures may be imposed by law. Against an older juvenile for an action defined by law as a criminal offense educational measures may be imposed and sometimes a sentence or alternative measure.

The main aim of the measures for fighting and preventing juvenile delinquency consists in warning a juvenile for the criminal offense committed and their treatment for the purpose of education, rehabilitation and proper development.

The prediction of the extensive catalogue of measures and sanctions for juveniles is necessary, because in this way the courts are able to determine whether to impose a certain type of measure or penalty which would best achieve the goal of education, rehabilitation and proper development of juveniles (Salihu Ismet, 2005).

2. REPRESSIVE MEASURES

Repressive measures are the oldest forms of intervention and response of a society and state institutions against crime in general and perpetrators. State institutions that apply repressive measures are: the police, courts, public prosecution, organs of enforcement of criminal sanctions etc. Although today in modern science the prevailing view is that penalties alone can not successfully fight crime, the contemporary

criminal law in its application, firmly adheres to traditional measures of social reaction against crime (Salihu Ismet, 1985).

The courts and state public prosecution also havea very important role in the fight against crime. They should, with their commitments pay particular attention to juveniles, making sure that as criminal sanctions against them, only educational measures are imposed. They should also, in a professional way, be cautious about the procedures which are specific for juveniles not to negatively affect the process and that the procedures have preventive effects as well.

According to the juvenile law in the Republic of Macedonia measures that are mostly imposed are represented in this order: disciplinary measure "reprimand",increased supervised by the parents, increased supervision by the Social Centre, imprisonment and expulsion of foreigners from the country.

3. APPLICATION OF EDUCATIONAL MEASURES

Educational measures, as separate criminal sanctions against juveniles, are aimed primarily at the prevention of juvenile delinquency, but also rehabilitation, reintegration and their preparation for life (Halili Ragip, 2002).

Therefore, the purpose of educational measures is to contribute to rehabilitation and proper development of juvenile perpetrators, offering protection, assistance and supervision, providing professional education and training, developing personal responsibility, preventing recidivist behaviour (Hajdari Azem, 2004).

Juveniles should be treated as victims and not as criminals, no matter how much their behaviours are potentially dangerous, but this does not mean that they should be forgiven for their behaviour, but they should be handled in the best way during the proceedings and they should have the appropriate measures applied to them (Latifi Vejsel, 1988). Upon selection of educational measures based on the provisions of the Law on Juvenile Justice of the Republic of Macedonia courts should consider: the age of the juvenile, the degree of biopsychological development, the motives for the offense, the place and family environment, the weight of the offense etc. with which areal and objective sanction will beachieved.

According to the Law on Juvenile Justice which was approved in 2007 for a successful prevention of juvenile delinquency, State Councils and Municipal Councils for prevention were established. The State Council consists of fifteen members who are elected by the Assembly of the Republic of Macedonia with a mandate of five years, eligible for reappointment (Zejneli Ismail, 2008).

In the framework of the measures and penalties imposed on juveniles, educational measures are considered as the main and primary measures. Consequently, a special attention should be paid to finding adequate measures so that in the future juveniles become disciplined law-abiding citizens who respect the moral norms of society.

According to the Law on Juvenile Justice there are three types of educational measures:

I. Disciplinary measures:

a) Reprimand and/or

b) order to visit a disciplinary centre for juveniles.

II. Measures of increased supervision:

a) By the parents or the guardian,

b) the family that takes care for the juvenile or

c) by the centre for social work.

III. Institutional measures:

a) order to visit an educational institution or

b) to a correctional-educational centre.

1. Disciplinary measures. Are the lightest educational measures which are imposed on juveniles who have committed minor delinquent offenses, (Halili Ragip, 2002) especially those who for the first time have committed a criminal offense. These measures are largely imposed for minor offenses, and for reckless behaviour.

a) Reprimand: is the measure by which the juvenile's attention is drawn on the harm of his/her action and he/she shall be warned that if he/she repeatsthe criminal act once again, other sanctions may be imposed.

This measure is imposed only if it is enough to scold the juvenile for the committed criminal act.In the court practice of the Republic of Macedonia one of the lighter measures imposed on juvenile delinquents is a reprimand, so that juveniles are made aware of the weight of the crime and not carry out delinquent acts because in the future it might be replaced with another criminal sanction.

*b) Order to visit a disciplinary centre for juveniles:*as a disciplinary measure of institutional character is imposed on a juvenile offender when the court forms the conviction that the offense was committed by recklessness and negligence and it is necessary that adequate short-term measures be imposed to impact on his/her personality and delinquent behaviour.In these cases, the minor is sent to the disciplinary centre for juveniles where through organizing educational activities we positively influenceon his/her development and on the avoidance of negative behaviours. Activities that engage the juvenile should fit the age, skills and interests, with the aim of developing a sense of responsibility (Salihu Ismet, 2005)

The juvenile who is sentenced to this measure may be sent to a disciplinary centre:

a) for a certain number of hours during the day on holidays; maximum four consecutive holidays;

b) for a certain number of hours during the day, but at least one month; or

c) uninterrupted stay of certain number of days, but not longer than twenty days (Law on Juvenile Justice of the Republic of Macedonia-Albanian translation, 2004).

When the court imposes this measure, it shall make sure that by its implementation not to cause absences of the juvenile from his regular lectures or work.When a juvenile is sent to a disciplinary centre, he/she may be placed under increased supervision for a period not longer than six months.

2. Measures of increased supervision. Are measures outside the institutional character that are of great importance in preventing and fighting juvenile crime without depriving him/her of liberty and without isolation from his/her environment. In judicial practice these measures represent the most frequent type of educational measures imposed on juvenile offenders, due to their nature as more favourable in fighting juvenile crime.

These measures are imposed on juvenile delinquents in cases where it is necessary to warn them for their misconduct, for the purpose of his/her education and treatment in his previous environment.

The advantage of the educational measure of increased supervision, compared with institutional measures and juvenile prison, consists in the fact that the measures with which the juvenile is deprived of his/her freedom and is sent to an institution causes damaging consequences (Salihu Ismet 2005). Accordingly, the separation of juvenile from their family and social environment in which he/she lives and his/her placement in the new environment, usually in a closed environment, causes certain traumas which can later be an obstacle to his re-socialization .

Educational measures are imposed by the courts on juvenile delinquents, who committed the delinquent act because of education, neglect and inadequate supervision by parents who are legally obliged to do that and if it is determined that another family in which the minor may live, are suitable for an education and meaningful care. The increased supervision measures are:

a) Increased supervision by the parents or the guardian:

It is imposed by the court if the parents or the guardian have failed in the education and supervision of the juvenile, even though they had the opportunity to supervise the juvenile, yet they were reckless.

To impose the measure of increased supervision by the parents, adoptive parent or guardian of a juvenile, two conditions must be fulfilled: The first condition is that the offense be committed due to failure to exercise supervision and education by the parents, adopter or guardian. The second condition is that this educational measure may be imposed if it is determined that the parents, adoptive parent or guardian of a juvenile have the opportunity and ability to exercise supervision and education.

The purpose of supervision is to reduce the recurrence of illicit behaviour and to help in the re-integration of juveniles in society in a way that minimizes the desire to return to crime (Standard Minimum Rules for Non-Custodial Measures-The Tokyo Rules, 1990).

By imposing this measure, the competent court obliges the parents or guardian with certain tasks that should be undertaken for the education, recovery and avoidance of harmful effects to juveniles. Also, the court may give the parents or guardian proper guidelines for the achievement

of certain tasks and it can also ordera disciplinary centre for juveniles to control its implementation and provide assistance to parents or guardians. The court decides when to end the supervision, but it may not last less than one year nor more than three years.

b) Increased supervision by a foster family: as the second educational measure of increased supervision, is imposed if the general conditions are met and if the parents or guardian of the juvenile are not capable or are unable to supervise him/her, then the juvenile will be handed over to afoster family that wishes to accept and is able to do an increased supervision over him/her. Execution of this measure shall be terminated when the parents or the guardian get the possibility to make increased supervision of him/her or when according to the results of education and re-education the need of increased supervision stops to exist (Law on Juvenile Justice of the Republic of Macedonia-Albanian translation, 2004).

During the sentencing, the court will determine that the social organ, during its duration which cannot be shorter than one or longer than ten years, to examine the implementation and provide assistance to the family to whom the juvenile is given (Kambovski Vllado, 2006).

In practice, this education measure of increased supervision is rarely imposed and in cases when it is, supervision is usually given to a family related to the juvenile.

c) Increased supervision by the Centre for Social Work: as the third educational measure of increased supervision is imposed in cases where the parents or guardian are unable to make increased supervision and there are no conditions for handing over the juvenile to another foster family, then the child will be placed under the supervision of a disciplinary centre for juveniles.

Additionally, the court decides when to terminate the measure, the duration of which cannot be shorter than one or no longer than three years.

Special obligations towards the measure of increased supervision: Is imposed on juvenile delinquents in order to achieve the main purpose of the application of the educational measures of increased supervision which insists on his/her education, rehabilitation and appropriate development. Subsequently, the realization of this goal in addition to increased supervision by the parents, guardian or foster family depends on the provision of specific obligations in addition to the increased supervision measures.

According to paragraph 2, Article 38 of the Law on Juvenile Justice of the Republic of Macedonia, the competent court, in addition to the increased supervision may impose one or more of thefourteen specific obligations to the juvenile delinquents:

- to apologize to the harmed individual in person;

- to mend or compensate the loss caused by the criminal act;

- to go to school regularly;

- to visit work regularly;

- to receive vocational training for a job that corresponds to his abilities, predispositions and physical strength;

- to accept work;

- to ban the use of alcohol beverages, drug and other psychotropic substances;

- to go to adequate health institution or counselling service;

- to spend the spare time qualitatively;

- not to contact the people having harm influence on his personality;

- to attend training, become professionally qualified or re-qualified for the purpose of keeping the post held or to create conditions for employment; and

- to allow inspection and accept advice in terms of allocation and spending of salary and other income realized;

- to get involved in the work of a humanitarian organization, communal, environment or non-government organization;

- to get involved in a sport, cultural organization or association with an obligation to attend the rehearsals and trainings (Law on Juvenile Justice of the Republic of Macedonia-Albanian translation, 2004).

Upon a proposal from the Centre for Social Work, the court may amend or abolish the special obligations it has given earlier. If the juvenile does not fulfill the given obligations, the court informs the juveniles and their parents or guardian that the measure may be replaced by sending to a disciplinary or educational institution or educational-correctional institution. The role

of the Centre for Social Work is permanent supervision and assistance to juveniles in the fulfilment of certain obligations and cooperation with the parents or guardian and informs the court at least once every six months about the implementation of specific obligations.

3.Institutional educational measures (institutional measures). These measures are of an institutional character in comparison to the aforementioned measures and are part of the heaviest type of educational measures.

The court may impose an institutional measure to juvenile offenders in the form of sending and placing them in an educational institution and placement in a correctional-educational home, thereby depriving the juvenile of liberty.

The purpose of the imposition and execution of institutional measures is that the juvenile perpetrator of criminal offenses which is placed in special educational and rehabilitation facilities to be educated, re-educated and treated. These measures are executed by trained professionals (educators, psychologists, social workers, doctors etc.) (Salihu Ismet, 2005).

The conditions that must be met to impose institutional measures are:

a) the necessity to impose on juvenile offenders long-term measures of education, rehabilitation or treatment, because up to then, the education and appropriate development is not realized by the application of short-term educational measures, and

b) the conviction of the court that the social environment has adversely affected the behavior of the juvenile and has had a negative effect, so, here *de facto* the separation (isolation) of a minor for a long time from that envirmonemt is imposed.

The Law on Juvenile Justice of the Republic of Macedonia provides two educational measures of institutional character:

a) The court may send the juvenile to an educational institution and

b) The court may send the juvenile to an educational-correctional institution (Law on Juvenile Justice of the Republic of Macedonia-Albanian translation, 2004).

The common characteristics of these measures are:

a) Are appliedat special institutions provided with such purposes

b) Juveniles are totally isolated from their environment and

c) Are long-term educational measures (Zejneli Ismail, 2010).

a)Sending the juvenile to an educational institution. The measure of sending a juvenile to an educational institution, as an institutional measure in the Republic of Macedonia is provided for in Article 39 of the Law on Juvenile Justice: the court may send the juvenile to an educational institution where constant supervision must be exercised by the professionals (with the appropriate professional and school preparation for educators) for the purpose of education, rehabilitation and proper development.

The term for staying at the educational institution for juvenile offenders is at least six months and at most three years.

This institutional measure comes into play when the court finds that the education and re-education of juveniles cannot be achieved without their full separation from the environment where they live and if the long-term and permanent measures for education, re-education or treatment are necessary. Therefore, the court, in imposing this measure, must be convinced that the institutional measure is the ultimate and indispensable tool for education, rehabilitation and proper development by professional educators.

b)Sending the juvenile to an educational-correctional institution. Compared to the measure of sending a juvenile to an educational institution, this measure as an institutional measure is heavier. This measure is provided in Article 40 of the Law on Juvenile Justice and the court shall impose this measure to a juvenile who is to be imposed continuous and reinforced measures for education and re-education and his/her full separation from the current environment (provided for in paragraph 1 of Article 40).

In determining whether it will impose this measure, a court will particularly take into account the gravity and nature of the offense committed and wherther the juvenile has had previoius imposed educational measures or juvenile prison (Salihu Ismet, 2005).

The juvenile perpetrator of the offense stays in the educational-correctional institution at least a year and at most five years, i.e. until becoming twenty-three years of age.

This mostly institutional measureis usually imposed on juveniles who have serious educational disorders and those who have committed serious offenses or who are recidivists. These institutions are established only for juvenile perpetrators of criminal offenses and are specialized educational institutions with a special security program.In addition to education and rehabilitation, they also organize general and professional education and training for certain professions. This is a school-prison type measure, the realization of which consists in the deprivation of liberty of the juvenile and his/her engagement in general education programs or programs for vocational training (Zejneli Ismail, 2010).

c)Stopping the enforcement, amendment and re-deciding on educational measures. The enforcement of an imposed measure of increased supervision or an institutional measure may be stopped or changed with another measure of increased supervision or institutional measure when after the initial decision circumstances that have not existed at the time or were not known have appeared; and those are of influence to the decision.

In addition to the stopping of the measure of increased supervision or the educational instituion measure, it can also be replaced by other measures, with these limitations:

a) the measure for referral to an educational institution may not be stopped before expiry of the term of six months, and by the expiry of this term it may be replaced by sending the juvenile to an educational-correctional home; and

b) the measure of referring the juvenile to a disciplinary centre may not be stopped before expiry of the term of one year.

4. CONCLUSION

Juvenile delinquency, as a negative phenomenon, today is an international social problem that every country is faced with. The prevention of juvenile delinquency, has special importance in the society because juveniles are the future of a nation. Thus, without a healthy youth we do not have a healthy society.

The educational institutions in which the juveniles are sent for treatment also have their irreplaceable importance in their professional training, in their education through their programs organized during the time the

juveniles stay there, in their preparation for re-socialization and easy adaptation to the social environment and their awareness not to commit crimes in the future.

Macedonia's institutions should pay special attention to this phenomenon in order to prevent juvenile crime.They should make greater efforts with a comprehensive approach, to influence with the proper programs and policies in orderto prevent, deter and fight this harmful phenomenon with a growing trend.They should make efforts to avoid subsequent consequences that the society may have, including covering the costs for the treatment of juveniles.

I think that the issue of juvenile delinquency should be looked at very carefully, because we are dealing with a generation of persons that is in the process of being formed, and who are faced for the first time with the criminal sanctions as a punitive measure.

5. LITERATURA

1. **Halili Ragip,** Penology, Pristina, 2002
2. **Hajdari Azem,** Juvenile delinquency in Kosovo 2001-2003, 2004
3. **Kambovski Vlado,** Criminal law (Albanian translation),Skopje, 1996
4. **Latifi Vesel,**Phenomenology and the structure of juvenile delinquency and the fight against it in ASR of Kosovo, "Progress", nr. 4, 1988
5. **Law on Juvenile Justice of the Republic of Macedonia**(Albanian translation) Skopje, nr.87/07
6. **Milutinovic M.**Criminology, Pristina, 1982
7. **Salihu Ismet,**Juvenile criminal law, Pristina, 2005
8. **Salihu Ismet,**Criminal law (general part), Pristina, 2005
9. **Salihu Ismet**, Homiciceds in the ASR of Kosovo, Pristina, 1985
10. **Zejneli Ismail,**Juvenile delinquency in the Republic of Macedonia, Tetovo, 2008
    Criminal code of the Republic of Macedonia, Skopje, 1996
11. Law on Juvenile Justice of the Republic of Macedonia(Albanian translation) Skopje,2004
12. Juvenile criminal law on of Kosovo, Pristina, 2004
13. Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), Resolution 45/110 14th December 1990.

CYBER-TERRORISM AS A THREAT TO NATIONAL SECURITY

*Jasmin Kalac, p. 119-127

September, 2017; 2 (2)

ABSTRACT

The tremendous achievements and the development of the leading technology, sophisticaled computer systems opened new "cyberspace" that constantly destroys the old traditional forms of organization, behavior and belief. Cyber information led to cyber revolution and the emergence of the information society, which dominates the race for information and communication technologies, in parallel the global liberalization and free circulation of people, goods and ideas (Stern, Jessica, 1999). Today, thirty years after the introduction of the term, the concept of cybernetics, it inevitably became a primary component of many important terms: cyber society, cyber policy, cyber economy, cyber warefare, cyber terrorism, cyber crime, in which essentially the most precious crown represents cyber information. Cyber terrorism is an important cybersystem of cyber warefare, and is very difficult to detect and counter because it is almost impossible to determine the political affiliation or sponsors of its prepertators.

Keywords: cyber; spase; terrorism; attack; warefare;

***Phd.Cand. Jasmin Kalac**

Macedonia, Gostivar
International VISION University, Faculty of Law

e-mail:
yasmin.kalac@vizyon.edu.mk

Article type:
1.02 General scientific articles

UDK: 323,28:004]:355.45

Date of received:
June 19, 2017

Date of acceptance:
July 21, 2017

Declaration of interest:
The author reported no conflict of interest related to this article.

1. INTRODUCTION

The construction of modern and flexible computing and communicating systems set TCP/IP protocol as a universal communication protocol provided information around the world to move with incredible speed, delivering all the events in a new dimension of communication called cyberspace. The new forms of warefare and terrorism as a specific, modern "form of warefare" will co-exist at the same time with "cyberspace" attacks. The cyber warefare is directed towards the information and information systems that provide support to the civilian and military structers of the opponent. It enteres the sphere that is much more subtle than physical attacks and destruction or the acts on the flow of information in networks and manipulate them (interrupts, change its form, adds, etc.).its activities are geared primarly to information are crucial for the functioning of the civilian and military systems and air traffic control, commodity exchanges, international finansial transactions, logistical needs and goals. The opportunities for disruption of national computer systems and the ability to threaten the normal pulse of the social life and the dangers of mass endangering the lives od the people contributing the term "cyber terrorism" to be surrounded by sense of fear and wraped in the veil of mystery (Kotovcevski Mitko, 2004 god.).

More expansive conceptions of cyberterrorism as any form of online terrorist activity unsurprisingly tend to be associated with a higher estimated probability of the threat's materialisation than do more restrictive accounts (Stuart Macdonald, Lee Jarvis, Tom Chen and Simon Lavis, 2013). One of the most sustained deconstructions of the cyberterrorist threat is provided by Maura Conway (Maura Conway, p.11). Terrorists, she notes, are routinely dehumanised, while technology is associated with a lack of control over the world. The combination of these spectres is, therefore, ripe for the establishment of worst case scenarios in which entire societies are 'cut off' and thus rendered vulnerable by the 'evil' of terrorists (Gabriel Weimann, 2005). If information warefare, without a doubt, represents a way of warefare in the future, then and the future of terrorism

will be substantially determined by the emergence of cyber terrorism. The attraction of the warefare of information sponsored by the state is so great that many nations will not be able to resist this "challenge and tempation". However, cyber terrorism in the future will represent a new "fatal attraction" for a number of terrorists and terrorist organizations. This terrorism is the most clear example of the globalization of the world, but also its "outside marriage mischievous child", which dangerously endanger the communications in the military sphere, emergency medical care, traffic systems from different types, telecommunications and other goods. Also, its "hacker games" can cause chaos and anarchy through attacks on bankers and other financial and computer links and totally paralyze life in the big urban centers of the most developed countries. (Badey, Thomas, 2005)

In their wide range of activities include the use of private information to export same forms of cyber crime by entering into networks, as well as physical and electronic destruction of digital information system. Already there is no digital device that can not become a victim of computer vandals and terrorists.All devices connected to computers may become a target for hackers, who through a global computer network can bring a digital code that would violate their regular and normal operation. On any device that connects to a network can send an arry of digital commands that will make the device work as the creator wants those commands. The classical protection systems are virtually helpless in the methods used by today's hackers and cyber terrorists.

The main danger today represent the hacking codes that use every occasion to implement in a closes computer network created by making themselves can be activated and the effect still be scarier, themselves finding their way to breeding, spreading the "evil code,,. Also, printers become more sophisticated, upgraded with numerous software applications for support could be used for terrorist cuber hackes intrusions into networks." (Tuchman, Barbara; 1967)

2. METHODS OF CARRYING OUT THE CYBER TERRORISM

In societies of the third technological revolution there are two primary methods through which terrorists can carry out terrorist attacks.The first method is when the information technology represents a target of terrorist attacks. So the carrying out of certain sabotage (electronic and physical) on the information system, will try to destroy or to commit stoppages of information system and information infrastructure, depending on the specific goal. (White, Jonathan; 2003)

The second method is when the information attack is a tool-step for implementation of more operation. This act implies that terrorists will make efforts for manipulation and exploration of the information system, theft of information as an alternative or forcing – "programming" of the system to carry out the function for which is not intended.

Under the term computer virus refres to programs that negligent individuals write to inflict greater damage on many computers connected in a network such as the goal Internet-network. Their main features are: to copy themselves on a computer that would come in contact. They are not detectable or mostly invisible to the computer user, especially if the computer is not installed a specialized software for their detection. They automatically carry out certain commands like deleting useful data on the victim's computer, or send data to a specific location on another network without knowledge of the computer owner. Besides hackers and groups that they organize for unauthorized instrusion into protected systems, nowadays there are specialized government secret services by entering the computer system of other countries obtain data of destructive nature. Thus under the term computer espionage can be defined as one of the modern forms of intelligence but there is also an industrial espionage that is only of a commercial nature. Computer sabotage have in case when someone destroy, delete, alter, conceal or damage the computer which is important for the state authority, institution, public service.

The attack by information technology is easily feasible, by using cheap assets that are easy yo hide and are virtually unreachable. Is it is known that terrorist "go crazy" about their media promotion, if it is known that the most desirable target for terrorist is the media, then certainly we can conclude that the possibilities of terrorists undisturbed intrusion in sensitive information technology enormously increases their opportunities for "information warfare". That is just another perfect weapon in the rich arsenal of weapons to terrorists who tirelessly follow all modern trends in this important area.

If today there are a huge number of objective and subjective obstacles of starting a cyber war of major proportions (for example: international economic dependency, escalation and response from the other side in a military conflict, lack of technological rediness), then the new "terrorists" there are no obstacles not the "red line" for launching cyber terrorism globally.

The invisible armed enemy only with a lapto, PC, connected to the global computer network, "armed" with vast human knowledge being transformed into a digital code that decides enormous destructive power and fiery desire to achieve their dark goals, sails into attack with difficult recognizable direction, but with a single objective: electronic attack on national information network of enormous strategic significance for smooth functioning of all vital social functions (www.ict.org.il).

It is ominous face of cyber terrorist and cyber terrorism, a dangerous threat to the national security of certain countries, a death threat to global security in the future. It is close to the danger of atomic bomb. The invasion of cyberspace countinues at a rate of speed of a powerful offensive computer technology. The world again is facing a new and more dangerous serious security challenge of the greatest evil – terrorism.

3. GOALS OF CYBER TERRORISM ATTACKS

Nowadays, most modern weapons is the computer. Everyone well trained computer user is a good soldier. Any child who well understands the concept of the computers and the method of work of some programs is a potential danger for whole world. In the world there are many examples of computer attacks, in which victims of such attacks are various companies or government institutions. The question is what is the purpose of such attacks? In many cases with such attacks are stealing information from military institutions that directly threaten the security of a particular country. In other cases codes are being stealt from some programs that are in development, and third cases the attacks are carried out just for fun (or training). This will be investigated through examples of computer attacks that are attacked servers from one country by computer users to another country.

In 1999 IRA shocked the English public with treats that despite the bombings and other forms of terrorist attacks will start to use electronic attacks on government officials and computer systems.

Experiences with Al-Qaeda have also shown that the members of these terrorist ogranizations now use sophisticated techniques to protect their channels of communication through the Internet, setting a new daily web sites on which propagate their fundamentalist ideas, and some of the arrested terrorist are found computers with codified files. (Spisanie, dekemvri 2001: Odbrana br.68)

The attack on the World Trade Center in New York we all know how it ends. However another thing was interesting. Immediately after the attacks, the official site of the World Trade Center was blocked. It is hard to call this coincidence.

Shortly after the attack, the US feared of a repeat attack, but this time a computer. According to US experts, the success of such attack whould paralyze the country. For their luck such attack did not followed (at least not successful).However of the preventive measures, the Penta-

gon was “disconnected” from Internet. USA was preparing for “electronic Pearl Harbor”. The damage from such an attack would be invaluable. In fact a few years ago in the USA, certain Robert Moris, son of some of the directors of the National Security Agency, in the network inserted a programe that fully paralyzed the computer in some of the most important federal university institutions (for that he got a sentence of only 10 000 dollars and 3 years of conditional imprisonment) (http://www.terrorism.org/).

A distinctive “cyber” war was waged between China and USA in May, 2001 (the reason was the clash of Chinese airplane with American spy plane). Immediately after the clash began the attacks firstly by China. Goal of such attacks were the servers accros USA, and the site of US Congress suffered. It is characteristic that in these attacks are not being made some major damage, but only modified contents of certain pages (usually a Chinese sybols were written out).However the hackers from USA remained bound on these attacks. They responded with attacks on the websites of provincial governments in some of the provincies in China, as well as the Korean companies Smsung and Desoo Telecoma (interestingly, in this “cyber” war on the side of the Americans were Hackers from Saudi Arabia, Pakistan, India, Brazil, Argentina and Malaysia, and the side of Chinses hackers were from Japan, Korean and Indonesia). It was obvious that the states have financed such attacks, because the two “major” hackers were responsible for preparation of the servers in the US of possible attacks. (Bogoev, 2010)

On July 1, 2001, in Mexico was arrested a Mexican teenager who was accused of committing an attack on NASA. He managed to get into the server, modified some files and created some illegal accounts. It is interesting that in defense the Mexican teenager defended himself by saying that had nothing to do with computers, and that he is by mistake accused. Does this country wants to instill fear among hackers for their successful presecution, whether the state is served by false accusations? Why are these false accusations?

4. CONCLUSION

Legally, cyber terrorism is an international abuse of the digital information system or network components that completes or combat the terrorist activity. The consequence of the abuse of the system will be direct violence against people (which is not excluded for example airplane, chaos in hospitals, etc.), but can cause fear, increasing world crime with fastest pace, the greatest strategic vulnerability of all vital social functions, enormous human suffering and victims as "collateral damage". In this context, even worse is the fact that these subtle effects may initiate cybernetic was or "place" certain states to start classical war, in response to cyber actions "taken by the other side". Under certain US considerations it is only a matter of time before the US can experience "cyber pearl harbor", which would have devastating results, thefts of electronic funds of data that would supported the terrorist information, remitting, diverting consigments of weapons, etc. But, probably the most dangerous is the eventual simulation of "Cyber Chernobyl" disaster.

5. BIBLIOGRAPHY/ REFERENCES

1. Badey, Thomas (ed.). Violence and Terrorism 05/06. Dubuque, IA:McGraw-Hill/Dushkin, 2005.p.152
2. Богоев Славчо ,**Колективните системи на безбедност: процес и критериуми на интеграција на Република Македонија во НАТО**, Правен факултет, 2010 стр 63
3. Maura Conway, "The Media and Cyberterrorism", p. 11.
4. Gabriel Weimann, "Cyberterrorism: The Sum of All Fears?" *Studies in Conflict and Terrorism* 28 (2005), pp. 129-49.
5. Митко Котовчевски "Борба против тероризмот", Македонска цивилизација -Скопје.str 182
6. Tuchman, Barbara. The Proud Tower. New York: Macmillan, 1967.p.52
7. White, Jonathan. Terrorism: An Introduction. New York: Thompson-Wadsworth, 2003.p.89
8. Stuart Macdonald, Lee Jarvis, Tom Chen and Simon Lavis, (2013) *Cyberterrorism: A Survey of Researchers*. Cyberterrorism Project Research Report (No. 1), Swansea University. Available via http://www.cyberterrorism-project.org (accessed 28 June 2013).
9. Stern, Jessica. The Ultimate Terrorists. Cambridge, MA: Harvard University Press, 1999.p.204
10. http://www.terrorism.org/
11. www.ict.org.il

FAMILIES IN CRISIS

*Müedin Kahveci, p. 129-139

September, 2017; 2 (2)

ABSTRACT

There are numerous factors that can influence one family and its functioning. This paper refers only to certain factors which can influence family functioning, its development and thus indirectly affect mental health of family members. Developmental and no developmental, willing and unwilling family crises are seemingly inevitable part of every family system. Experts in the area of mental health, family psychotherapists or experts in the area of family functioning should aim their activities towards facilitating of families to meet a variety of crises as effectively as possible. It is, thus, important to build up the family resources, or abilities to identify the options provided by those resources, for overcoming of crises. During the process of family functionality support, awareness of family members should be raised concerning the importance and options that relevant institutions have to offer to a family in crisis through different educative forms, seminars, debates, etc. as stressed by Ackerman (Ackerman, 1966) tendency towards psychical health is not a luxury but a necessity of one family, and both the individual and the society as a whole.

Key words: mental health, family crises, family functioning.

* **Phd.Cand. Müedin Kahveci,**

Macedonia, Gostivar
International VISION University, Faculty of Social Sciences

e-mail: muhittin.kahveci@vizyon.edu.mk

Article type:
1.02 General scientific articles

UDK: 364-787.24:159.92

Date of received:
June 21, 2017

Date of acceptance:
July 23, 2017

Declaration of interest:
The author reported no conflict of interest related to this article.

1. FAMILY (DEFINITIONS AND SIGNIFICANCE)

The family is defined in different ways, ie. there are disagreements in definition and theoretical determination, but everyone (scientist, theorists, practitioners, lay people ...) agree that it is very important for the normal development of an individual. The simplest family is defined as a social group, characterized by communion or a certain type of interaction (Golubovic, 1981). Family support is the leading factor determining the normal development of the human being (Kowal, et al., 2007) and the mental health of its members (Kubrick, 1994). The family can be the source of maximum benefit for the individual, and vice versa (Goldner- Vukov, 1988), the source of stress (Moslei-Hanninen, 2009), conflicts, problems, etc. Mental adult health depends on the "basics" set in previous development phases (especially in early childhood and adolescence) and in the family as a primary- not the most important group to which an individual belongs. Ackerman (Ackerman, 1966) points out that the mental health of an individual depends largely on the family whose individual is part; Kalicanin (2002) believes that early childhood and middle factors are very significant for the development of an individual, while Zukovic (2009) points out that respondents highly value the phenomenon family and family life attach great importance. Matic (according to Videnovic and Kolar, 2005) further emphasizes that mental health is not only the absence of disease, but also the harmoniously developed personality, among other things satisfied with family relations.

The family is sensitive to changes in its internal and external environment (Milic, 2001), which, among other things, is characterized by round causality (Barker, 1992) and functioning which depends on the socio-economic context (Gachic and Maykic, 2000), structures, interactions and the functioning of family subsystems and society as a whole (Zukovic, 2008). Golubovic (1981) points out that social crises and long-standing social conflicts cause various family disorders (from the increased frequency of occurrence of social pathology of members, to an increasing number of deficient families). In the family survey, the

systemic model is particularly important, i.e. access, because it studies the family as a system that, on the one hand, is part of a wider system, and with others, this same system is viewed as a set of smaller, mutually dependent systems. System approach means the concept of a system, i.e. the entity being maintained by mutual interaction of its parts and within which the significance of integrity, hierarchical arrangement and interconnectedness of elements is emphasized (Polovina, 2007). The family is a system in constant change (Goldner-Vukov, 1988, 1994; Milojkovic, Srna, Micovic, 1997; Mitic, 1995, 1997, 2000; Milic, 2001).

2. PROBLEMS OF THE MODERN FAMILY

The modern family faces many difficulties and problems. Changes in society are large, rapid, and sudden, with unforeseeable outcomes and consequences per family and its members. The changes that take place in society and the time in which we live, accompanied by numerous changes that endure nature, then social shocks and wars, are a constant threat to the health of the population around the world. All this makes the individual feel threatened, no matter where he lives and puts him in a situation of constant concern for his own health and the health of his family, and in front of the family as a system and all its members, they set new demands for adaptation and adequate response to them. In such conditions, the consequences for the development, role and place of the family in the society are large, endangering and often non-fatal. The problems of the modern family (viewed globally) are: poverty, domestic violence, family difficulties and attempted escape of some its members, family in the so-called. Demographic vortex, as well as the summation of the classical family (Sijakovic, 2008). Changes that happen every day in the world, and they concern health people, require changes in access to and study of the same.

3. FUNCTIONAL AND DYSFUNCTIONAL FAMILY

A functional family has the ability to find ways and solutions to the problems and conflicts it encounters. It has capacities, i.e. appropriate resources and is able to fulfill tasks and meet the development needs of its members. Unlike them, dysfunctional families often delay the resolution problem, i.e. do not fulfill tasks, do not meet the development needs of its members, etc. A dysfunctional family is constantly in crisis, does not recognize the problem all the way through the onset of symptoms in their members or the persistent breakdown of the family system.

Olson (Olson, 2000) circulatory model of marital and family systems, one is one of the most famous and most frequently theoretically and practically applied models of family functioning. The functionality of the family system according to the above model operates through: cohesiveness, flexibility and communication. Family cohesion is defined as the emotional attachment of family members, family flexibility refers to the extent to which the family system is flexible and capable, while family communication is assessed in relation to how many families such as the group possesses listening skills, skill and clarity of speech, the ability to monitor the continuity of conversation, respect and respect for others, to emphasize oneself, and so on (Zukovic, 2009). Very important for understanding the functionality of the family system are the characteristics of the current phase of the life cycle in which the family is located, as well the issue of resources or potentials available to the family and whose functionality can be strengthened (Zuković, 2009).

4. THE NOTION OF CRISIS

There is no clear and unambiguous conceptual definition of the crisis, but it is possible in the literature find many definitions, and often different interpretations. Usually the term “crisis” is used for all types of negative events and for situations that are unwanted, unexpected,

unpredictable ... The original meaning of the term crisis (Greek: crisis) is: judgment, judgment, decision, decisive point, decisive moment, etc. (Vujaklija, 1997). Based on the original meaning of the crisis can be concluded that the crisis can be positive and stimulating for further development or negative, disruptive and frequently threatening to further development of individual or system. In ancient Greece, the crisis referred to situations in the lives of individuals and communities in which final and irrevocable decisions were made (Vlajkovic, 1998), while in Chinese the crisis is written with two signs, one of which means danger, while the second sign means the possibility (Vlajkovic, 1998).Understanding the crisis as a danger or possibility tells us about its light and dark side, the incentive or disturbing potential, and the importance that the crisis has for the development and advancement of an individual or system, but of the stagnation and decline that can happen to an individual or system in the period crisis. The crisis is considered a milestone, risk, danger, but also the possibility for further development of personality (Caplan according to Vlajkovic, 1998).

The crisis is a period during which it can help the individual or the system mobilize and strengthen the resources it already owns. The crisis does not mean illness, but a passing state or a brief reaction of a psychological nature when learning an individual or family with a problem. The crisis is "a brief mental disorder that happens from time to time to persons whose life problems exceed their capacities" (Caplan, 1964). During the crisis, the balance is lost and there are numerous attempts to re-establish the distorted balance; then the adaptive ability of the individual decreases on the one hand, but increased vulnerability to the activity of harmful factors, as well as the risk of developing mental disorders on the other. If the crisis is not resolved in an adequate way, acceptable to the individual and the system, and in accordance with their capacities, disorders occur at different levels of functioning.

5. CRISIS AND DEVELOPMENT

Crises are an integral part of the life of every individual and family. There are different classification of crises and two basic groups are: developmental and accidental (Vlajkovic, 2000). Development crises follow development phases and they are inevitable during the life cycle of an individual or family. Development crises involve changes that arise in transitional or crisis periods of personality development, are the result of a temporary discrepancy between the individual's individual development potentials and the demands arising from the social environment (Erikson, 1976, 1994). Development crises are also called normative crises, because they are related to developmental changes (they follow the developmental stages), are the core of the development of each individual or family, they occur at different ages and are considered normal, expected and necessary for development. Crisis periods of development or periods of crisis, although marked by imbalance, discrepancy, and pathology, are crucial for the development of personality, because they are preparing a developmental shift and creating the possibility for further progress and development of both the individual and the system as a whole.

Accidental crises differ in their frequency, intensity, the number of individuals they affect, the severity of consequences for the health of the individual and the result of unexpected life events (whose source can be in the natural or social environment). Accidental crises occur as a reaction of an individual to sudden and sudden changes in the external environment (Vlajkovic, 2005) and can be large or small. Major crises or existential crises (such as death of a close person, severe physical or mental illness, loss of property in natural disasters, etc.), while small or natural crises carry the potential for changing an individual or system and represent hidden or a possible "sparkle" that brings the individual or family to change, which is the essence of every development. Unwanted family crises are related to unpredictable, unpleasant and difficult life events, such as: the birth of a child with special needs, many developing disabilities, physical disorders,

then severe family member illnesses, family death, and a crisis caused by the presence only one of the parents. a crisis caused by the presence of one of the parents can be willing (agreement between parents: divorce, absence due to work, etc.) and unwilling (death of one of the parents, emigration, serving sentences ...).

6. FAMILY LIFE CYCLES AND CRISES

In the study and understanding of families, the review and orientation to the family life cycle is indispensable. Family life cycle is the natural context within which individual identity and development are formed (Milojković, Srna and Micovic, 1997, p. 63), that is, the main factor in maintaining the continuity of the family, because it links the past, the present and the future (Gacic and Majkic, 2000). Each family goes through the crisis, but each family does not have the same potential for overcoming it (Goldnervukov, 1988), with the existing potentials changing over time, therefore it is extremely important to observe the family according to the current phase of the life cycle. Erik Erikson (1976, 1994) in his psychosocial theory of personality talks about eight development phases throughout the entire life cycle, stressing that these phases are a series of related crises, which are inevitable in the life of every individual, and knowing that the individual is a part of the system (ie,) then it is the crisis of the family as a whole. What changes one family member changes and others. Family evolution and cycles through which they pass require greater strain in terms of adaptation to new demands. Life cycles represent critical development points for each family, so-called. Development challenges (Gacic and Majkic, 2000), if in the course of them there is a certain unforeseen life event (divorce, illness, death ...), the possibility of deepening the crisis is increasing.

There are many of the periods of live are the cause of the crisis, among which the following are especially the following:

1. make a family;
2. a family with a small child;

3. a family with a pre-school child;
4. a family with a school child;
5. a family with adolescent;
6. a family leaving children;
7. a family with "empty nest";
8. a family that is getting older.

A family with an adolescent is a particularly vulnerable system; this phase in the family's life cycle is extremely provocative for the occurrence of the problem (Goldner-Wolf, 1994, page 12) and requires a new process of reorganization from the family (Milojkovic, Srna and Micovic, 1997). Adolescence is an important and dynamic period of development (Djordjevic, 1988; Neshic and Radomirovic, 2000; Gutovic, 2006) marked by numerous changes in various aspects. Adolescents are changing in this period, but external environment requirements are also changing towards them, i.e. there are changes in the attitudes of adolescents with the environment (Curchic, 2005). Changes in the environment surrounding adolescents can intensify or change the usual forms of psychopathology or even contribute to the emergence of new forms of psychopathology and behavioral disorders (Kurzic, 2005). Adolescence is a crisis at the personal and family level and it develops around two processes; The first process relates to how the adolescent accepts his own changes, and the second process, how parents experience changes in adolescents and change their own position and role in the lives of adolescents (Polovina, 2000).

7. TREATMENT OF A FAMILY IN CRISIS

Treatment of a family in a crisis is an important area that puts the family as a system at the center of treatment, treating the family as a system, composed of a set of interconnected subsystems. During the crisis, they are intensely searching for new solutions that lead to change. The crisis is associated with many dangers, both per person and the system ("the ground is lost under the feet", "the balance is shaken" ...). Very often, professional help (psychologist, psychotherapist, psychiatrist ...) is

necessary to get out of the crisis.

Family treatment models are different (Goldner- Vukov , 1988): psychodynamic family treatment - where the goal is to inspect the unconscious factors of earlier conflicts that affect the present; systemic family treatment - where the goal of changing patterns and loss of symptoms, growth, family development; behavioral model - where the goal is to change the problematic behavior in the family; an experiential-existential model - where the goal is to change the way of experiencing and responding to family members.

Family psychotherapy highlights the importance of circular examination of the problem, with the so-called "identified patient" only the carrier of symptoms in a disrupted and dysfunctional family system. it is important to emphasize that the result of resolving the crisis is a change, and that every change is painful, but it is also a challenge for the individual and family, because it encourages maturation and further development. In order for a system, such as the family change to get something (health, maturity, freedom for all its members ...) and improve its way of functioning, something must "lose" (dysfunctional patterns, secondary profits, etc.). the crisis can help family members to get closer, better understand, renew respect, etc. The best quality change is when the whole family changes and when the change is significant and substantial. The change comes spontaneously, the so-called natural healing, but also through therapeutic work with families. The most frequent change in the family as a system starts and stimulates family therapy, which involves working with a complete family or with a family or an individual. Crises are important for the development of an individual or family, because the success of overcoming and solving it depends on the further development of the individual and the family as a system. When the family faces a crisis or becomes aware of the crises, ie the existence of a certain symptom or a disturbance of relations among members, then it is most modest to change and this moment should be used for a change that, for the whole system, means development and progress towards a positive half of family functioning.

8. LITERATURE

1. Antonovsky, A. (1985). Health, stress, and Coping. london. jossey-basss Publishers, san francisko. Antonovsky, A. (1988). Unraveling the Mystery of Health, How People Manage Stress and Stay Well . London. Jossey-Basss Publishers, San Francisko.
2. Antonovsky, A. (1993). Complexity, conflict, chaos, cocherenc, coercion and civility. soc.sci med, 37: 969–98
3. Barker Ph. (1992): Basic Family Therapy, London, Blackwell scientific Publications.
4. Videnovic, I., Kolar, D. (2005). Mental hygiene. Belgrade
5. Vlajkovic, J. (1998). Life crises and their overcoming. Belgrade. Plato.
6. Vlajkovic, J. (2000). Refugee risk of mental health. Belgrade . The Yugoslav Red Cross of Serbia, The international federation of the Red Cross and the Red Crescent.
7. Vlajkovic J. (2005). Life crisis - Prevention and overcoming, third, revised edition. Belgrade.
8. Vujaklija, M. (1997). A lexicon of foreign words and expressions. Belgrade. Prosveta.
9. Goldner-Vukov, M. (1988). Family in crisis. medical book. Belgrade
10. Goldner-Vukov, m. (1994). Roads and family traits: Family and youth. Belgrade.
11. Gacic, B., Majkic, V. (2000). Family Resilience: Key Processes. Psychology. 3-4, 329-350.
12. Golubovic, Z. (1981). Family as a human community. forward. Zagreb.
13. Gutovic, M. V. (2006). Developmental psychology. Banja Luka. University of Banja Luka, Faculty of Physical Culture and Sports.
14. Djordjevic, D. (1988). Developmental psychology. Gornji Milanovac. Children's newspaper.
15. Ekerman, N. (1966). Psychodynamics of family life, Podgorica. Library Physic.
16. Erikson, E. (1976). Youth, crisis, identification. Podgorica. Victory.
17. Erikson, E. (1994). Identity and the Life of Cycle.W.W. Norton & company

18. Zotović, M. (2002). Stress and Consequences of Stress: An Overview of the Transactional Theoretical Model. Psychology, Vol.35 (1-2), 3-23.
19. Zuković, S. (2008). Empirical study of the family - possibilities and limitations. BIBLID: 0553-4569, 54, 1-2, p.14-22.
20. Kaplan, Dž. (1964). Principles of preventive psychiatry. London. publisher
21. Kapor - Stanulovic, (2007). Family: family resilience, vulnerability and family equity.
22. Kowal A., Szymona K., Opolska A., Piszczek R., Domanski, M. (2007): Family support and the senseof coherence (soc) in adolescents. annales Universitatis Mariae Curie – Sklodowska Lublin Polonia,.
23. Mccubbin, H. and. & Mccubbin M.A. (1988) Typologies of resilient families: emerging roles of social classand ethnicity. Family Relations, 37, (3), 247–254.
24. Mccubbin, H. and., Thompson, A. et al. (1998): Stress, coping and Health, in Family Resilinacy. Sense of coherence, sage Publications.
25. Mosley-Hänninen, P. (2009). Contextualising the salutogenic Perspective on adolescent health and the sense of coherence in families – a stady amnog adolescents and their families in the swedish speaking finland. Laurea University of applied sciences abstract.master of healthcare.
26. Polovina N. (2000). How to preserve the mental health of the family in refugee. Belgrade
27. Olson, D.H. (2000). Circumplex model of marital and family systems. Journal of Family Therapy, 22, 144–167.
28. Hawley, D.R., Dehaan, l.(2004) Toward a Definition of Family Resilience: Integrating Life-Span and Family Perspectives. family Process vol.35 (3), p. 283 – 298. Published online: 29. july 2004. sagy s.
29. Walsh, F. (1998): Strenghteoing family resilience. New York: Guilford Press.

VISION

International Refereed Scientific Journal

Editorial Principles

VISION aims to publish highly selective original articles and current relevance that will have a long-term impact in the social sciences to international area.

VISION publishes scholarly articles in all branches of Social Sciences.

Submission to **VISION** must be either original articles making significant contributions to studies in the field or essays of analysis evaluating previously published studies while presenting novel and worthwhile perspectives.

Submission to **VISION** must not be previously published elsewhere and must not under consideration for publication by another publishing agency. Papers presented at scientific meetings or conferences may be submitted to **VISION** on condition that this is explicitly stated at the time of submission.

VISION is published regularly twice per year by the International Vision University, Gostivar, Republic of Macedonia.

International Vision University holds the copyright of articles accepted for publication in **VISION**.

Authors hold the sole responsibility for the views expressed in their articles published **VISION**.

Submission to **VISION** should be made electronically through journal@vizyon.edu.mk.

Detailed editorial principles of **VISION** can be found by visiting visionjournal.edu.mk.