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# THE IMPACT OF THE SARS-CORONA PANDEMIC 2 ON HUMAN RIGHTS

Zoran Filipovski, . Kalina Sotiroska Ivanoska, Milena Galetin, page 9-17

## ABSTRACT

In addition to the negative aspects of the quality of life caused by the crisis from the KOVID-19 epidemic, it is in a way a foundation for the essentiality of ensuring the further development of social rights, especially in terms of health care rights. This crisis only highlights the shortcomings in the development of the corpus of these rights, of which the governments in many countries were aware, but still did not do much to improve this situation, which is negatively reflected in dealing with this health crisis, and thus in the protection of the corpus of the fundamental rights and freedoms of the citizens through the loss of their lives, as a consequence of the non-functioning of the health system.

**Keywords:** Covid 19, Human Rights, Right to Life, Social Rights,



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## INTRODUCTION

In efforts made by countries through strengthening the capacity of their health systems and the introduction of emergency measures with the sole intention to preserve the life and health of citizens, thereby restricting their freedom of movement, they are in the process of care, actually deny freedom to enjoy other rights, enshrined in international instruments on fundamental human rights and freedoms. Such measures affect the livelihood and safety of people, especially due to the difficulty of accessing the use of health care (not only for KOVID-19), food, water, fulfillment of their professional obligations, education - as well as leisure. More obvious is the need for taking measures to mitigate these adverse effects.

However, in order to protect the lives of citizens, countries have no choice but to introduce emergency measures in order to strengthen effectiveness against this global threat to human health as well as to mitigate the wider scope of the crisis and stop its expansionary action.

Although states use emergency measures to protect the health of citizens, the fact must be emphasized that in this time period, it is not necessary to neglect human rights, for whatever reason, because the focus must be on achieving sustainable development and economic well-being of the countries, which after the end of this crisis, will be essential for the return of economic and political correlations to the level of before its onset.

### 1. VIOLATION OF THE BODY OF FUNDAMENTAL RIGHTS AND FREEDOMS

#### 1.1. Populism as a tool for violating certain rights and freedoms of citizens

The issues of protecting the corpus of fundamental human rights and freedoms are even more important because the crisis has been used for populism by some leaders and political elites from both the countries of the union and the world. The political elites used this health crisis for the survival of populist politics as a chance to expand their executive powers,

which in turn negatively reflected on the democratic capacity of state institutions and international organizations. Lowering the support of the population for political elites who opposed the recommendations of the World Health Organization and the scientific community in their countries make populist leaders to change their course of conduct policy and adopt measures that were widely accepted by the population despite the damage they caused to the economies of the countries. (*Bruno Theodoro Luciano, Can Populism Survive Covid-19?*). However, some leaders, taking advantage of this health crisis, have given additional powers to the executive, allowing it to run decrees indefinitely, which has greatly contributed to the strengthening of autocracy at the expense of the democratic capacity of certain states. In others, such powers have produced increasing levels of repression through the deprivation of liberty of protesters, journalists, and human rights activists.

Instrumentation of crises is not a new approach of populists. In fact, the modern rise of populism is rooted in the context of the economic and financial crisis of 2008, as well as the influx of migration and the influx of refugees due to the effects of the Arab Spring and the unrest in Libya and Syria. This health crisis is being exploited by some political actors, who not only have aspirations to take power in their countries, but also to disable domestic and international institutions that can challenge their policies and legitimacy.

## 2. THE IMPACT OF THE EMERGENCY ON THE RESTRICTION OF THE FREEDOM AND RIGHTS OF THE CITIZENS

There is an evident crisis which the world faces, and what was almost a century, it requires a global response that is more than certain that there will be a reflection on our social, economic and political rights.

Given the need to preserve the lives of citizens, as a greater valuable asset, countries have established emergency measures to slow the transmission of the virus, resulting in a curtailment of citizens' freedom to exercise their human rights. Such measures inadvertently affect the existence and safety of people, their access to health care, food, water and sanitation, work, education and, most importantly, their socialization. This situation can

lead to an increase in alienation for some categories of citizens, which as a condition, can negatively affect the overall social and political system.

During a state of emergency, governments may be given general authority to enact regulations by force of law. This is acceptable, provided that these general powers are of limited duration.

The range of measures taken to prevent the Covid-19 pandemic, depending on the situation in the countries, is implemented differently. Despite certain norms set out in the articles of the European Convention on Human Rights in relation to the protection of health, which allow Governments to exercise the right to prescribe emergency measures, those norms still leave the right for states to assess the extent to which they will use this situation in order to deny the rights and freedoms of their citizens. An essential feature of this system is the ability of states to determine the situation with regard to restrictions on freedoms, in the context of the continued application of the Convention and the mechanisms for the protection of human rights protected by this Convention. However, all these measures taken to protect the health of citizens have a negative effect, primarily due to the violation of other rights guaranteed by the ECHR, as well as the violation of one of the basic - the right to respect for private and family life. (*European Convention for the Protection of Human Rights*). The long duration of these measures deprives individuals of the opportunity to develop personal relationships with their loved ones with a number of activities that they normally did. This situation has the greatest consequences for families living in different countries, which in turn make contact and care, watching and spending time together, significantly more difficult over a long period of time. (*Covid 19 and the effect on human rights, Advice on Individual Rights in Europe*).

### 3. LEGAL FRAMEWORK FOR PROTECTION OF THE RIGHTS AND FREEDOMS OF THE CITIZENS DURING THE EMERGENCY PERIOD - IN THE PERIOD OF HEALTH CARE

Although some rights, such as freedom of movement, freedom of expression or freedom of peaceful assembly, may be restricted for the protection of public health, even in situations where no emergency

measures have been taken, such restrictions must still be met, certain conditions such as legality, necessity, proportionality and non-discrimination.

When we talk about legality, it means that the restriction must be "provided by law", which means that the restriction should be contained in the provisions of existing laws or special legal acts, which must not derogate from the provisions of existing laws, at the time of application of the restriction. These acts must not be arbitrary or unreasonable and must be clear and accessible to the public.

The necessity of the restriction must refer to the protection of one of the permissible grounds set out in the International Covenant on Civil and Political Rights, which includes public health, while proportionality means that this restriction of freedoms must be appropriate to achieve its protective function and be the least assertive option among those which can achieve the desired result. (*Respect for democracy, the rule of law and human rights in the context of the health crisis caused by COVID 19, Council of Europe, 2020*).

Non-discrimination as the last condition is aimed at ensuring that no restriction is contrary to the provisions of international law for the protection of fundamental human rights and freedoms. (*Emergency Measures and Covid-19, Ohcr.org*)

The restriction evident by these measures also addresses other rights protected by the European Convention, such as the right to freedom of religion, freedom of expression and the right to information and the right to peaceful assembly.

By denying people the right to freedom of religion, they are denied the opportunity to visit places of worship or to be visited by those who provide them with spiritual assistance.

The possibility of denying freedom of expression and the right to information, especially in a state of pandemic, when health care information is essential, is more than debatable, regardless of the fact that freedom of information can be used to place certain harmful information with in order to cause panic among the population. Although the prevention of disinformation during a pandemic is essential, the measures taken by the states in those cases should not mean censorship of the press

and the authorities responsible for sharing and sharing useful information. What should be emphasized, which was also a proposal of the European Commission for Democracy, is to encourage the free flow of information to the public to understand how to detect and control the disease, but at the same time to restrict that freedom, only in relation to public health. The proposal came in particular because of the misuse of information by certain governments that used it to detain healthcare workers on charges of allegedly "spreading false news" when they publicly criticized the way these governments dealt with the pandemic.

Restriction of the right to peaceful assembly, as an instrument for effectively guaranteeing the freedom of individuals, according to a new general commentary issued by the UN Human Rights Committee, is a personal right of every individual. This means that if there are individuals who use the right to peaceful assembly for violence, it does not mean that the whole group is to blame for such behavior. (*Fundamental Rights and The COVID-19 pandemic, World Justice Project Rule of Law Index 2020*). It does not mean that the right to peaceful protest should generally be derogated from if there are individuals who exercise this right during a health crisis without complying with health protocols.

From the analysis of the justification of the measures for establishing the state of emergency in many countries in the region, it cannot be concluded that they gave an appropriate answer that the goal achieved by their determination was more effective than if the pandemic were controlled by regular legal measures. (*Economic and Social Rights Initiative, www.a11initiative.org, March 2020*). There are also no answers that the measures taken in the state of emergency were justified, necessary and legitimate, and that there is no detailed explanation why a certain type of measures was introduced.

The permissible deviation or suspension of certain rights, when extraordinary measures are declared, should be avoided, when the situation can be adequately resolved by establishing proportional restrictions or restrictions on certain rights. If all this is taken into account, then as a logical conclusion is imposed the fact that the legislation that makes up the provisions for determining emergency measures should be of a strictly temporary nature, as well as directly proportional to achieve the stated goals in public health.

According to all international acts, during a state of emergency, certain rights, such as the right to life, the prohibition of torture and the principle of legality in criminal law, not only can not be derogated, but their application should take place smoothly. States should also take measures with the sole purpose of preventing actions that may lead to human rights violations and other abuses related to the state of emergency, committed by state authorities or non-state actors. In such situations, it is essential that governments investigate allegations of such violations and abuses effectively and promptly so that they are stopped, not repeated, and the perpetrators brought to justice. (*Emergency measures and covid-19: guidance, The Office of the High Commissioner for Human Rights (UN Human Rights)*).

The principles of legality and the rule of law, during the duration of the state of emergency, require strict adherence to these principles and the basic requirements for a fair trial. Emergency measures should not be used as a basis for curtailing the rights of certain individuals or groups, including minorities. The measures taken must not discriminate against citizens' rights on any grounds, such as race, color, sex, sexual orientation and gender identity, disability, language, religion, political or other opinion, national or social origin, property, birth or another status. The essentiality in such situations is aimed at ensuring, by the state, the enjoyment of the basic economic and social rights of the people affected by the emergency measures, which includes support for employment, housing, food, education and social protection.

In order for citizens to exercise those necessary rights during the state of emergency, it must be formally declared by law, and states must notify the UN Secretary-General and other states of the provisions they have repealed, as well as the reasons for the abolition, in accordance with the International Covenant on Civil and Political Rights. According to the provisions of the International Documents ratified by the states, in their actions the Governments are obliged to inform their own population about the duration and territorial scope of the state of emergency, in order for the public to be fully aware of the new situation so that citizens can behave appropriately. (*Promoting Democracy, Government Rights and Human Rights in the Context of Health Crisis by COVID 19, Council of Europe, 2020*). It is essential that the state of emergency should not be used for any purpose other than what it is intended for, and especially not to censor

media outlets, as they play a key role during the state of emergency. Also, the suspension of certain rights, during the state of emergency, should be subject to periodic and independent review by the legislature. What should be emphasized is that the continuous judicial supervision over the measures taken in the state of emergency is of particular importance.

The United Nations have available, a powerful set of tools in the protection of human rights, which enable states to respond to threats and crises by putting the rights of citizens at the center of protection, which only indicates that the protection of the corpus of the fundamental rights and freedoms of citizens is an obligation that states must respect. These documents can help states, through the protection of the human rights corpus, calibrate response measures to increase their effectiveness in combating the disease, minimizing the consequences on the economy, social and health systems.

Despite the existence of the health crisis, the suspension of certain rights and freedoms must not be the principle of this time, but should be a guide that will allow us, in a short period of time, to focus again on achieving equitable sustainable development.

## CONCLUSION

Measures taken in the past to protect the population from the pandemic have not only suspended the right of movement of people but this health crisis has affected other areas where the corpus of fundamental human rights and freedoms has been derogated from.

Due to the systemic problems faced by certain countries, the rights and freedoms of the citizens were derogated, which referred to: a) access to justice, primarily due to paralysis of the judicial systems, b) adequate access to technology, due to insufficient technological literacy, or inability to connect to the internet, made it difficult to exchange pandemic responses and information globally, c) individual cases of systemic racism that some governments, using the health crisis, through law enforcement agencies, have committed excessive violence against vulnerable groups of citizens.



Although it is known that against this health crisis, still as an essential response to protection, are personal protection measures and as the most effective state of emergency, it is more than clear that human rights should be respected even in times of pandemic that changed the way of life globally.

What is essential is that the measures that governments can take to combat this global pandemic should be targeted, necessary and proportionate. It is also essential to establish mechanisms that can analyze research and as a last resort prevent abuse of power in implementing measures to combat this health.

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# CORPORATE SOCIAL RESPONSIBILITY IN TERMS OF COVID 19 PANDEMIC

Jordan Delev, page 19-37

## ABSTRACT

Global society is currently facing the greatest challenge of the 21st century. The pandemic created by the Sars-Cov-2 virus has caused a major health crisis which has appropriate implications not only for health organizations and institutions, but also for the whole institutional system of each country and particularly has a full impact on the functioning of national legal and economic systems. The COVID 19 pandemic expresses its health, legal and economic repercussions equally to all social actors. Analyzed from a legal and economic point of view, legal entities, companies are equally exposed to the effects of the pandemic as individuals (natural persons). The companies strive to achieve their lucrative goal, but in parallel with the lucrative goal, they should also provide their social component, i.e. to contribute to the development of the community in which they operate and function. The purpose of this paper is, using the method of analysis to determine the basic need for corporate social responsibility, especially in the presence of the COVID 19 pandemic. The analysis comes down to defining corporate social responsibility and the impact of the pandemic on the performance of its functions. In that regard, within the newly created economic conditions of functioning, the need to use corporate social responsibility as an element of the business policy of companies and implementation of soft law practices was analyzed. The paper includes an appropriate analysis of the applicability of corporate social responsibility in the new conditions. On the other hand, the use of the comparative method provides a comparison of examples from world and Macedonian practice. The focus of the paper is on emphasizing the need for a responsible approach of companies and realization of the defined corporate social responsibility in changed conditions imposed by the COVID 19 pandemic.

**Keywords:** Corporate Social Responsibility, COVID 19 Pandemic, Company Law.



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## **INTRODUCTION**

The COVID 19 pandemic is currently causing global society as a health crisis, which is spreading surprisingly fast and demonstrating fatal consequences for the health of the entire population. The health crisis caused by the COVID 19 pandemic is not one-way, i.e. it does not imply only on the health system on a global or national level, but it can be defined as a socio-economic crisis with its health, legal, economic, sociological and cultural implications. The spread of COVID 19 causes a reduction in global economic activity and a crisis in all walks of life. On the other hand, appropriate regulation of the newly created conditions and activation of legal instruments in the national legislations is required in order to prevent the spread of the pandemic. The positive effects of globalization are currently stagnant and are met with restraint in the free movement of people, capital, products and services.

The treatment and analysis of this crisis from a purely health point of view is insufficient in presenting its overall impact it has on the global society. Therefore, certain legal and economic elements that this crisis has reflected should be analyzed separately and to present separately the appropriate effects that the pandemic has caused. The main drivers of the economic system on a national and global level on the one hand are the companies and on the other hand is the labor force. Both companies as legal entities and workers as individuals are equally affected by the COVID 19 pandemic, primarily from a health perspective, and then from an economic and legal perspective.

Modern corporate governance imposes corporate social responsibility, which companies should manifest to their stakeholders. Corporate social responsibility means a company reaction in terms of improving the functionality and quality of life of the community, whether it is for the immediate community (its employees), or for society as a whole. (Valeri, 2019, p. 19-20) The conditions of the pandemic put every company in front of the challenge to ensure a balance between the negative economic conditions in which it is forced to work and to achieve a sustainable level of productivity and social responsibility towards its working community and the society in which it operates. That is why it is of particular interest to analyze primarily the need for an established and stable approach in creating corporate social responsibility and analysis of the application of such an approach in difficult and negative economic conditions. Here, first of all, soft law instruments must be taken into

account, whose non-coercive character contributes to the realization of the foreseen and newly imposed strategic goals of modern companies.

The COVID 19 pandemic is the starting point in the analysis of this paper by emphasizing the changes it has caused in the socio-economic system and the consequences for business entities. The analysis that this paper seeks to provide includes the definition, need, functioning and legal nature of corporate social responsibility, its functioning in changed economic conditions imposed by the COVID 19 pandemic.

## **1. COVID 19 AND ITS SOCIO-ECONOMIC AND LEGAL IMPACT**

The genesis of the emerging state in which the world is occupied and forced to find alternative mechanisms of functioning begins in China in December. Less than 4 months after the first case of coronavirus was diagnosed in March 2020, the World Health Organization has already declared a pandemic. This pandemic is characterized by the rapid spread of the virus worldwide so the current situation after one year from the first registered case is the following: 66 964 380 infected cases and 1 536 618 deaths (the numbers are constantly growing and are variable). (World Health Organization [WHO], online available)

From the very beginning of the declaration of the pandemic, its effects have exceeded the limit of only a health crisis, and it has an impact on the basic foundations of society and the economy as a whole. However, the impact of the pandemic and its effects are variable from country to country and this contributes to a proportional increase in inequality and poverty worldwide, which requires a coordinated approach to overcome the negative consequences. (Bagchi et al., 2020, p. 15) On the other hand, despite the attempts for a coordinated approach in dealing with the pandemic, national protection of the interests and priorities of each of the countries is evident. The growing disproportion between countries will escalate with global irreparable damage, endangering life and livelihood in the coming years, and therefore requires a rapid socio-economic response to the development strategies that countries seek to undertake in dealing with the COVID 19 crisis.

The effects of the pandemic have a multidimensional effect on the social movement, which can be partially analyzed as health, economic, social and legal effects.

The COVID 19 pandemic has pronounced implications for a health system that is overloaded and oversaturated. In a situation where the health system is on the verge of collapse, then the consequences of the

pandemic are not expressed in infected cases but in deaths and the creation of difficult conditions for treatment. When health systems are on the brink of extinction, this leads to an increase in deaths not only as a result of the pandemic, but also as a result of other medical conditions. Therefore, the focus should be on maintaining the necessary health services during the pandemic. Countries in this situation tend to make difficult decisions to strike a balance between the needs posed by the pandemic and the needs necessary for the normal functioning (in the absence of a pandemic) of the system to reduce the risk of collapse. What is critical is defining health as a priority by mobilizing basic health services and the system during the pandemic, reducing financial barriers to basic services and access to viral diagnostics, and focusing on the most vulnerable groups to ensure continuity of services. (Gans, 2020, p. 11)

Under normal circumstances, economic theories focus on the fact that there are limited resources that need to be used adequately to achieve the maximum effect of their exploitation. However, the current conditions are out of amplitude to be able to be defined as normal, so the appropriate resources need to be directed to public health. The current conditions dictate the direction that politicians and business leaders take towards accepting the idea that we need to deal effectively with the pandemic first and foremost in public health, so as not to cause a loss of economic health. The economic crisis caused by the COVID 19 pandemic is leading the world into a recession with a historic unemployment rate. The pandemic causes job losses that qualifies it as an existential crisis. Small and medium-sized enterprises (SMEs), agricultural workers, the self-employed, day laborers, refugees and migrant workers are hardest hit. Jobs in service industries, especially tourism and culture, are equally affected. The global economic recession caused by the pandemic will affect global population movements and hence will affect countries with high levels of migration and negatively affect their Gross Domestic Product (GDP). The International Monetary Fund (IMF) has described the crisis as unique and unprecedented. The consequences of this crisis are huge because at the same time they cause a loss of human capital, it manifests financial implications that are difficult to measure due to the uncertainty of the duration of the pandemic. (Gans, 2020, p. 13) Economic recovery is possible through the protection of jobs and workers, the provision of appropriate and decent working conditions and the protection of productive assets, production units and productive networks during the crisis. At the same time, economic recovery is impossible without support for business units during a pandemic by creating economic policies to

mitigate the negative consequences on basic services to avoid permanent job loss.

COVID 19 pandemic expresses its impact deeper in the field of social protection and basic social services by expressing its social effects. The COVID 19 pandemic has a strong impact on the most vulnerable and poor categories and with significant implications on the intergenerational structure of the population. In order not to put the world in a situation where more people have died as a result of the collapse of the social system, it is necessary to ensure that the population has access to social services and social protection. The social protection system must take into account the different effects of the pandemic on vulnerable groups, namely men and women and those with income from the informal sector, as well as groups excluded from the health care system. Of particular importance here is the structuring of a wide range of social protection programs and basic social services and the implementation of social protection in a way that will be accessible to all groups in society who need it. (United Nations [UN], 2020, p. 29-30)

The legal effects of the COVID 19 pandemic have been an integral part of everyday life for the past year since the pandemic was declared. National legal systems were set up to find measures to prevent the spread of the pandemic that had a direct effect on the restriction of human rights and freedoms. The pandemic has far-reaching implications for human rights, unequivocally on civil, economic, political, social and cultural rights. Measures taken in response to the pandemic should seek to strike the right balance between addressing the key issues posed by the pandemic and the universally accepted international human rights standards. Primarily, this entails the provision of the right to life and health through the maximum use of national and international resources to ensure the availability, accessibility, affordability and quality of health care for all who need it, including for conditions other than viral infection, and to ensure that the right to life is respected throughout the period of the pandemic. This framework includes respect for the right to information and participation, the right to social protection and the right to work, the right to education, the right to liberty and security, a fair trial and freedom of movement, as well as the proper use of the state of emergency and its legislative implications. (United Nations [UN], 2020, p. 41-46)

This classification of the effects of the pandemic is illustrative only. Because the effects are deeply intertwined. It is almost impossible for a phenomenon not to manifest its economic, social and legal effects.

Corporate social responsibility is an example of this interaction of effects. Here is emphasized the social component of legal entities - companies, in harsh and unpredictable economic conditions and set legal restrictions that depend on the pace and development of the pandemic.

## **2. THE CONCEPT OF CORPORATE SOCIAL RESPONSIBILITY**

The company analyzed only as a set of factors that lead to economic profit is insufficient, and it should be analyzed from the prism of its role in the society in which it operates. As an active social unit, the company, in addition to the economic function, must also have a social function that arises as a result of its action in the wider social system, so it is necessary to ensure a balance between the economic and social function of the company. Accordingly, the company as a unit can not be analyzed in isolation, but only in correlation with the economic and social conditions of the community in which it operates, and the overall impact that society has on the company. Just as society can influence a company, so a company can influence the economy and the society in which it operates. (Doxee, 2020) This leads us to the conclusion that it is impossible to completely separate a company from the outside world, many of its business choices have an impact on various areas of society, from employees to the environment. In this regard, customers, employees and the general public expect companies to implement initiatives that are in line with corporate values and skills that can benefit the entire community. All this emphasizes the pronounced role of corporate social responsibility.

This by no means that the company's focus is not on making a profit, profit remains the main goal that drives the company's activities, but it is only the foundation on which the fulfillment of other responsibilities defined by different entities (such as government/regulators, customers, suppliers and, finally, society as a whole) depends.

Defining corporate social responsibility is a process that is constantly evolving. Thus, the notion of corporate social responsibility has changed in the past and is constantly exposed to the overall achievements in technology, economy and society. In this regard, the definition of corporate social responsibility from the middle of the last century has evolved from normative and ethically oriented arguments, through an integrative approach, to an instrumental approach oriented to the performance of the company. The normative approach is based on the



view that companies should take social responsibility as an ethical obligation to society as a whole. The integrative approach is based on the fact that business entities depend on society in terms of their existence and growth, including their input resources and output products are dependent on social conditions. According to the instrumental approach, corporate social responsibility means that companies are expected to achieve profit and financial stability, and on the other hand this concept is rooted in the assumption that the role of the company is to create wealth for the good of society as a whole. (Valeri, 2019, p. 18-19)

In recent years, corporate social responsibility and its implementation has been widely accepted and widely recognized as a good practice that can lead to improved company image and financial performance. The concept of corporate social responsibility is based on the belief that companies have a responsibility to society despite the fact that their primary focus is to generate profit for shareholders. The premise of corporate social responsibility is that companies have moral responsibilities that are higher than net profit for their owners and shareholders. Being socially responsible means acting in a way that does not satisfy only legal and economic obligations, but acting in a way that is of particular benefit to the society. In a simplified sense, corporate social responsibility means doing good and at the same time not harming the relationship with stakeholders. In summary, corporate social responsibility can be defined as voluntary activities that a company can undertake, once it has complied with the minimum legal requirements, in order to strengthen its own competing interests and the interests of the wider society. (Kubasek et al., 2016, p. 18-19)

The analysis of corporate social responsibility every time imposes the debate on its impact on the financial and economic performance of the company. This primarily raises the questions of defining the factors that affect profit, the existence of a relationship between corporate social responsibility and financial performance of the company and how to properly measure the contribution of corporate social responsibility to the overall profit of the company. The view that there is a positive relationship between corporate social responsibility and corporate financial performance is generally accepted. This view leads us to the conclusion that the socially responsible behavior of the company will enhance its competitive advantage and result in better financial performance and sustainability. In this regard, corporate social responsibility should be developed as an inevitable element of business strategy, in order to develop a competitive advantage. This unequivocally shows that those companies that apply corporate social responsibility will be more

financially successful. At the same time, this attitude does not mean that companies that can benefit from corporate social responsibility do not have initial costs before receiving a return on investment. On the other hand, there are costs for the lack of corporate social responsibility for companies. Being socially irresponsible has negative consequences, as it gives the company a negative reputation that leads to greater difficulties in attracting customers, investors and employees, and can lead to costly litigation. Making a profit as a goal can be achieved again, but improving a negative reputation can take years, and a good reputation can be lost forever. (Marom & Lussier, 2020, p. 252)

The applicability of corporate social responsibility is strongly related to the overall stakeholders of the company. Corporate social responsibility must not be treated only in correlation with the company's shareholders. Stakeholders can be defined as a group that can influence or be affected by the achievement of the company's goals. According to this definition, the group identified as stakeholders may include various constituents such as employees, customers, suppliers, investors, society and others. Anticipating corporate social responsibility as part of the company's business policy does not mean that the company should demonstrate social responsibility outside the company every time, but the company is equally socially responsible if it is aimed at undertaking activities in the form of internal policies that affect on employees and the working atmosphere. The company can affect stakeholders both negatively and positively. Stakeholders can be hurt by the company's actions, but it can help them achieve their goals. Stakeholders, on the other hand, can act in a way that contributes to or hinders the company from achieving its goals. Therefore, companies need to establish stakeholder management practices in order to address their needs and expectations in order to avoid negative outcomes and produce positive outcomes for themselves. (Marom & Lussier, 2020, p. 253)

### **3. INTERNATIONAL FRAMEWORK OF FUNDAMENTAL PRINCIPLES OF CORPORATE SOCIAL RESPONSIBILITY**

Corporate social responsibility is the subject of elaboration of acts adopted by international organizations with a non-binding character that try to lay the foundations that would define corporate social responsibility. The purpose of these acts is to establish advisory standards for the application of corporate social responsibility in a way that would contribute to the development of business culture and high awareness of

companies about their social environment. There are several initiatives to set standards that would model corporate social responsibility. The development of these standards primarily begins with the establishment of basic principles formulated by international bodies such as the United Nations (UN), the Organization for Economic Co-operation and Development (OECD) and the International Labor Organization (ILO). Regarding the definition of basic principles of corporate social responsibility, the existence of the Guidance issued by the most important international standardization body - the International Organization for Standardization (ISO) is of particular importance. The contribution of the European Union (EU) using its methods of adopting acts with advisory content in promoting corporate social responsibility as an integral part of the business policy of companies can not be left out of this framework. (Valeri, 2019, p. 22)

The review of these acts, which establish the basic principles, should begin with the United Nations Global Compact. The Global Compact is a strategic initiative for the wider socially oriented enterprise in the world, which was proposed in 1999 and officially launched in 2000, in order to promote a sustainable global economy, through the development of agreements and joint activities involving a number of institutional and non-institutional actors belonging to the private sector. In general, the United Nations Global Compact is a voluntary initiative to adhere to a set of principles that promote long-term values of sustainability through political action, business practices, responsible social and civic behavior, and also take into account future generations. However, once companies have joined these activities, they are committed to developing, implementing, maintaining and disseminating sustainable practices and policies. In detail, the Global Compact proposes ten basic principles related to human rights, labor, environmental protection and the fight against corruption. (United Nations Global Compact, 2014)

Corporate social responsibility is part of the precise framework of the Organization for Economic Co-operation and Development (OECD), which is an international organization with specific expertise in the field of economic cooperation. The OECD Guidelines for Multinational Companies, published the first version in 2000 and updated in 2011, reflect on the changes affecting international investment and multinational companies. The Guidelines provide voluntary principles and standards for responsible business conduct in accordance with applicable laws and internationally recognized standards. However, countries that comply with the Guidelines undertake a binding obligation to implement them. (OECD, 2011)

The tripartite ILO Declaration of principles concerning multinational enterprises and social policy adopted in 1977, amended in 2000 and 2006 and revised in 2017 is also significant in this area. This declaration is an international reference point on issues of corporate social responsibility related to labor. In particular, it provides guidance to multinational companies, governments and employers and workers organizations in areas such as employment, training, working and living conditions, and inter-industry relations. The guidelines are essentially based on the principles enshrined in international labor conventions and recommendations. (ILO, 2017)

As part of the basic principles for defining corporate social responsibility, it is necessary to emphasize the contribution of the Organization for International Standards with the updating of the ISO 26000 standard entitled "Guidance on Social Responsibility". (International Standard [ISO], 2010) The ISO 26000 standard is a non-mandatory international standard for corporate social responsibility started to be published in November 2010 after many years of process and inclusive stakeholder participation. The standard was developed to help companies evaluate and effectively focus on those social responsibilities that are relevant to their operations, the environment, their stakeholders, and the world at whole. The standard establishes guidelines focusing on five aspects - understanding social responsibility; principles of social responsibility; recognition of social responsibility and commitment to stakeholders; guidelines for the basic subjects of social responsibility; and guidelines for integrating social responsibility across the organization. The goal that the Guidance seeks to achieve is to help companies contribute to sustainable development. The purpose is to encourage them to overcome legal compliance, recognizing that compliance with the law is a fundamental duty of every company and an essential part of their social responsibility. In addition, the Guidance aims to promote a common understanding in the area of social responsibility and to complement, rather than replace, other instruments and initiatives for social responsibility. (Idowu, 2019, p. 2-3)

Since 2000, the European Union has made an important contribution to the dissemination of corporate social responsibility practices. The publication of the "Green Paper" by the European Commission is considered to be undoubtedly the most important initiative that the EU has taken in this field. (Commission of the European Communities, 2001) This is how the European Framework for Corporate Social Responsibility was promoted in July 2001. Initially, the concept

advocated by the European Commission in the 2001 Green Paper defined corporate social responsibility as a concept in which companies voluntarily choose to contribute to a better society and a cleaner environment. Ten years later, the European legislature revived the issue by regulating the issue through Communication No. 681 of 2011, entitled "A renewed EU strategy 2011-14 for Corporate Social Responsibility", which also introduced a new definition of corporate social responsibility as responsibility of companies for their impact on society. (Commission of the European Communities, 2011) This new definition rejects the voluntary nature of previous legislation and firmly places corporate social responsibility in a much wider area, stipulating that for the full fulfillment of their corporate social responsibility, companies should have a process for integrating social, environmental, human, ethical, human rights and customer care in their business and core strategy in close correlation with their stakeholders. It is therefore not at all surprising that in recent years the EU has sought to spread the concept of shared value, in which economic aspects, social benefits and marketing strategies can coexist. The idea behind this approach is that the competitiveness of each company and the well-being of the community in which it is located depend on each other. Recognizing and promoting this kind of link between the economic and social spheres would give greater impetus to the new wave of sustainable economic development and, at the same time, correct some of the damages typical of capitalism. (Doxee, 2020)

#### **4. THE IMPACT OF COVID 19 PANDEMIC ON CORPORATE SOCIAL RESPONSIBILITY**

The emerging situation caused by COVID 19 has a strong impact on companies in terms of corporate social responsibility. The advent of COVID 19 has contributed to a drastic and structural change in corporate social responsibility policy during 2020. Starting from the fact that one of the fundamental goals that companies strive to achieve is to make a profit, the newly changed economic conditions dictate the pace at which companies try to minimize the negative effects of the current crisis. This imposed behavior of companies undoubtedly indicates changes in the business environment and changes in their crucial business policies. This underlines the impulsive change of companies in terms of their corporate social responsibility.

Characteristic of the COVID 19 crisis is that it causes fluctuating and unequal effects on different types of industries, so the effects of COVID 19 in terms of the company's response to the crisis should be

measured sectorally. Certain industrial sectors in the conditions imposed by COVID 19 show excellent results that are characterized by increased profits, and therefore it is expected that in these conditions they will manifest greater corporate social responsibility. The corporate social responsibility of these companies that record positive trends in times of crisis should cover all partial units starting from the company stakeholders to the development of competitive advantages and positive business practices.

The analysis of corporate social responsibility in conditions of COVID 19 crisis must start from the perspective of company stakeholders, primarily from their own employees. Employees are undoubtedly the most valuable company resources and the company's attitude towards them is directly related to the contribution of employees to company results. Corporate social responsibility to employees is most often expressed through typical aspects related to working conditions and labor valuation, such as job security, adequate pay and compensation, employee health, adequate working conditions, equitable organizational distribution, introduction non-discriminatory practices and stimulating diversity and inclusiveness, labor relations and collective bargaining, flexible working arrangements, training and careers, and other good labor practices. With the advent of COVID 19, employees have emerged as the most important component of corporate social responsibility, with certain aspects related to them, such as job retention, remuneration and health and safety at work, gaining the primacy of very important in this context. Practices that should undoubtedly be included in COVID 19 concept of corporate social responsibility aimed at improving the situation of employees are: paid absence from work (full or limited); keeping the job active for a limited period or partially; creating a policy of voluntary leave for a limited period; payment of quarantine fee; work from home; flexible working hours; and work by using of communication technologies. These practices should unequivocally include paid sick leave, maintaining the safety of employees, the mandatory introduction of safeguards and especially crisis support services such as financial assistance. (Aguinis et al., 2020)

The stakeholder dimension of corporate social responsibility includes an active approach to its customers. This includes analyzing corporate social responsibility towards customers from aspects such as quality of products and services, creating a safe and friendly environment, fair price, consistent quality throughout the product life cycle, honest, well-intentioned and advertising within good competitive practices and similar. This approach is in line with the marketing concept of value

perceived by the customer, which in principle provides the answer to the question why customers prefer one product over another, and includes the benefits of the product/service, monetary costs and time and energy. Seen through the prism of COVID 19 some of these aspects are more significant in relation to the new situation such as online services, deferred payments due to difficulties in securing finances, home delivery and etc. Analyzed by sectors, the corporate social responsibility towards the customers in conditions of COVID 19 crisis is manifested in the following way, in the financial sector there is introduction of measures aimed at postponing the payment of loans, mortgages and cancellation of monthly fees for services, etc.; in multidimensional companies increased favoring of online services; in the food sector intensified application of home delivery; in the transport sector abolition of compensation for cancellation of services; in the retail sector it is noticeable to define special working hours dedicated to the elderly; while in the domain of the online sector, the ban on higher prices for basic services is noticeable. (Sundar, 2020). Certainly as a confirmation of increased corporate social responsibility towards customers can be seen through the examples which show the creation of customer value through deals, discounts and free links, which can be used in a pandemic. This includes home delivery, the introduction of free television and online programs, music, digital books, free virtual lessons, increased capacity and speed of internet use, free use of WiFi network, as well as the provision of free services for a limited time interval for certain categories of users (for example students, senior citizens, etc.). (He & Harris, 2020, p. 177).

The social community in which the company operates is an inevitable element that is actively represented in the policy of creating corporate social responsibility. Corporate social responsibility towards the community includes charitable donations to the community, donation of products and services by the company for the needs of the community, use of facilities or managerial expertise, as well as helping those categories of community members who need it. The COVID 19 pandemic dramatically emphasizes this aspect of corporate social responsibility. Of particular importance here are practices such as food donations, donations to finance the medical needs of at-risk populations, assisting families in finding temporary childcare solutions, community assistance programs, providing medical supplies, donating masks, donating supplies and deviating the capacity to hospitals and other health care providers. (United Nations [UN], 2020, p. 28)

The companies have the primary responsibility to work in the best interest of the shareholders and their operation is based on making a profit.

Without making a profit, the company can not remain in business and consequently provide a return on investment to shareholders, pay taxes that would be reinvested for social needs, pay employees and increase their compensation, give donations to non-profit organizations and including to be socially responsible to other stakeholders. The COVID 19 pandemic, on the other hand, posed challenges that brought the issue of profit to the status quo, creating conditions in which many companies are currently trying to keep up or reduce costs, as well as minimize the loss resulting from the pandemic. This pandemic is characterized by large layoffs by companies, creating a record number of people looking for work and creating rising unemployment. In such circumstances, companies face the challenge of meeting the demands of shareholders, which in no way includes the possibility for shareholders to give up anything in favor of other stakeholders, unless they benefit in some indirect way, such as an increase of brand value, reputation or productivity. In this regard, careful use of the tool called corporate social responsibility is needed. On the other hand, the company manifests its social responsibility towards its shareholders in conditions of pandemic through other important aspects in terms of organizing general meetings and giving directions related to achieving business success. As a result of the adopted policies and measures of the companies for work from home and social distancing, they must be applied in the organization of shareholders' meetings by organizing hybrid/virtual meetings. (Marom & Lussier, 2020, p. 256)

In the classical definition of corporate social responsibility, the environment is a segment that companies should pay exclusive attention to. The increasing debate on climate change and environmental threats puts this topic at the top of the priorities in creating a company's social responsibility policy. The COVID 19 pandemic, analyzed from an environmental point of view, is perhaps the only area in which it manifests positive effects. This is a result of the cessation of major activities around the world, including industry and transport. However, this is in no way related to the corporate social responsibility of the companies, but is a result of the natural development of the pandemic situation. (Tansley, 2020)

Under normal conditions, companies in creating corporate social responsibility measure their corporate results, i.e. they measure their competitive advantages that they receive from the use of corporate social responsibility with the costs they have for its realization. However, with the advent of the COVID 19 pandemic, the focus on corporate social



responsibility should outweigh the purely competitive advantages by reallocating resources to achieve the desired effects of corporate social responsibility. First of all, this refers to the use of the opportunity by the company to direct its own production in order to achieve social responsibility. This can be done in a way that companies can offer their product lines, production opportunities and material resources, in order to produce items needed for treatment or protection from COVID 19. This diversion involves the production of medical equipment, disinfectants, masks and ventilators. The same can be done so these newly needed products, which are not their typical products, are the result of a transformation of production. A second way they can contribute, and thus be socially responsible, is by renting space, machinery, staff and production expertise.

The second segment where companies can manifest corporate social responsibility under COVID 19 is to increase production. This includes companies that regularly produce products needed to fight the coronavirus, such as disinfectants, masks and ventilators. These companies are currently facing increasing production needs of their own products, while changing their production portfolios. Such a change requires a high degree of flexibility in production, and expresses the ability to adapt to future unpredictable changes that occur in conditions where the external environment is changing. (He & Harris, 2020, p. 177).

The corporate social responsibility for the duration of the COVID 19 pandemic incorporates the company's efforts to invest in research and development in order to overcome the negative consequences of the imposed health and economic crisis. This stems from the fact that the fight against the pandemic requires the rapid development of medical products, including new opportunities for diagnosis and treatment, as well as vaccines. This can be achieved with large investments in research and development mainly carried out by companies from the medical and healthcare industry. This is a challenge for both large pharmaceutical companies and start-up companies in this industry. (Marom & Lussier, 2020, p. 259)

Normal conditions (conditions before the onset of the pandemic), and especially the newly imposed conditions as a result of the pandemic require companies to actively use information technology in order to be socially responsible. This approach can be seen through the development and adequate application of location tracking technology to help limit the spread of the disease. Other efforts are aimed at improving Internet accessibility, and there is a growing need to prevent the spread of misinformation.

The rapid adaptation to the new operating conditions requires companies to make the most of their logistics capabilities and thus demonstrate their social responsibility. The emerging situation as a result of the pandemic has contributed to a shortage of basic supplies, including health and medical supplies, as well as food in supermarkets, as a result of a disruption in the global supply chain. The disruption in itself is a result of the cessation of production in many locations and countries, disruptions in worldwide transportation and a shortage of workers in the supply chain. Hence companies with strong logistics capabilities and supply chain must act proactively and enable the shortage of basic needed products to be overcome. (Marom & Lussier, 2020, p. 260)

The analysis of the overall effects of the COVID 19 pandemic on corporate social responsibility is subject to certain limitations. First of all, it must be emphasized that the pandemic crisis is still ongoing and that in the foreseeable future this new situation will still be active. On the other hand, the current conditions affecting corporate social responsibility must be seen not only in terms of stakeholders and competitive advantages, but also in terms of a broader socio-economic and legal aspect.

## **CONCLUSION**

Companies as business entities must make efforts and resources to deal with the consequences of the pandemic, while following the basic definition of corporate social responsibility have the responsibility to realize their commitments and justify their function within society. The extensive range of practices that are part of corporate social responsibility, in conditions of great global health and economic crisis, provides an opportunity to express affirmation of the need to find the best ways in which companies should plan and practice their social responsibility.

The directions in which corporate social responsibility should be developed are also actualized from the aspect of the upcoming post-pandemic period. The pandemic exposes the vulnerability of business entities to extraordinary external forces, creating increasingly turbulent and unstable business environments that have their implications for corporate social responsibility. The post-pandemic period will bring to the surface the dilemmas of companies and business leaders about investing in corporate social responsibility and its importance or they will have to succumb to the pressure of short-term business activities and the threat of survival. (He & Harris, 2020, p. 177).

The general conclusion is that the post-pandemic development of corporate social responsibility should be planned in the long run, companies to understand that their long-term survival and development depends on achieving a delicate balance between profitability and harmony with their various stakeholders. Instead of confronting companies with the dilemma of whether to invest in corporate social responsibility, they should show interest in investing in corporate social responsibility in order to achieve mutually beneficial and interdependent social, environmental and economic goals. What global society can learn as a lesson from this pandemic is that "we are all together in this", which undoubtedly imposes the need for people and companies to be more socially responsible. Therefore, the post-pandemic period must be created as a period in which companies succeed in the realization of their business activities with a strong commitment to corporate social responsibility by developing effective strategies and having their effective implementation.

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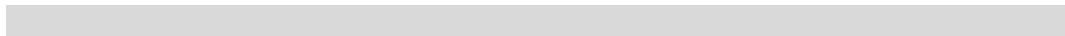
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## RISKS OF CORRUPTION DURING COVID-19

Gjorgji Slamkov, page 39-51

### ABSTRACT

The paper addresses the issue of risks of corruption during dealing with the pandemic that marked 2020, ie COVID -19.

Namely, the crisis caught almost all countries and imposed the need for urgent measures to reduce the harmful consequences. However, the shortening of deadlines or simplification of procedures has created conditions for the occurrence of corrupt activities, ie, misuse of state resources for private purposes.

In the paper, the most risky points for corruption during the COVID-19 crisis are public procurement, economic assistance from the state to citizens and companies, as well as the decline of integrity.

The paper lists several scandals of a corrupt nature during the pandemic that arise from the above-mentioned risk points, which include procurement at extremely high prices, low quality of goods, secrecy of the procedure, missing humanitarian aid, abuse of quarantine.

The paper emphasizes that the most effective tool for fighting corruption is transparency, and in terms of COVID -19 and the challenges it brings, transparency should be at a higher level.

Accountability, informing the citizens, access to public information are tools aimed at reducing the risks of corruption, strengthening trust in the system and the rule of law.

**Keywords:** corruption, COVID -19, corruption risks, transparency, integrity,



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## **Introduction**

The coronavirus crisis (COVID - 19) has brought unexpected challenges in the field of health, major economic disruptions globally, the need to take urgent action, and thus new opportunities for corruption. All this has imposed the need for an organized state response in specific conditions by including mechanisms for detecting, preventing and prosecuting forms of corruption. Some corruption risks are immediate due to the actions taken to alleviate the health and economic crisis. Other risks will arise in the medium and long term, as the consequences and impact of COVID-19 will be greater. Due to the above, the decline of citizens' trust in public institutions and business is something that will be inevitable. Hence, identifying and addressing corruption risks is crucial to safeguarding trust in public institutions and business, and in particular to public confidence in governments' ability to respond effectively to the crisis.

The rule of law, systemic institutional organization "or functioning of the system" is put to the test in a crisis situation, and as such we will include the global pandemic COVID - 19. For every country it is imperative that the entire institutional system shows integrity in a crisis, adapt its operations to the new circumstances, but in no way at the expense of the rule of law. The protection mechanisms of integrity and the rule of law must not be weakened either in the initial response or in the further process of dealing with COVID - 19.

The point of an effective fight against corruption lies in the procedural form, ie the actions taken in the field of economic recovery or procurement of medical devices must not bypass the established procedures. Namely, if we start with the view that in order to achieve certain results it is necessary to circumvent certain rules, then the way to corruption is opened.

Areas where there is a risk of corruption

The COVID-19 crisis has created changes in overall life from a global perspective in an extremely short period of time. The adjustment process, followed by quarantine measures, extreme health activities, and especially large financial packages showed both the pros and cons. Namely, the new



steps have created space for corrupt activities, fraud, misuse of public funds and similar incriminating behaviors in many areas of everyday life.

Due to the topicality of the topic, several areas that are more sensitive to the occurrence of corruption during the COVID-19 crisis will be highlighted below.

- Integrity,

When we talk about the integrity of the institutions, we mean the individuals who directly decide on behalf of the institutions, ie, it is the integrity of each individual. The COVID-19 crisis creates opportunities for many integrity violations and could intensify fraud and corruption. Namely, COVID - 19 crisis obliges governments to make quick decisions and apply drastic measures to protect the population and the economy, and this is where the danger lies.

Economic crises create preconditions for crisis in the value system as well, thus there is a crisis in integrity, the defense of the system is weakened, the control mechanisms are relativized, which opens the way for corruption and professional fraud. Namely, the sudden economic crises followed by dismissals, reduced salaries, increase of the gray economy, basically destroy the integrity of both the individual and the society.

Emerging corruption cases and scandals may also negatively impact on citizens' perceptions of corruption and thereby undermining support for government measures and reform. The negative effect is long-term because the decline in integrity will delay the process of economic recovery.

In order to prevent corruption and protect integrity, public sector organizations could take a series of preventive measures, such as: strengthening internal controls and anti-fraud policies, establishing or supporting employee counseling or financial assistance programs, as well as raising awareness of integrity standards.

A big test of integrity are the stimulus economic packages, namely, in order to respond more quickly to the needs of the real sector, governments relaxed control measures in order to urgently spend public funds, thus

creating operational risks that are aimed at corruption and misuse of public finances. Thus, the implementation of economic stimulus packages requires the relaxation of control mechanisms, such as internal controls and the timely submission of reports, which in turn is a risk of corruption. Therefore internal control, internal audit and oversight functions within government play a critical role in ensuring that public integrity is not compromised in the management of the economic stimulus packages and that these, in turn, produce the intended economic benefits.

Both internal and external auditors should act preventively and reactively, i.e. before receiving the economic stimulus packages, to highlight the risks of abuse and the dangers to integrity, and then, after granting economic packages, to respond promptly to any documented cases of corruption or abuse.

To ensure that the internal control, internal audit and oversight functions can exercise effective accountability and oversight of the economic stimulus packages, it is necessary in the shortest period of time the control bodies receive the necessary resources for efficient action. An option could be to set up temporary specialized bodies with increased competencies and thus have a primary response to dealing with integrity risks.

However, the key question is to what extent governments want to be controlled in emergencies because the increased powers of audit bodies mean increasing control over the government. This is a factual issue that depends on the degree of democracy in a society, then on the degree of corruption, as well as the public awareness for the protection of public goods. Any society with the rule of law at the forefront will strive to strengthen the capacity of control bodies, in contrast, in societies with high levels of corruption, public officials will seek to exploit the crisis in the system for their own personal gain or that of certain groups.

- Public procurement,

The COVID-19 crisis creates great opportunities for corruption in public procurement. Many countries and institutions during the crisis urgently procured large quantities of goods and services, such as hospital

equipment, medical ventilators, hand sanitisers, face masks, and health services, in order to meet the immediate needs of the health sector and affected communities in abbreviated public procurement procedures. This creates increased demand, which raises prices, raises the question of the quality of materials (fake products are sold or of lower quality, thus endangering the lives of patients), and at the same time opens a large space for corrupt practices. This is especially characteristic of developing countries where public procurement problems are present in "normal conditions", and in conditions of a pandemic such as KOVID - 19 they are even greater.

However, the problem is global, as the COVID-19 crisis occurred suddenly and spread around the world in a relatively short time. This means that the reserves of the necessary funds (primarily health and food products) in all countries, including the developed ones, were at a standard level, which did not correspond to the real current needs. Increased competition was created for the required supplies globally, then most countries (to meet their needs) prioritized their needs and restricted the export of certain products. This created an unusual corruption scheme, ie, buyers corrupt sellers in order to reach products that are currently limited in the market, and they are urgently needed to deal with the health crisis.

Some governments have introduced strategies, regulations and guidelines in place to help their contracting authorities manage their suppliers portfolio, and making sure that fair, transparent and equitable mechanisms continue to govern contractual relationships. For example, the central purchasing body of Ireland, the Office of Government Procurement, developed an information note on good practices for contracting authorities during the COVID-19 outbreak (<https://ogp.gov.ie/information-note-covid-19-coronavirus-and-public-procurement/>).

In developing countries, the adoption of rapid response integrity instruments is needed, such as: spot checks, supply tracking and monitoring, light-touch financial and performance audits, citizen surveys or multi-stakeholder initiatives and observatories.

Strengthening public procurement integrity requires urgent action, this includes developing detailed guidelines on procurement strategies under

a crisis, favouring recourse to existing collaborative procurement instruments such as framework agreements, and subjecting all emergency procurement processes to audit and oversight.

Corruption in emergency procurement reduces the resources available for life-saving operations, lowers the quality of products and services provided, and diverts aid from those who need it most. It also negatively influences public support for humanitarian relief, both in the affected country and abroad.

As one of the most affected countries, the United States has established Virtual Procurement practices - this includes the innovative use of virtual activities, such as online industry conferences, video proposals, and virtual oral presentations and consensus evaluations,

temporarily replacing standard face-to-face procurement procedures (<https://www.b2e-media.com/covid-19-the-need-for-digital-procurement>).

Similarly, urgent public procurement procedures have been established in the United Kingdom for rapid response to the COVID-19 crisis (<https://www.gov.uk/government/publications/procurement-policy-note-0120-responding-to-covid-19>). Urgent procedures emphasize transparency and demand of suppliers when receiving public funds must work on an "open book" basis. The need for integrity in the implementation of urgent public procurement is emphasized ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/874178/PPN\\_02\\_20\\_Supplier\\_Relief\\_due\\_to\\_Covid19.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874178/PPN_02_20_Supplier_Relief_due_to_Covid19.pdf)).

On 31 March 2020, the European Commission adopted guidance on how to use the flexibilities offered by the EU public procurement framework in the emergency situation related to the coronavirus outbreak. The guidance provides an overview of the tendering procedures available to public buyers, applicable deadlines, and examples of how public buyers could find alternative solutions and ways of engaging with the market to supply much needed medical supplies (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CI.2020.108.01.0001.01.ENG>).

On European soil, Italy was hardest hit at the start of the pandemic, resulting in a series of deviations from the Public Procurement Code (Legislative Decree No. 50/2016) (<https://www.dentons.com/en/insights/articles/2020/march/19/italys-cura-italia-decree-introduces-new-public-procurement-measures>). Such derogations have been adopted in compliance with EU legislation and in particular with the Communication from the EU Commission 'Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis (2020 / C 108 I / 01 adopted on 1st April 2020). The derogations aim at speeding up public procurement procedures for drugs, medical devices and personal protective equipment by the state administration (<https://app.powerbi.com/view?r=eyJrIjoiNTE2NWM3ZjktZGFiNi00MzYxLWJlMzEtYTlmOWEzYjA1MGNhIiwidCI6ImFmZDBhNzVjLTg2NzEtNGNjZS05MDYxLTJjYTBkOTJlNDIyZiIsImMiOiJh9>). In the first three months of the crisis, the government intervened with about 25 billion euros to boost health care, social security and save jobs.

In order to provide the necessary funds to combat COVID-19, as in other countries, Slovenia also approached urgent public procurement. But there was a case of suspected corruption because the tender worth about 25 million euros was won by a gambling industry businessman who had no previous involvement in healthcare (<https://www.occrp.org/en/coronavirus/opaque-coronavirus-procurement-deal-hands-millions-to-slovenian-gambling-mogul>).

In Ukraine, as a result of public reactions, a public procurement of thermal cameras worth \$ 2.2 million was overturned (<https://www.occrp.org/en/daily/12097-kyiv-cancels-2-2-million-deal-for-thermal-cameras>). Although Ukraine has passed a new law allowing the purchase of goods and services intended to combat COVID-19 without public procurement, thermal imaging cameras were not on the list.

A lesson from the pandemic in the field of public procurement is the need to create public procurement procedures in specific circumstances, but with adequate control mechanisms, with a high degree of transparency. In addition, existing public procurement procedures need to be reviewed to eliminate potential points of corruption.

More than eight months after the World Health Organization declared COVID-19 a pandemic, several pharmaceutical companies announced that they were close to creating a vaccine against COVID-19. Thus, the German company BioNTech and its US partner Pfizer announced promising results from the trial of a vaccine that could be up to 90 per cent effective against COVID-19 ([https://www.pfizer.com/news/press-release/press-release-detail / pfizer-and-biontech-announce-vaccine-candidate-against](https://www.pfizer.com/news/press-release/press-release-detail/pfizer-and-biontech-announce-vaccine-candidate-against)), the Russian vaccine Sputnik V was published almost at the same time (<https://www.nature.com/articles/d41586-020-03209-0>). This is positive news from a health point of view, but it raises questions from an anti-corruption point of view, ie who will get the vaccine first, it is known that governments are already in the race to get it, which in itself means that transparency is limited.

Secretive bilateral deals between pharmaceutical companies and governments have flourished, leaving it to journalists and the civil society to expose their actual terms and amounts and even, sometimes, worrisome conflicts of interests. In September 2020, wealthy nations representing 13 per cent of the world's population had secured 51 per cent of the promised doses of leading COVID-19 vaccine candidates (<https://www.oxfam.org/en/press-releases/small-group-rich-nations-have-bought-more-half-future-supply-leading-covid-19>). Limited vaccine supply and lack of transparency will become a breeding ground for corruption if the whole process is not strategically planned, leading to less discrimination and a more fair approach.

- Economic measures,

Regarding the economic measures for economic recovery, it is noticed that more attention is paid to quantity than quality. Namely, in the past period, the countries have invested trillions of dollars/euros for defense and recovery of the economy and preservation of jobs. But what is missing is the existence of quality anti-corruption mechanisms that will prevent the loss of money in illegal flows.

Drastic economic measures are a kind of stress test for the integrity of the institutions and the financial system, they also check the way of functioning of the public internal financial control. Especially important

is the role of audit institutions, which should map potential points for losing state money through corruption, and thus neutralize any danger to state money. In short, auditors and other controlling financial institutions need to keep abreast of solutions to financial problems, even before them, in order to indicate the dangers of certain financial measures and the manner in which they are implemented.

On the other hand, internal auditors need to create the highest possible degree of transparency and open data, so that everyone has access to information acting according to the maxim "corruption is hidden in the dark."

If the state wants the funds to go to those who need them most and to prevent abuses, it is necessary at the time of planning the emergency financial measures to hear the opinion of auditors, anti-corruption and other experts who will help to protect the public interest and integrity risk.

In order to avoid the risk of corruption during the COVID-19 crisis, governments should take measures such as: monitoring the delivery of public services in the health sector, ensuring transparent procurement processes and management of health funds, as well as undertaking other targeted integrity efforts.

The COVID-19 crisis has forced governments to intervene with huge financial resources, thus, from the countries of the Western Balkans, Montenegro from March to November 2020 borrowed about 440 million euros (from the World Bank, IMF and EU), North Macedonia in the same period issued a Eurobond of 700 million euros, and provided additional about 480 million Euros (through loans and grants from the IMF, the World Bank and the EU). As a precaution, the National Bank of Serbia and the European Central Bank agreed to set up a repo line arrangement worth EUR 1 billion for Serbian financial institutions to address possible euro liquidity needs caused by markets disrupted by the COVID-19 shock. Albania owed the same creditors about 370 million euros, Bosnia and Herzegovina received about 615 million euros, while Kosovo about 225 million euros, from the same creditors (An uncertain recovery, Western Balkans, Regular economic report no.18, fall 2020, World bank group).

Without making a global analysis of the emergency funds that were invested in the national economy to mitigate the effects of the COVID-19 crisis, data from the Western Balkans show that these are huge amounts expressed in billions of euros/dollars. Due to the above, the danger of corruption and misuse of public money is strongly present and therefore the control mechanisms and measures for integrity are key in securing the way of money.

Developed countries, in parallel with supporting the economy, also allocate funds to oversight entities, thus, the United States' stimulus package allocates funding to the Government Accountability Office (GAO), the State Audit Institution, enabling it to assist Congress in conducting oversight over spending in relation to COVID-19 crisis (<https://www.alternet.org/2020/04/federal-watchdog-agency-plans-a-blizzard-of-audits-of-2-trillion-coronavirus-relief-package-report/>).

In some countries there is a lack of clear criteria for granting humanitarian aid, while in others the process of granting humanitarian aid has a lack of transparency and accountability. As a result, corruption is emerging that contributes to the enrichment of public servants and their political supporters, at the expense of citizens who are in real need of humanitarian assistance. Such is the case with Sri Lanka, ie in March 2020 the Government decided to provide financial assistance to low-income families, the elderly and the sick. However, in many cases financial assistance was lacking because local public officials did not deliver it to certain citizens (<https://www.transparency.org/en/news/citizens-struggle-as-promised-covid-19-aid-goes-missing>). Big problems have arisen with the provision of financial and humanitarian aid, in countries like Nigeria, Afghanistan, El Salvador. Namely, at the beginning of the pandemic they received assistance from other countries and international organizations, but for a large part of the

assistance it is not known where it ended due to a completely non-transparent procedure for its distribution (<https://www.transparency.org/en/news/citizens-struggle-as-promised-covid-19-aid-goes-missing>).



## Conclusion

The fight against corruption is constant with finding new instruments, strengthening the awareness of the citizens, application of effective sanctions, as well as wider international cooperation. In the field of corruption, 2020 is different from previous years due to the outbreak of the COVID-19 crisis. There have been pandemics before but COVID -19 has spread almost all over the world in a relatively short time. The countries were caught up in the initial reaction and copied the response measures from each other. Namely, the measures are aimed at protecting the health of the population, but also their jobs - the economy.

There is a saying that "mistakes are made in a hurry" and based on the fact that during the COVID-19 crisis the measures are taken on a daily basis we could conclude that the risk of corruption during the COVID-19 pandemic is large.

The COVID -19 crisis creates risks in the area of public procurement, granting economic support, preserving the integrity, functioning of the health system, the legality of the actions of the security authorities during quarantine or conducting elections during a pandemic.

During the COVID – 19 pandemic, nearly half of the world population has stayed at home in order to slow the spread of the virus. Governments have injected trillions of dollars in economic stimulus to help ease the hardship –but, in many places, corruption prevented aid from reaching the people who need it most (<https://www.transparency.org/en/news/citizens-struggle-as-promised-covid-19-aid-goes-missing>).

Corruption during COVID-19 has a devastating effect on the functioning of the health system and citizens' access to health care. Lack of adequate protection for health professionals contributes to their working in unsafe health institutions. Corruption in public procurement contributes to the lack of medicines or to be of dubious quality. Lack of COVID-19 tests leads to a manipulative increase in their cost or patients being forced to pay a bribe for a COVID test.

The approach to fighting corruption during COVID-19 varies from country to country, but still developed countries have shown a higher

degree of precaution to reduce the dangers of corruption in emergency circumstances.

Transparency is the key to preventing corruption under normal circumstances, but even more is needed during a pandemic, such as COVID-19.

The right to information is crucial in times of crisis, because the voice of the citizens affects the way the authorities deal with them, in this case COVID -19.

The media, especially the new social media, reveal the indications of corrupt actions of public officials during a pandemic, ie misuse of state resources for private purposes.

The actions of public officials during a pandemic do not have to be criminal acts, in such circumstances - extraordinary circumstances, it is enough to be immoral activities. Such officials should be removed from office immediately.

In general, to reduce the risks of corruption during COVID-19 it is necessary to promote transparency, accountability and integrity at all levels and in all sectors of society.

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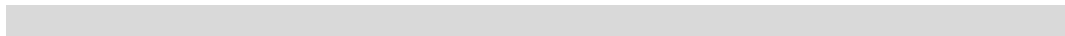
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## CONTENT OF LEGAL PROCEDURE IN CIVIL LAW

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### ABSTRACT

Transactions that directly affect a right in property, transfer or restrict that right to another person, change or terminate its legal content are called legal transactions. Absolute rights, relative rights and legal relationship in assets are among the rights that may be subject to peculium process. While absolute and relative rights in assets create changes in rights in a narrow sense, in a broad sense, not only a right included in the property, but also a legal relationship to which the person is a party is the also subject of a legal transaction. In our study, theoretically, the concept of legal transaction in a narrow sense has been discussed. Based on this scope; The scope of the legal transaction, the effects created by the legal transaction, and finally, the absolute and relative rights in the assets of the peculium process were examined based on the basis.

**Keywords:** Legal transaction, Peculium process, Civil law.



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## 1. THE CONCEPT OF THE LEGAL TRANSACTION

In terms of the concept of legal transaction, it is seen that there is a unification and agreement about the basis of the concept in today's doctrine. According to the idea that is accepted as a whole, it is accepted that a legal act is a concept that arises due to a declaration of will made properly for a legal result and a result is concluded by the legal order in accordance with this declaration of will<sup>1</sup>. In general, legal transactions are defined as declarations of will or declarations of will directed by one or more persons to reach a certain result and which are concluded by the legal order on them or themselves<sup>2</sup>. If we briefly stated, the declaration of will made by the person to have legal consequences is accepted as a legal act. If the validity conditions sought by the legal order are in question, the legal order concludes this declaration of will. Among the elements of the concept of legal transaction, there is both a declaration of will and a legal result linked to this declaration of will. Legal transactions consist of two parts. One of them is "facts" and the other is "legal result"<sup>3</sup>.

Cases are generally divided into two parts as founding cases and supplementary cases. Undoubtedly, "declaration of will" is accepted among the founding facts and has an important place. The means of projecting the will of the transaction to the outside world, especially to the party, is "disclosure" or synonymously "declaration". With the declaration of the person, we understand his will to put the legal action into effect<sup>4</sup>. It is possible that the person's words, writing, hand-arm or head movements, and in some cases a verb of silence, can also be considered as an explanation. As a matter of fact, while the declaration of will is considered the only founding fact of the legal transaction in some cases, it is sometimes accepted as the "most important founding phenomenon". In cases where the declaration of will is accepted as the most important founding fact, the legal order seeks the existence of supplementary facts along with some other founding facts together with the statement of will

<sup>1</sup> Werner Flume, **Allgemeiner Teil**, Zweite Band, Das Rechtsgeschaeft, Berlin 1965.s. 23.

<sup>2</sup> Aydın Zevkliiler, **Medeni Hukuk, Giriş ve Başlangıç Hükümleri, Kişiler Hukuku,Aile Hukuku**, İzmir 1992, s. 111; Ali Naim İnan, **Borçlar Hukuku, Genel Hükümler, Ders Kitabı**, 5. bası, Ankara 1984, s. 61. Fikret Eren, **Borçlar Hukuku, Genel Hükümler**, C.1, 5. bası, İstanbul 1994, s. 168-169.

<sup>3</sup> Eren, **a.g.e.**, s. 167.

<sup>4</sup> Flume, **a.g.e.**, s. 25.

in order for a legal act to be valid. The existence or formation of the legal transaction essentially depends only on the founding facts.

Complementary facts are generally the facts that are necessary for the emergence of the provisions and results expected from this legal action, after the legal action is established. To specify, while the facts that help a legal act to be formed, or to be established, are founding facts, complementary facts help a legal act to be concluded and have its consequences. In order for a legal transaction to take effect, it may be necessary to carry out this transaction in the presence of the official authority, that is, the participation of the official authority in this transaction in order for the legal transaction to take effect. If a transaction has to be made in the presence of or in the presence of the official authority, it is considered as one of the founding elements of this transaction.

In some cases, a material fact must also be added to the declaration of will for the establishment of a legal transaction. An example of such transaction types is the *delivery contract*<sup>5</sup> type. In this type of contract that we encounter in Roman Law, the contract is established when the thing in the contract is delivered to the other party. In such contracts, besides the declaration of will for the contract to be formed, the delivery of something that is a founding element is also included. As we have stated above, in addition to the founding elements, a complementary element is also required in some cases for a legal transaction to occur. As a matter of fact, the constituent element is necessary for the establishment of the legal transaction, while the complementary element is the necessary element for the transaction to become effective.

To give an example of a complementary element, in cases where a legal representative is required to approve a transaction that has been made, this approval process is a complementary element. Legal transactions are classified in different ways according to their characteristics<sup>6</sup>. The classification, which is important in terms of the subject and considering

<sup>5</sup> Selahattin Sulhi Tekinay, Sermet Akman, Haluk Burcuoğlu, Atilla Altop, **Tekinay Borçlar Hukuku Genel Hükümler**, İstanbul 1993, s. 40.

<sup>6</sup> Hukuki işlemlerin Roma Hukuku'nda; tek taraflı-iki taraflı, sağlar arası-ölüme bağlı, ivazlı-ivazsız, sebebe bağlı-soyut, şekle bağlı-şekle bağlı olmayan işlemler şeklinde sınıflandırıldığı görülmektedir. Paul Koschaker, **Modern Hususi Hukuka Giriş Olarak Roma Hususi Hukukunun Ana Hatları**, Çeviren: Kudret Ayiter, Ankara 1950, s. 48-49; Ziya Umur, **Roma Hukuku Dersleri**, İstanbul 2010, s.192.

the effect of the legal transaction on the assets, is based on. Legal action can take two forms in terms of the effect it creates on assets. The first type of legal act is a subtractive transaction and the second type of legal transaction is an earning transaction<sup>7</sup>. Subtractive transaction is a type of transaction that reduces a person's assets. While the subtractive legal transaction does not seem to cause any increase in the assets of the other party, it is seen that the party performing this transaction causes a decrease in the assets. The appearance of the subtractive process is always a one-sided peculium process<sup>8</sup>. A rewarding transaction is a process that occurs when a person gains a new right to a property belonging to someone else, in other words, increases his / her assets by gaining interest or prevents him / her from decreasing<sup>9</sup>.

## 2. EFFECT OF LEGAL TRANSACTIONS

### 2.1. Subtractive transaction

Subtractive transaction is a type of transaction that reduces assets. A subtractive transaction is a unilateral legal transaction that causes a reduction in the assets of the counterparty, without causing any reduction in the assets of the counterparty, in the asset. In the subtractive transaction, while no gain is provided to the other party, a right in the assets of the person performing this transaction is terminated. As an example of subtractive processing, we can show the process of renunciation of ownership with these qualities. In the process of renunciation of ownership, the owner terminates a right in the property of the person with his own unilateral declaration of will and without notice to the other party. Looking at this process, it is seen that a right in the assets has ended. Since it directly affects this right in the assets, it is accepted that this transaction is a peculium process without any doubt. Although abandonment of ownership is considered as a peculium process, this process does not

<sup>7</sup> Hüseyin Hatemi, Emre Gökyayla, **Borçlar Hukuku Genel Bölüm**, İstanbul 2011, s. 11; Hüseyin Hatemi, **Medeni Hukuka Giriş**, İstanbul 2012, S 10, N. 20; Andreas Hans, **Allgemeiner Teil des Schweizerischen Obligationenrechts**, Erster Band, Zürich 1979, S 25, s. 194

<sup>8</sup> Hüseyin Hatemi, **Medeni Hukuka Giriş**, İstanbul 2012, S 10, s. 34; Hüseyin Hatemi, Rona Serozan, Abdülkadir Arpacı, **Eşya Hukuku**, İstanbul 1991, s. 487.

<sup>9</sup> Kemal Oğuzman, Nami Barlas, **Medeni Hukuk Giriş Kaynaklar Temel Kavramlar**, 13 Bası İstanbul, Arıkan 2006s. 140.



constitute a profitable transaction for anyone<sup>10</sup>. In some cases, the waiver process, which occurs as a unilateral subtractive peculium process, does not cover all kinds of rights in the person's assets. The person cannot waive his claim right unilaterally, that is, only by his own declaration of will.

In such transactions, if we want to terminate the right to claim by comparison with the subtractive peculium process, the existence of mutual and appropriate declarations of will indicating that both parties participate in this transaction. So there is a release process that needs to be done. Although we think that the release process is a subtractive peculium process in terms of ensuring the termination of the debt right by the contract, we can mention the existence of a profitable peculium process, since there is no reduction in the assets of the debtor on the other side, while one party loses its credit right in the transaction. The main feature that distinguishes the subtractive process from the earning process is that the subtractive process is a type of transaction that does not provide gains to both parties.

## 2.2. Earning transaction

Earning transactions are included in the broadest concept of earning. Earning is the benefit of another person from one person's property or work power<sup>11</sup>. Earning can generally be achieved in the form of increasing the active assets of a person, or preventing the decrease of the active in his / her assets, decreasing the passive or preventing the increase in the passive. Earning means a wider meaning than legal action alone. As a matter of fact, not every gain is a legal transaction. Earning can be done in various ways, this acquisition can be done by a peculium process, by granting a credit right or by an act<sup>12</sup>. If the acquisition is provided by a legal transaction and if it is an acquisition other than performance or material action, the gain made by such legal transaction is called an earning transaction. If we briefly look at the meaning of the earning transaction, in the earning transaction, the person makes a debt transaction and provides a credit right to the other party with this borrowing

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<sup>10</sup> M.Kemal Oğuzman, Nami Barlas, **Medeni Hukuk, Giriş, Kaynaklar, Temel Kavramlar**, 13 Bası İstanbul 2006,

<sup>11</sup> Fikret Eren, **Borçlar Hukuku, Genel Hükümler**, 8 bası, İstanbul 2003, s. 167; Andreas von Tuhr, **Borçlar Hukukunun Umumi Kısım**, Cilt I-II (Çeviren: Cevat Edege), 2.bası, Ankara 1983, s. 194.

<sup>12</sup> Eren, **a.g.e.**, s. 168; Necip Kocayusufpaşaoğlu, **Borçlar Hukukuna Giriş, Hukuki İşlem, Sözleşme**, İstanbul 2008, s. 108-109.

transaction. While a debt arises on behalf of the person making the gain in the winning transaction, a credit right arises for the person on the opposite side of this transaction.

If this borrowing transaction imposes debt on both sides, then two borrowing and two earning transactions result. Example: In a sales contract, the seller has an obligation to deliver an electronic item, while the buyer has a debt to pay, which is in the liabilities of both parties and creates debt for both parties. The price to be received by the seller in exchange for electronic equipment and the buyer to receive the electronic equipment are included in the assets of both parties and are a winning transaction for both parties. Based on the example we have given, the buyer paying the seller in return for the delivery and delivery of the electronic goods causes a peculium process, while the seller who receives the price and the buyer who receives the electronic goods is a gain for both.

### 2.3. Debt Transaction

Debt transaction adds a new debt to the liabilities of the assets and causes the person to decrease his / her assets. Debt transaction is a type of legal transaction in which a person on the other party makes a commitment to do something, to deliver something, or to refrain from doing anything. Making this kind of debt transaction increases the liabilities of the person who made this transaction, that is, the assets of the person who went into debt. With the debt transaction, a debt situation has occurred in the assets of the person making this transaction, while a new right is added to the assets of the person on the opposite side of the transaction. The debt transaction cannot directly affect a right in the person's property and transfer this right to another person, cannot limit this right, terminate this right, or cause a change in the content of the right. The borrower makes a commitment to make a peculium process in the form of terminating, limiting, transferring or changing the content of the right, which is actually the subject of the act borrowed.

The creditor on the opposite side with the debt transaction does not have a right over a part of the debtor's assets, his right is only a credit right. With the debt transaction, a debt relationship including principal performance obligation is established between the parties<sup>13</sup>. With the debt

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<sup>13</sup> Karl Larenz, Manfred Wolf, **Allgemeiner Teil des Bürgerlichen Rechts**, München 2004, S 23, N. 31; Fikret Eren, **Borçlar Hukuku Genel Hükümler**, Ankara 2012, s. 171.

transaction between the parties, a debt relationship arises, with this debt relationship, a debt relationship is established between the creditor and the debtor, and the transaction to establish this relationship is called the transaction that causes debt. With this relationship, the debtor is obliged to fulfill his debt, while the creditor has a right to receive a debt at the point of execution of the debt. The performance of the debtor owed by the debtor can be done by execution or peculium process. In the presence of a service contract, the debtor's fulfillment of his debt occurs as a behavior, while in the case of a sales contract, the seller fulfills his performance obligation by executing a debt transaction. The debt transaction occurs between the parties in the form of a bilateral legal transaction, that is, a contract. Some opinions in the doctrine accept that the promise of awarding in the form of an advertisement is in the form of a unilateral debt transaction<sup>14</sup>. With the debt transaction, the person can end, transfer, limit, or change the content of something in his / her assets and the subject matter of the original debt, while the person concerned with this thing can make a new loan and the borrowings and borrowings he made are valid. Some kind of person can make more than one borrowing transaction by using the same right in his / her property or he / she can perform any of these transactions. In the event that the person who has borrowed money over the same issue fulfills one of his debts, this does not mean that the person gets rid of other debts. The borrowing transactions made by the person still exist. In this way, the legislator has given the buyer the right to demand compensation from the debtor if the debtor does not fulfill his debt by protecting the other party. A person who has made more than one borrowing transaction for the same thing cannot make a difference in terms of the first transaction date and the other transaction date in terms of performance. It cannot give priority to one of the creditors over other creditors.

The reason for this is that since the right in the assets of the person in the debt transaction is not directly affected, the buyer only has the right to receive and this credit right does not affect the right of disposal on this right in the assets of the debtor. Borrowing is the legal reason for the peculium process. The fact that the debtor transaction constitutes the legal reason for the peculium process and the effect of the legal reason on the validity of the peculium process have different meanings. The legal reason included in the debt transaction is not included in the peculium process. The legal reason is actually the debt transaction that is not included in the content of the peculium process and is made before and outside it.

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<sup>14</sup> Wilhelm Schönenberger, Peter Jäggi, **Kommentar zum Schweizerischen Zivilgesetzbuch, Obligationenrecht**, Teilband VIa, Allgemeine Einleitung, Art. 1-17, Zürich 1973, Art. 8, N. 3; Reinhard Bork, **Allgemeiner Teil des Bürgerlichen Gesetzbuch**, Tübingen 2006. N. 448.

## 2.4. Peculium process

Peculium is the process that directly affects a right in the assets of the saver and transfers it to another person, restricts it, terminates it or changes its content<sup>15</sup>. With the peculium process, the right in the assets of the person making this transaction is directly affected, while a decrease in the active part occurs. Peculium means the termination of a right in the assets of the party making the transaction, its content change, transfer or limitation. With the execution of a sales contract, the buyer who has the right to receive with this contract becomes the owner of this property right as a result of the transfer of the right by directly affecting the property right in the seller's assets. An increase occurs in the buyer's assets with this transaction<sup>16</sup>. Transaction can be done in the form of a contract or a unilateral transaction. The profitable peculium process takes place in the form of a contract, while the subtractive peculium process occurs in the form of a unilateral transaction. Peculium process are encountered in the transfer of receivables, in the transfer of movable or immovable property. The saver can transfer a right in his assets, restrict, remove the right or change its content, only once.

## CONCLUSION

In our study, we have been subjected to the distinction between subtractive legal action and profitable legal transaction, taking into account the effect of legal action on assets. As we know, a subtractive transaction is a type of transaction that always occurs in the form of a peculium process, which does not constitute a gain for both parties, while a decrease in the assets of the party making the transaction. A rewarding transaction is a transaction that increases the assets of the person making the transaction, decreases his / her liabilities and creates gain in the care of the counterparty. A profitable transaction occurs as a debt transaction or a peculium process. In our opinion, it is not correct to accept that the peculium process generally occurs as a profitable transaction. Because it is more correct to divide the peculium process into two as a subtractive transaction, that is, while there is a decrease in the assets of the

<sup>15</sup> Kudret Ayiter, **Medeni Hukukta Tasarruf Muameleleri**, Ankara 1953, s. 13; Safa Reisoğlu, **Borçlar Hukuku, Genel Hükümler**, 17. bası, İstanbul 2005, s. 47.

<sup>16</sup> Carole Van de Sandt, **L'acte de disposition**, Fribourg 2000, N. 808.

counterparty, a peculium process that provides a gain for the other party, while there is a decrease in the assets of the counterparty.

Peculium process and debt transaction cannot be explained clearly without a borrowing transaction. After the comparison of both transactions, it is known that the right to borrowing transaction indirectly affects the right and the disposition transaction directly affects the right. While it is certain that the effect cannot be eliminated after the peculium process is made, it is possible for the parties to make changes about the transaction after the transaction. Both transactions take place side by side in the acquisition phase. While the borrowing transaction lays the groundwork for the peculium process, the peculium process is in the nature of the execution of the debt committed by a kind of borrowing transaction. In this respect, it is necessary to clarify the situation that both processes are affected by each other with the principles of loyalty to cause and abstraction.

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# THE ORETICAL FRAMEWORK REGARDING THE CAUSES OF PEER BULLYING

Şehida Rizvançe Matsani, page 63-76

## ABSTRACT

Peer bullying is a form of aggressive behavior with one or more students intentionally perpetuating against another, dominated by the imbalance power. Peer bullying has many negative effects on bullying children and adolescents as well as victims of such behavior. In this article, the definition of peer bullying and the different theoretical views about the causes of bullying are discussed. These different approaches are briefly summarized below. Although bullying has not been emphasized directly in some theories, it has been found appropriate to address these theoretical views because they deal with aggression and it is accepted that bullying is a form of aggression.

**Keywords:** peer bullying, bullying, aggression, theoretical approaches



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## **Introduction**

Education is seen as a means of transferring the culture, values and experiences of a society that has been developed since its existence to the new generations (Karip, 2017).<sup>1</sup>

Schools have been of the most important environments in which children communicate and interact. Also, school has been one of the most important environments in which the child learns and develops social life and social relations after his family. The aim of the education is to make individuals a harmonious member of the society in which they live and to become individuals with the knowledge and skills required by the present age. Schools are the institutions where students gain academic knowledge and professional skills as well as social responsibilities, self-control and respect towards other individuals. Every child and young person has the right to education in a safe school environment (Leach, 2005). Although the main goals of the school are to develop communication and problem solving skills, the relationships that students have established with their peers may not always develop in the desired direction. Talking about bullying and violence in school contradicts with the above-mentioned school objectives.

One of the most common problems among students in school environment is peer bullying. Bullying has always existed from the past to the present, which means that the strong constantly disturb the weaker. Studies on aggression date back to quite a long time in the literature.

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<sup>1</sup> Karip. E. (2017). *Eğitim Bilimine Giriş*. (8. Baskı)  
Ankara: Pegem Akademi.



However, the issue of bullying, especially peer bullying in schools and the issues that concern it, has only been the subject of various researches for the last 25-30 years. Although peer bullying is a familiar topic in schools, especially with educators, the systematic involvement of researchers in this issue has started with Dan Olweus' research (Atalay, 2014). In recent years, there has been a significant increase in bullying research around the world, and especially school staff and students are being informed about the peer bullying. Peer bullying is one of the most important problems that affect the school age children, which the whole world has to deal with today. There are different reasons behind the neglect of bullying, especially among children. One of the most important reasons is that perpetration of bullying among children is perceived by adults as normal social behaviors, seen as a natural part of growth and development, play, joking and other perceptions. Another reason is to cover up the problem and easily hide it from teachers, administrators and other adults. Another reason is that it is not known how to identify the traits that distinguish bullies and victims, and that there are no clear definitions.

Despite the fact that bullying has been neglected and ignored for many years, the fact that it is now very common in all countries has reached an undeniable level and researchers in many countries are conducting scientific research on this issue.

As seen in the world today, in our country, it is seen that bullying behaviors, which are a kind of aggression, are exhibited in a widespread manner in addition to the aggression events among school age children and youth. It has a negative impact on the academic achievement of students who are exposed to bullying and witnesses, as well as severely damaging their emotional, social and personality development. It is seen that students have negative attitudes towards school and have problems in attendance, low self-esteem, loss of self-confidence, and lack of social

skills due to lack of emotional and social needs. On the other hand, it was found that the students who bullied and made it habit during school years continued their behaviors in the following years, this negatively affected their ability to establish and develop positive relations with other people and even involved in various crime events. Many people who live as adults today, perhaps during his school years he had experienced bullying as a bully, victim or bully / victim, or by witnessing this process. (Pişkin, 2002).

Peer bullying is a frequent and continuous common situation in schools. Peer bullying is generally considered as a subdimension of aggression (Rivers & Smith, 1994).

### **Definition of peer bullying**

Peer bullying is a form of violence that can cause significant harm to children in school settings. When searched in the literature, it is seen that the first studies related to bullying started in Scandinavian countries. The first researcher of the peer bullying in the 1970s, the Norwegian researcher Olweus, described bullying as “one student / students exposed to negative effects more than once”. ( Olweus, 2004).

When the dictionary meanings of bullying are examined, Bully in the Turkish Dictionary of the Turkish Language Association; it is defined as “anyone who is obedient, opposing, despot, dictator who does not grant the right to speak and freedom of conduct to those under his authority by relying on his power”, (<https://sozluk.gov.tr/?word==bully/zorba>), while in another dictionary site, it is defined as alan taking the rights of others by relying on its power (<http://www.dildernegi.org.tr/>).

Since the first studies on bullying were made by Olweus in the 1970s, the most commonly used definition in international studies is

accepted his. According to Olweus (1993), bullying is negative behavior that one or more people do to other weaker than themselves and continuously.<sup>2</sup> Later this definition was developed by other researchers.

The most comprehensive definition of bullying belongs to Olweus, who made the first scientific studies on this subject. Olweus (1993) described bullying as an individual's chronic physical or psychological harm. Later, he elaborated this definition and mentioned some of its components.

For a better understanding of the concept of bullying, it is useful to consider some of the basic criteria of bullying. According to Olweus (1999), an action must have three basic criteria in order to be considered as bullying. These:

- Aggressive behavior intended to cause intentional harm to the victim or individuals,
- Continuity of behavior and
- There is a power imbalance between the bully and the victim.

Bullying according to Arora and Thomson (1987); is the process of establishing and sustaining social dominance over individuals who lack self-defense skills, unable to interact with peers, and unable to form peer subgroups through open aggression.

Roland and Munthe (1989) described bullying as being systematically subjected to psychological or physical violence by

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<sup>2</sup> Olweus, D. (1993). *Bullying at School: What we Know and What we Can Do*. Cambridge MA: Blackwell.

another person or persons against those who cannot defend himself or herself for a long time.

Smith and Sharp (1994), on the other hand define bullying as when a student says unpleasant words to another student whom he has chosen as a victim; pushing, kicking, threatening, shutting him down and/or never talking to him.

Furniss (2000) describes bullying as any behavior that causes one person to hurt another person ". In addition, Furniss (2000) states that bullying is repetitive and that the victim has difficulty in self-defense or stress.

Bullying, a subspecies of aggression, is defined as the behavior of one or more children, in other words, a group that aims to harm or disturb another child who is perceived as unable to defend himself (Glew, Rivara and Feudtner, 2000).

According to Salmon and West (2000) bullying are "the deliberate, unprovoked behavior of one or more children, including painful, repetitive and force-causing behavior to another. " The most common types of bullying are naming the victim with bad names, physical assault, threatening and gossiping, respectively.

Pişkin (2002) examined many definitions of bullying and as a result of bullying; "A type of aggression in which one or more students are intentionally and consistently disturbing weaker students, and the victim is unable to protect himself". According to Pişkin (2002), school bullying; may occur as "physical gibi, such as kicking, slapping, pushing, pulling; ridiculing, annoying, naming them with bad names, disparaging remarks; "indirect gibi such as gossiping and spreading rumors; "behavioral" such as forcibly taking money and possessions,

threatening to take them and damaging their belongings”.

In addition to the definitions of bullying, Pişkin (2002) also mentioned the following concepts:

**Bully:** Students or groups of students who are intentionally and constantly disturbing their peers who are physically or psychologically weak (Pişkin, 2002).

**Victim:** Students or groups of students who are subjected to bullying words and actions of more powerful students (Pişkin, 2002).

**Bully-victim:** It is a student or a group of students who are involved in bullying words and actions and are also exposed to bullying (Pişkin, 2002).

### **Theoretical approaches in peer bullying**

Many different theoretical views on the causes of bullying. Here, these different approaches are briefly summarized. Although some theories have not emphasized directly bullying doğrudan directly, they have been found suitable for addressing aggression.

#### **1. Psychoanalytic theory**

In this theory, aggression is defined as the reaction to the frustrations of trying to fulfill the pleasure or the wishes of libido. In other words, aggression is caused by blocked libido. When libido is prevented from seeking pleasure, a “primitive reaction tepki is created to attack that obstacle (Burger, 2006).

The instinct of aggression may be directed towards the individual in the form of suicide or other self-destructive behaviors or in other words, as well as towards the individual in the form of aggression towards others (Kağıtçıbaşı, 1999). According to Freud, we have a subconscious desire

to attack some people or groups of people. In the act of bullying, there is a pleasure in the bullying of all situations in which the victim is attacked or humiliated in front of everyone, which can be described as sadism. It is possible to describe bullying as joyful rituals of sadistic torture (Minton and Minton, 2004).

Horney, on the other hand, rejected Freud's instincts of aggression and interpreted aggression as an individual's response to basic anxiety. According to him, basic anxiety is the main motive of all tendencies (Yalçın, 2004). In other words, individuals develop different interpersonal interaction styles to cope with basic anxiety in their childhood. These are: approaching to people, being away from people and being against people (Burger, 2006). Horney describes individuals who are opposed to people as aggressors and states that the world is hostile and that people do not think they are honest. These aggressive individuals show their reactions by fighting. They even act beyond revenge with the motive of revenge associated with sadism. In other words, an individual who does not feel happy in essence, is jealous of the happiness of other people and seeks to make them suffer (Yalçın, 2004).

## **2. Biological Theories**

These theories acknowledge that a biological mechanism in the organism inevitably leads to aggressive behavior. In these theories, it is stated that the brain and nervous system cause aggression and the existence of a chemical, hormonal and genetic process is advocated in aggression (Bilgin, 1995). In other words, it has a fighting instinct as a genetic heritage, which makes people prone to violence. After anger and violent emotions emerge, they are very difficult to stop, resulting in devastating effects (Köknel, 1999).

According to James Lange's theory, which explains biological structure and emotions, there are four steps in the formation of anger experience: (1) Recognizing a situation; (2) the stimulation of the central nervous system into the muscles, skin and internal organs; (3) Sensitivity returned to the brain through changes in body parts; (4) Returning stimulation is perceived by combining the original stimulus with the cortical structure and transforming the object into an emotionally felt message (Köknel, 1999). The formation of aggression occurs in this way.<sup>3</sup>

### **3. Social Learning Theory:**

Social learning theorists have stated that human beings are not innate aggressors and that aggression occurs as a result of socialization. According to Bandura, with the exception of basic reflexes, people do not have an innate repertoire of behavior and therefore have to learn behavior. Like all other behaviors, aggression is a learned behavior and individuals learn this behavior by observing similar behaviors of others and imitating them through sampling. In short, aggressive behaviors are the responses learned through modeling, imitation, identification and reinforcement in terms of expression (Köknel, 1999).

According to Bandura's social learning theory, bullying behaviors are formed by the interaction of individual and environmental factors and therefore, the social environment has direct and indirect effects on the formation of bullying. Direct impact; children learn the aggressive behavior model from their

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<sup>3</sup> Köknel, Ö. (1999). *Kaygıdan mutluluğa kişilik*. (15. Baskı). İstanbul: Altın Kitaplar Yayınevi.

peers and adults; perceptions, norms and trends and self-property (Natvig et al. 2001,365).

In a study conducted by Schwartz et al. (1997), it was found that boys' early life in the family was the determinant of their being aggressive and bully at school (Greenbaum et al., 1988; Horne and Socherman, 1996). In another study, when the role of social learning in the tyrant-victim cycle was examined, it was found that the abused victims exhibited more harsh, challenging, aggressive and disruptive behaviors than those who were not abused. In other words, victims of extreme bullying are also the most aggressive bullies. This reveals that bullying behaviors are the result of social learning (Ma, Stewin & Mah, 2001).

#### **4. Cognitive Theory**

Cognitive theory aims to link emotion-behavior-cognition. Unlike other theories, it attaches importance to developmental issues and examines differences in interpreting some forms of aggressive behavior (Durkin, 1995)

Cognitive psychologists have very different perspectives on aggressive behavior. They are based on the process of aggressive people processing information. According to the proponents of this theory, the response to a situation is related to how it is perceived. For this reason, some people react calmly to an event, while others may exhibit aggressive behavior. In other words, the cognitive approach suggests that some people may interpret uncertain conditions as more threatening than others. These people are likely to exhibit aggressive and bullying



behavior (Burger, 2006).

## **CONCLUSION**

As a result, all the theories mentioned here consistently explain aggression in itself and all have truthfulness. Theories do not often contradict each other, but they focus and emphasize different points in explaining aggression. It is important that all approaches contribute to a clearer understanding of aggression and the underlying dynamics. It is difficult to say that aggression is the result of purely biological or purely social learning. Studies of theories reveal the emergence of aggression and the initiating role of basic physiological processes in expression discovery. Then the intensity of aggression is determined by the contribution of cognitive and affective processes

Research findings show that peer bullying seriously threatens the physical and psychological health of children and adolescents. Therefore, it is very important to identify the factors leading to peer bullying, which is a major problem for bullies, victims and witnesses and their families, as well as for school management and teachers. While some of the risk and protective factors lie in the individual characteristics of the adolescent, others occur as a result of the adolescent's interaction with the people and the environment. Learning the risk and protective factors of peer bullying will help us develop sensitive and effective intervention programs. These programs should be designed considering the developmental characteristics of children and adolescents as well as the family structure, cultural values and the dynamics of the education system. At the same time, social policies on peer bullying awareness and prevention programs involving all schools in Northern Macedonia, not only at the individual school level, but at the macro level, need to be established.

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# THE MANAGEMENT OF WATER RESOURCES AROUND THE WORLD: A REVIEW

Drenushe Fidani, Yasemin Hodza, page 77-90

## ABSTRACT

Water resources are unevenly distributed in time and space. They must be managed in order to control the presence of water on Earth. This is what this paper deals with. The paper gives a review of management of water resources in some countries, namely: Turkey, Japan, Netherlands, India, Italy and China. It is concluded that different countries use different methods and technics to manage water resources. Some of them are still useful, although are quite old, but there are also modern methods. Large cities are particularly vulnerable to flooding due to their huge concrete structures with a lack of green areas to absorb rain. As a result, floods remain a central sore point for most of them.

**Keywords:** Water resources, Management, City, Flood, Future Cities



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## **1. INTRODUCTION**

Water is one of the essential elements for the existence on the Earth. The greatest part of the Earth consists of water. Despite this fact, the lack of drinking water still remains the main problem for many people. While, on the other hand, floods are common occurrence in numerous countries. As a matter of fact, water resources must be managed to prevent the above phenomena and to be used for many purposes to fulfil the needs of people and nature: for drinking, for hygiene, for production of electricity, for irrigation of agricultural land, parks and other green areas, and so on. Different systems are used to provide clean water for drinking. Some other systems are used to take away the storm water and sewage, totally different systems are used for irrigation, etc. Also, different techniques are used to manage water resources in urban areas. The following case studies are some examples of construction projects related to water resources management in urban areas, i.e. the aim of this study is to give a review how the management of water resources is done in some countries around the world, namely: Turkey, Japan, Netherland, India, Italy and China.

## **2. THE MANAGEMENT OF WATER RESOURCES**

### **2.1. Turkey: Basilica Cistern, Istanbul**

This ancient underground water cistern was the largest water reservoir in Constantinople (today Istanbul) and is known as the Submerged Cistern “Yerebatan Sarnici”. The water in the tank was transported from the Belgrade (Serbia) forest from the huge Byzantine aqueducts. It was unusable for some time, but was discovered by the Frenchman Petrus Gyllius in 1545 [Istanbultourstudio.com, 2019]. It represents the largest underground tank in Turkey with dimensions 140m x 70m with a capacity to hold 80,000m<sup>3</sup>. Due to its underground construction, the roof of the tank is retained over 336 marble pillars 9 meters high. The columns are arranged in 12 rows with 38 columns, 4.9 m apart [Mays, Antoniou and Angelakis, 2013]. 52 stairs lead to the cistern which is surrounded by walls and connected to an aqueduct that distributes water [DGM Magazine, 2019]. Today the tank is not used and there is very little water. But the cistern is used as a tourist attraction, museum, event venue and so on.



**Fig 1.** and **Fig 2.** The Basilica of Constantinople

**Source:** [ Mays and al.,2013; DGM Magazine, 2019]

## **2.2. Turkey: Melen System, Istanbul**

Istanbul is one of the most populated cities in the world. Furthermore, its population is growing everyday as result of a large in-migration. Therefore, water supply and sanitation are major concern of the city [van Leeuwen and Sjerps, 2015]. In order to provide water to Istanbul the Melen watershed was constructed, located in the western part of the Black Sea Region and 180 km to the east of Istanbul. The water from Asian side (Melen River) is transfered to Euporean side (Istanbul) by a 6-m diameter and 5551-m long Bosphorous tunnel [Inc., 2019]. The tunnel goes 135 m below sea level, crossing the two continents, with a capacity to transfer 3 million m<sup>3</sup> of water daily [Cuceloglu, Abbaspour and Ozturk, 2017]. This project will transform the Melen River Basin into Istanbul's most important water source. The Melen Project aims to solve the problem of drought in Istanbul until the year 2071. It consists of variety of components; the Melen Dam, Melen regulator, a drinking water treatment plant and a 189 km pipeline, as shown in Figure 1 [Ağırlioğlu and Danandeh Mehr, 2019].



**Fig 3. Melen Dam basin** Source: [Inc., 2019]



**Fig 4. Pumping station** Source: [Inc., 2019]

### **2.3. Japan: Metropolitan Area Outer Underground Discharge Channel, Tokyo**

With the construction of the gigantic underground flood system which lasted over the course of approximately 17 years, Tokyo has decided to tackle the issue of flooding quite seriously [McFadden et al., 2019]. The region of the city of Tokyo is located on an alluvial floodplain with eight major rivers that flow through the Tokyo Basin. Since flooding is a major concern in Japan, the country has a long history of managing water resources, river diversions and flooding [Dunlop, 2015].

To protect the country from flooding, Tokyo has built the largest stormwater-drain in the world, the Metropolitan Outer Area Underground Discharge Channel. It eases overflowing of the city's major waterways and rivers during rain and typhoon seasons. The famous Metropolitan Area Outer Underground Discharge Channel is a flood prevention facility located in Kasukabe city in Saitama, 19 miles north of Tokyo, Japan. It is often called "the Underground Parthenon" or "the Underground Temple" [Naho, 2019]. It was built 22 meters below ground level between 1993 and 2009, with the dimensions: 177 m long, 78 m wide, 25 m high with a forest of 59 reinforced concrete pillars each weighing 500 tons supporting the ceiling. The main tank known as the "Underground Temple," resembles a sort of bizarre underground cathedral [Nagy, 2015]. The construction is gigantic. In its compound are included gargantuan tunnels, colossal water tanks, massive pillars and enormous pumps. The 78 water pumps in the humongous drainage system can pump over 200 tons of water per second [Nagy, 2015]. The facility has the



capacity to protect from historic flood, the kind that only comes every 200 years [Dunlop, 2015].



**Fig 5.** The pillars **Source:** [Nagy, 2015] **Fig 6.** The pumps **Source:** [Web-japan, 2013]

#### **2.4. Netherlands: Maeslant barrier, Rotterdam**

The Netherlands is located at the end of the Rhine, the largest river in Europe [Silva, Dijkman and Loucks, 2004]. Much of the Netherlands is below sea level, so the country has been facing major floods for hundreds of years. Hundreds of years ago, the Netherlands had a vast history of storm floods that resulted in hundreds of thousands of deaths. For this reason, the Dutch have become the best water management experts in the world, turning the Netherlands into a water-focused economy. Of the many flood solutions, the most famous is the huge Maeslant barrier, against a flood gate the size of two Eiffel Towers. It is a computer-controlled storm barrier that closes automatically when Rotterdam is threatened with flooding. First, the dry ports were constructed on both shores, and then the two steel gates with dimensions of 22m high and 210m long were built [Wermac, 2019]. Sea level is monitored by computer, and the port can be automatically opened or closed in two and a half hours. When the hands of the gate are closed, they meet and lock, and the pipes are filled with water and lie on a concrete base, creating an impenetrable steel wall. The pressure from the sea is transmitted from the steel wall to the largest ball joints in the world, inserted in the banks on both sides of the river. When the gate is reopened, thirty pumps draw water from the pipes. If the grid fails, there is a backup network and, as a last resort, a generator [Thestructuralengineer, 2019]. The frequency of floods in Rotterdam is effectively reduced by a controlled barrier [Zhong et al., 2012], which serves as a good example of total flood.



**Fig 7. and Fig 8. Maeslant barrier** Source: [Wermac, 2019]

### **2.5. India: Water temples**

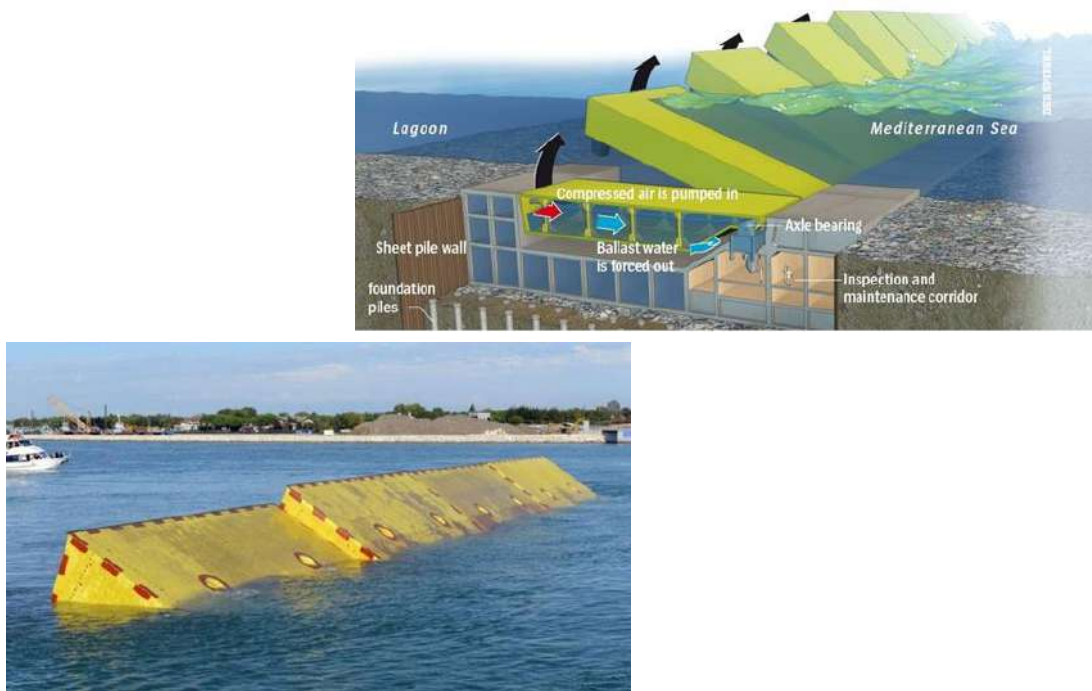
India is the country that receives the heaviest rainfall in the world, and on the other hand suffers from water shortages every year in periods when there is no rain. Due to the spatial and temporal variation of precipitation, the country is facing the sixth outbreak of floods and droughts [Kumar, Singh and Sharma, 2005]. Water resources management is done with traditional methods that have been used successfully since ancient times. Each region has its own unique system for water supply or water collection. Basically, these systems are in the form of tanks of two types; one is the village tanks, which serve for daily needs and temples that served the vital purpose, for refilling the groundwater [Kaptan, 2019]. Traditionally, temple reservoirs have played three or three hydraulic roles: to store water as insurance against periods of low rainfall, to protect against floods during periods of heavy rainfall, and as a key tool for overall ecosystems [Ganesan, 2005]. The temple reservoirs of India are ancient water bodies that are an integral part of the temples. Temple tanks, in orthogonal projection are either square or rectangular and in cross section have the shape of a trapezoid, narrowing upwards. Usually temples consist of two tanks, an inner and an outer one. Granite is used in the construction of the stairs. Most tanks have wells in the ground. The wells connect the aquifer and the reservoirs and serve for natural filling [Alaguraj, Divyapriya and Lalitha, 2017], so the reservoir design is ideal for collecting and storing rainwater.



**Fig 9.** Chand Baoli, Dausa **Source:** [ Pursuitias, 2018] **Fig 10.** View of the temple tank **Source:** [ Alaguraj, et.al., 2017]

## 2.6. Italy: Moses Floods Barriers, Venice

A similar example as the Barrier in the Netherlands is the barrier in Venice, Italy. Venice is built on the islands and swamps of what is now known as the Venetian Lagoon. The Venetian lagoon, on the other hand, lies where rivers from mainland Italy empty into the North Adriatic Sea [D. Mitchell, 2017]. The Moses system was built to protect the country from flooding. It is located at the entrances to the lagoons of Lido, Malamoko and Kyogia, the three gates of the coastal cordon through which the tides spread from the Adriatic Sea to the Lagoon [Anon, 2019]. This system can protect the lagoon and its cities from the tides up to 3 m and will therefore be effective, even if sea levels rise significantly over the coming decades [Cecconi, 2013]. Moses is made up of four barriers; two at the entrance to Lido, consisting of 21 gates respectively, one barrier formed by 19 gates at the port of Malamoko and one barrier formed by 18 gates at the port of Chiogia. When inactive, flood gates are filled with water and lie completely invisible. In case of danger of floods, air enters the barrier channels and empties them of water. As water exits the gates, they rise and block the flow of incoming tide into the lagoon. Each gate is composed of a metal structure in the form of a box. The width of the gates is 20 m and each of them has a different length proportional to the depth of the place where it is installed. The average closing time of port entrances is about 4-5 hours [Anon, 2019].



**Fig 11.** and **Fig 12.** Moses Floods Barriers Source: [Venice flood barriers pass first test, 2020]

## 2.7. China

Researches so far show that 62% of Chinese cities have experienced floods, so the concept of Sponge Cities was introduced in 2014, which will be used to deal with floods and surface water in urban areas [Chan et al., 2018]. The goals of Chinese sponge cities are: to retain 70-90% of the average annual rainwater on site by applying the concept of green infrastructure, eliminating droughts and floods, improving urban water quality, mitigating the impacts on natural ecosystems, etc.

Sponge cities are cities that easily adapt to changes in the environment, in some way function as a sponge, ie, absorb, purify rainwater and copy stored water when needed [Shao et al., 2016]. Seven key synonyms would provide an accurate explanation of the term 'Sponge Cities'; "Sustainable Urban Water Management (SUWM)", "Integrated Urban Drainage System (IUDS)", "Water Sensitivity Urban Design - WSUD", "Low Impact Development (LID)", Active Beautiful Clean (ABC) Waters Program and Sustainable Urban Drainage System (SUDS) [Li ID, Xu and

Yao, 2018]. The concept of sponge cities has four main principles, namely: urban water resources, environmental water management, green infrastructure and urban absorbing roads [Nguyen et al., 2019]. So, the concept of sponges is intended to change the way urban planning is promoted while promoting the inclusion of more green space in urban areas. With successful implementation, the concept will result in more efficient land use, increase of green areas, conservation of rivers, swamps and other city water bodies, control and storage of atmospheric water during extreme rain and so on [Chan et al., 2018]. This practice will ensure complete control of the environment. In addition, the idea of sponge cities includes renovating drainage systems, improving the connectivity of water systems, separating rainwater and sewage networks, which will improve the city's ability to deal with water problems [Liu, Jia and Niu, 2017]. By building this type of cities, it is expected to achieve integrated rainwater management, flood protection, and its use during droughts. The city sponge program will also create investment opportunities in infrastructure upgrades, engineering products and new green technologies [Li et al., 2017]. As a new approach to urban water planning and management, the Chinese sponge town-building initiative is entering its fourth year and is rapidly adapting to cities across the country. In the Shanghai area, in Lingang, wide streets with ventilated sidewalks are being built to allow rainwater to seep into the soil beneath them. Roof green space is increased and water tanks are placed above the buildings to prevent flooding and collect more water for reuse [Zengkun, 2019]. China's experiences can be useful to other countries and cities, especially as it progresses in its international infrastructure project.



**Fig 13.** Schematic diagram of the concept of Sponge Cities **Source:** [Chan et al., 2018]

**Fig 14.** View from Crane Tower in Wuhan **Source:** [Zengkun, 2019]

#### **4. CONCLUSION**

Any change made through the construction of facilities necessary for modern living, should be analyzed and preferably reduced to a minimum to maintain the natural regime of water and the environment in general. In this regard, it is necessary to work on the relationship of each individual with the natural environment and, in general, with the use of water, as a basic resource for the existence of flora and fauna, including man himself. From the given examples it can be noticed that the water resources have been managed since ancient times. Some of the projects are made to bring water from certain places and some of them aim to protect a certain area from floods. These examples can serve as a basis for sustainable management of water resources for future cities. Sustainable management of water resources for future cities requires the participation of a team composed of different social and governmental groups, and the most important factor is to put certain people in appropriate places. It is a collaboration between government, academia, creatives and artists, advocates and residents. Involving the academic attitude in the process of water resources management means gaining time and effort. Research universities should be given the opportunity to put their ideas into practice. If we want to have a human-oriented human city, with proper water resources management, architects and planners must be part of this new approach. Their work covers another dimension of humanity without which the smart city would not be complete. Also, the developing countries should take example from developed countries, to manage the water resources in proper way. It would reduce time and energy.

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# EXCISE TAX IN KOSOVO AND HARMONIZATION WITH THE ACQUIS COMMUNAUTAIRE - COMPARATIVE ANALYSIS

Yll Mehmetaj, Anita Gligorova, Qazime Sherifi, page 91-105

## ABSTRACT

The paper addresses some of the important issues related to excise tax in Kosovo and their harmonization with the *acquis communautaire*, the current legislation which is in force in the European Union. Their structure and functioning, and their impact on budget revenues in Kosovo, and their fiscal role in the country's economic growth and development.

Excise taxes are applied in order to achieve economic prosperity, and since countries with small and open economies must devote most of their activity to importing, and especially to the export component, then the use of these taxes will be in the great function of faster economic development and will have a direct impact both on the increase of imports and exports, as well as on the possible improvement of the overall economic performance.

**Keywords:** : Excise, Taxes, Harmonization, Legislation, European Union



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## **Introduction**

Excise revenues are all those financial revenues with which the state / government meets the needs of the public and performs its functions. As such they represent all revenues or funds channeled into a state budget. The economic performance and development of the country depends mainly on public revenues. They are a collection of taxes, fees, various contributions and excises as special taxes. Excise revenues as specific taxes are distinguished by the importance, role and share in public revenues in our country as a dominant form of public revenues that together with other revenues collected at border crossings, which currently participate with 35 % in the total revenues of the Kosovo budget. Public revenues and public expenditures together constitute the consolidated state budget.

Excises are distinguished from customs duties, which are import taxes. In common terminology (but, not necessarily in law), excise is usually applied to a narrower range of products, is usually higher, occupying a larger share of the retail price of products, and is usually a tax per unit of product purchased, which means a certain amount for a volume or unit of product purchased. During the import of goods, which is a product which is subject to excise tax, at the customs base of the goods, which includes customs duties and other manipulative import costs, the excise tax is calculated and calculated.

We can say that it is a wide range of goods, in which the excise tax is applied and this also depends a lot on budget planning and is part of macroeconomic policy. In addition to the fiscal character d.m.th collection of revenues for the state treasury, through this tax is attempted to achieve other effects, such as. social, health, ecological etc. Meanwhile, the excise rates and the forms of their implementation in Kosovo are regulated by the law on excise tax rate in Kosovo. It will also talk specifically about the harmonization of customs legislation in the context of excise tax in relation to harmonization with EU directives on excises, solutions offered in accordance with the European Customs Code, Kosovo's achievements in the process of harmonization of legislation in this field and the challenges it faces during this very important process, so that in the near future Kosovo will be as close as possible to the European Union, where it has its purpose.

## **The concept of excise tax in Kosovo**

Excise tax is a tax on the sale of particular goods or a tax on a good produced for sale or sold within a country. Excise duties are different from customs duties, which are taxes on imports. In common terminology (but not necessarily in law), the excise tax is usually applied to a narrower range of products, is usually higher, accounting for a larger share of the retail price of products and is usually a tax per unit of product purchased, which means a certain amount for a volume or unit of product purchased. Excise tax is an indirect tax on certain products set by the government. Consumption of certain products such as alcohol, cigarettes or gasoline is often accompanied not only by the usual general sales tax or VAT, but also by an additional tax called excise tax (Kesner-Škreb, 1999).

Legal relations related to excises in Kosovo are regulated by Law no. 03 / L-109 on the "Customs and Excise Code in Kosovo", Law no. 03 / L-112 "On excise tax in Kosovo", Law no. 04 / L-185. "On special excise tariffs for initial production and small production of alcoholic products produced in Kosovo", Law no. 04 / L-021 On excise duty on tobacco products, etc. This legal norm regulates the legal relations, which have to do with the determination of excises, conditions, procedures, rights and obligations, to which the subjects of excise are subject, such as issues related to the rules for the collection and administration of revenues from the tax authorities for goods which are subject to excise duty. The taxpayer of excise goods taxes of the producer is the importer. Excise rates are different for all products. Excise duties on imported products are collected together with customs duties, while excise goods of local origin paid before being issued in circulation (Dimanoski & Zdravkoski, 2011). The main purpose of their introduction is fiscal character. Unlike sales tax, which appears to be general, excise taxes are represented as separate consumption taxes (Goranović, 2008).

Excise duties, as a separate type of purchase tax, in Kosovo were first applied in 2000 with the UNMIK / REG / 2000/2 Regulation of 22 January 2000 on excises in Kosovo and were paid for the purchase and import of derivatives. Oil, tobacco processing, alcoholic beverages, beers, coffee, passenger vehicles and other luxury goods.

All legal entities and natural persons, who plan to be producers or importers of excisable goods, are obliged to submit a written request to the body, respectively the customs administration, the Excise Sector in the Kosovo Customs, to be registered. In the register of excise taxpayers and

the basic price for the payment of excise tax is the sale price at which the excise tax is calculated. During the import of goods, at the customs base of the goods, which includes customs duties and other manipulative import expenses, the excise tax is calculated. We can say that it is a wide range of goods, in which excise taxes are applied and this also depends a lot on budget planning and is part of macroeconomic policy. In addition to the fiscal character, is the collection of revenues for the state treasury, through this tax it is attempted to achieve other effects, such as social, health, ecological, etc.

Meanwhile, excise rates and forms of their implementation in Kosovo are regulated by the law on excise tax in Kosovo (Law no. 03 / L-112). This law regulates the excise tax rates for goods presented in Annex A of this law, which in the territory of the Republic of Kosovo are issued in free circulation. This law regulates the maintenance, control, as well as sets the specific rules on excise that applies to the consumption of service, alcohol and alcoholic beverages, tobacco and other by-products which are subject to excise tax.

Meanwhile, excise tax exemptions under this law on production, heating and raw materials must be approved in advance by Customs for the purposes of Article 236 of the Customs Code and Excise Duties in Kosovo, which will also apply to special tariffs on manufactured goods in Kosovo.

From the acquaintance with the Customs Legislation of the Balkan countries and the European Union, and from the analysis of the use of the organization and the competencies we can find in their customs administrations, we conclude that the administration of excise duty both in import and inland is an attribute of customs administration. In Kosovo, excise duties are controlled and managed by Customs. All excise taxes collected by Customs are deposited in the Kosovo Budget (Kosovo Customs and Excise, Code L03 / 109, Articles 134 and 136).

### **Objectives and effects of excise tax application**

The main features of special taxes such as excise duty are the limited purpose of their implementation and the lack of differences in the tax treatment of domestically produced and imported products. There are a number of reasons that justify the introduction of such a tax, such as excise

duties on turnover and their maintenance in tax systems. Among many other reasons are:

- Establishing a more direct link between the amount of tax paid and the taxable benefit
- The concern that consumers are returning (discouraged) from using some of the products that are harmful, such as alcohol, tobacco, etc. namely, that tax policy also affects the reduction of consumption of those products
- Penalization of consumers who use certain products due to possible negative consequences in society, which are considered socially undesirable
- Taxation of the market of some products in order to reduce environmental pollution where we live (such as plastic bags or used car tires).
- Providing the necessary funds to finance public expenditures - specifically financing the expenditures of local units.

Today the structure of indirect taxes with special excise accent has been simplified and three tax forms of special taxes have been emphasized in circulation, which are special taxes on oil products, special taxes on tobacco and tobacco products and special taxes on alcohol and alcoholic beverages. In OECD countries, special sales taxes account for about 10-12% of total revenue (Šimovic & Šimovic, 2002). Non-fiscal reasons in modern states for the application of excise taxes are usually made to gain public benevolence and the electorate, by various political programs. The most important non-fiscal reasons are:

- Social reasons
- Health reasons
- Ecological reasons
- Principle of general utility
- Due to the increase in the prices of imported products (Šimovic & Šimovic, 2002).

The introduction of excise taxes for social reasons is justified by the fact that each entity should be involved in financing public needs in accordance with their economic capabilities, so it is understood that citizens with lower economic strength will not buy products that are subject to tax of excise duty against those whose economic power is higher.

For health reasons, the introduction of excise taxes as a special tax on sales is great, the consumption of certain products that have negative effects on

human health. This refers to the consumption of tobacco and alcohol products and alcoholic beverages. In addition to health, excessive use of these products directly affects the increase of health care activity by institutions and health care personnel, thus increasing government spending.

For ecological reasons, a special sales tax (excise) is subject to products, the use of which causes a negative impact on the natural environment and limited natural and non-renewable energy sources. This actually refers to the consumption of oil and petroleum products and natural gas. By applying higher excise rates to oil and petroleum products, they want to encourage a more rational use of its limited resources, thus increasing the price of products, the consumption of which negatively affects the natural environment.

### **Excise tax structure as a separate revenue into the Kosovo budget**

The obligation to pay excise tax can be presented: On the occasion of the import of excisable products, according to the rate of obligation that is in force. For tobacco products or alcoholic beverages, the excise tax liability arises on the occasion of the application for stamps or control banners through a request to the Kosovo Customs, and on the occasion of the purchase of these excise stamps and in fact the excise tax is paid, it is still not imported goods.

In cases where the manufacturer of excisable goods exports with those excisable goods, e.g. wine export, he has the right to return the excise tax, respectively enjoys the right to exemption from excise tax, documenting to the customs administration the customs document of export of goods, from Kosovo to the country where he was exported and to pay the fees that has paid for that commodity (which has already been exported), the excise tax paid is refunded (this is considered reversible excise).

In the case of release of excisable goods into free circulation for consumption, which goods are found in advance under the suspension agreement, respectively, when the goods are in the warehouse of excisable goods provided by applicable law for warehouses of excisable goods and in the absence of ascertained excisable goods.

The types of excise tax applied in our country are divided into import excise and produced in the country. This type of tax can be calculated as compliant with European Union (EU) directives.



Excises are paid directly or indirectly for consumption in the territory of Kosovo, which in this sense represents excise territory. Excises are paid for these goods:

- Mineral oils (petroleum products),
- Alcohol and alcoholic beverages and
- Non-alcoholic beverages
- Tobacco
- Vehicles

Meanwhile, until recently, the excise rate on coffee products has been applied, which has been removed as part of the harmonization of legislation in this area with the countries of the region and beyond, and being considered as an almost necessary product, in order to eliminate informality from this sphere of goods, it has been removed as a luxury tax since 2014, in the legislation of Kosovo and the same commodity (coffee) is no longer subject to excise tax.

Since 2012, excise taxes have been imposed on goods that are considered in one form or another may affect environmental pollution in Kosovo, and excise tax has been imposed on plastic bags, used tires and electric bulbs, and since 2015 also in fireworks and other related products, such as lighting rockets and other pyrotechnic products from the tariff code 3604. The same excise taxes as special as their kind have been applied through government decisions as a measure of environmental protection policies and ecology.

The following table presents in tabular form the types of goods that have been assigned a special excise tax, for the protection of the environment where we live.

Table 1:

Excise rates and trade policy measures for goods, which are considered pollutants for the environment

Type of goods to which excise duty is applied	Excise code	Excise rate	Trade policy measures
fireworks; lighting rockets and other pyrotechnic articles:	3604	2.00€/kg	Import license from the Ministry of Interior is required
Used tires	4012	5.00€ for piece	/
Biodegradable plastic bags	3923	3.00€ KG	Import license from the Ministry of Interior is required
Non-economical electric pots	8539	0.30 € for piece	/

Source: The data was obtained from Kosovo Customs and processed by the author.

The main purpose in this case, in addition to that of revenue, is primarily the protection of the environment and ecology through the increase in the price of plastic bags, for him the issue of tires is to increase traffic safety and reduce accidents, and electric bulbs the goal is to ensure a saving of energy expended and economic exploitation of energy.

In 2011, the excise rate was set for all games of chance, casinos, betting, etc. and based on the type, the special excise payment rate has been set and this as a good instrument of revenue collection from a profit-making activity and considered as a luxury activity and which for the budget is considered as a fiscal instrument.

We can conclude that excise revenues are part of the revenues collected by the Customs Administration and are part of the structure of public revenues, to a large extent and where their regular collection ensures a sustainability of the country's budget and take an irreplaceable place in the overall structure of public spending. In the following presentation the new table is the data on excise revenues in millions of Euros and their participation in the total revenues collected by Customs.

Table 2: Excise revenues in millions of Euros and their participation in general customs revenues

Year	Excise tax	Total customs revenue	Percentage of participation
2014	315,437.234€	870,978.222€	36.21%
2015	360,632.851€	937,711.876€	38.45%
2016	403,295.575€	1,051,419.363€	38.35%
2017	432,279,341€	1,121,097.109€	38.55%
2018	418,903.169€	1,135,015.816€	36.90%

Source: Official data from the Kosovo Customs, prepared by the author.

Based on the table above, the amount of excise duty on regular liabilities of general import realized by Kosovo Customs for the period 2014 - 2018, we can conclude that excise tax as a special sales tax enjoys a serious participation, starting with 36.21% of total revenues generated by customs in 2014, respectively 38.45% for 2015, a significant upward trend, continuing in 2016 with 38.35% and 2017 with 38.55% with almost the same trend as a slight increase and ending with a slight downward trend in 2018 to 36.90% of total customs revenue. From this we conclude that the trend of excise revenues constitutes an approximate percentage with a share that brings in more than a third of customs revenues, while in the last year the decrease of about 2% can be explained by the rates of gradually releasing excisable products coming from the EU, as part of the release package under the SAA Stabilization and Association Agreement.

### **EU legislation regulating excise tax**

The excise billing system in the EU member states, according to the structure and amount of the tax burden, are different and depending on economic, cultural, social and other circumstances. Under EU law, excise tax is mainly applied to three groups or branches of goods.

- Tobacco products
- Mineral oil products
- Alcohol products

The joint excise system in the European Union entered into force on January 1, 1993, where a common position was reached on the application of excise duties, focusing with particular emphasis on the circulation of tobacco, alcohol, energy products (oil derivatives, oil, natural gas, and electricity), as mandatory products subject to excise tax.

Member States may introduce and excise other products, for which each country independently determines a taxation system, provided that it does not impede the free cross-border movement of goods and persons. The rules governing excise duty in the EU were widely adopted during 1992, regarding the creation of a single domestic market and the purpose of enabling the free movement of people, goods, services and capital. The legal basis for a harmonized excise system is found in Chapter II on tax provisions in Article 93 of the Treaty establishing the European Union (Antic, 2011). Progress has also been made in harmonizing the percentages of excises, the structure of excises (defining products in different measures and in exceptions) as well as in the circulation of goods which are taxed with excises in the member states (Peci, 2018).

Directive 92/12 / EEC (Council Directive, 1992) of 1 January 1993 (Kulis, 2005), is a general document, fundamental to the harmonization of the excise system, which regulates the possession, movement and monitoring of alcoholic beverages, tobacco products and mineral oils, petroleum products (alcoholic beverages), manufactured tobacco, mineral oils) that are taxed with excise duties. Due to considerable difficulties in the process of harmonization and change in the political and economic aspect and the accession of new members, Instruction 92/12 / EEC have been amended several times (Council Directive, 1992). In addition, general guidelines for each group of these products are provided with specific guidelines for determining the excise structure (product definition, tax base, and tax exemption, temporary) and guidelines for which the norms to be applied are, so they are defined.

The excise duties on tobacco products in the EU are imposed on tobacco products and what they include, cigarettes, cigarillos and tobacco. Taxation of excise tobacco products was regulated at EU level and came into force on 1 January 1993.

With Directive no. 92/79 (1992) / EEC on harmonization of cigarette taxes, excise duty on cigarettes is calculated in two methods, per unit of product (per cigarette) and proportionally. With a special method, i.e. per unit of product (per unit), a minimum excise tax of 60 Euros per 1000 cigarettes was determined, which are the most popular categories in sales. With the method proportional (ad valorem), the rate is determined to be not less than 5% or more than 55% of the total tax contained in the maximum retail price.

Alcohol and alcoholic beverages taxation is usually regulated for EU countries and has been applied since January 1, 1993. First, Directive 92/83 / EEC on the harmonization of the excise structures of alcohol and alcoholic beverages determine:

- Types of alcoholic products that are taxed (beers, wine, fermented products different from beer or wine, intermediate products and ethyl alcohol contained in beverages)
  - The possibility of reduced rates for small manufacturers of small factory and small distilleries, whose annual production is not more than 200,000 hectoliters
  - Ability to apply a reduced rate for certain drinks
  - Special tax procedures for certain areas in Spain and ethyl alcohol used in processing and chemical production or excise-excluded medical needs
- Alcohol and alcoholic beverages set minimum rates for: beer 0.748 Euros per hectoliter (depending on the concentration of malt) or 1.87 Euros per hectoliter (depending on alcohol content), wine and carbonated wine, intermediate (e.g. dry wines, liqueur wine): 45 Euros per hectoliter and pure alcohol: 550 Euros per hectoliter of pure alcohol (Council Directive 92/83, 1992).

Excise on EU energy and electricity resources - The Energy Directive 2003/96 / EC of 1 January 2004 replaces the previous guidelines and expands them, covering taxable products on all fuels, including coal, coke, gas natural and electricity. The system sets minimum energy usage rates as fuel or as a heating device (Kulis, 2005).

The purpose of the tax is to improve the functioning of the domestic market and reduce competition between oil products and other energy sources. In line with the objectives of the Community and the Kyoto Protocol (Kulis, 2005), which supports more efficient use of energy reducing dependency on energy imports and control and limiting greenhouse gas emissions? It is also in the interest of protecting the environment allowed by member states to reduce the negative and have been implemented for businesses, which define the fiscal label for gas oil and kerosene in order to prevent tax evasion and improve the internal functioning of market.

EU member states have the right to regulate the height of their excise minimum rates provided that the upper limit is not set and each country can autonomously set more rates.

The 2003/96 / EC Energy Excise Tax Directive allows members to apply differentiated rates for commercial and non-commercial use of oil, gas and fuel, provided that the gaseous oil rates are commercially available and not below national tax level, which entered into force on 1 January 2003. The loss of excise revenues due to the gray economy is smuggling in these goods is the same, a major problem in both the European Union and Kosovo. Preparation for membership will certainly need to be determined by the manner of connection and engagement in an information exchange system between the respective customs administrations.

### **Harmonization of excise tax in Kosovo in the context of *Acquis communitarian***

The main purpose of harmonizing the legislation with the EU law related to excises is undoubtedly the advancement of the market and the strengthening of the international trade chain; all this supported by the relevant control mechanisms and electronic management systems.

From the acquaintance with the Customs Legislation of the countries of the European Union, and from the analysis of the way of organization and competencies that cover the customs administrations of these countries, we have come to the conclusion that the excise tax management in both import and domestic production (excise internal) is the exclusive competence of the customs administration.

The content of the customs legislation related to excise rates in Kosovo is based on the EU Directive no. 2008/118 on excise duty. This Directive is binding on all Member States and has been applicable to EU countries since 1 January 2011. This legislation is also based on a number of other EU Directives which regulate the specific elements of products of excise, such as:

Directive 92/12 / EEC of 25 February 1992 on general rules for the maintenance, movement and supervision of excise products;

Directive 92/83 / EEC of 19 October 1992 on the harmonization of excise tax structures on alcohol and alcoholic beverages;

Directive 92/84 EEC of 19 October 1992 on the harmonization of excise duty levels on alcohol and alcoholic beverages;

Directive 2003/96 / EC of 27 October 2003 restructuring the Community framework for the taxation of energy and electricity products;

Decision of the Commission dated 22 July 2006 on the provision of fiscal markers of diesel and kerosene, etc;

Regulation of the EC Commission 2008/450, "Modernized Customs Code" (Regulation (EC) No 450/2008 of the European Parliament and of the Council, 2008) etc.

Excise legislation in Kosovo determines the general rules for the production, storage, storage, movement and control of products subject to excise duties, and sets specific rules on excise that applies to the consumption of products such as alcohol and alcoholic beverages, liquids and their products, tobacco and its by-products, so we rightly state that based on the content of the law on excise and excise products the same is in line with the above directives in terms of regulating this area, as a very important domain, in the customs field, especially when it comes to the level of equality, since taxation, in regulation of excise taxation, especially those that are considered as special products of luxury such as tobacco or alcohol, in addition to the material side of the harvest as tax for the state coffers, it also has the social side, that of protecting society, by applying higher market prices for them products, that in some form create distillation to the buyers or users of those goods.

The administration of excise duty by the Customs Service also in production has several advantages such as:

- It is a tested model for its well-functioning in many countries that aspire to be part of the EU.
- Since the Kosovo Customs Administration is one of the most computerized administrations in the Republic of Kosovo, computerization in the field of administration, supervision and collection of excise revenues in domestic production, including various beverages, alcohol and tobacco is the easiest. Customs operates with the Ascidia World Information System, so for the administration and collection of the Excise there is no need to create a new computer system, but in the current system, the control and fertilization system of the Excise is also included in production.

The calculation of excise duties as a specific tax on alcoholic beverages in the concept of calculating the liabilities according to the percentage of alcohol in the final product is without a doubt according to the standards of EU countries.

## **Conclusions**

The purpose of this paper is to analyze and elaborate on the role and manner of operation and application of excise tax in Kosovo from its establishment until now, and its future path, perspective and challenges, and to analyze the harmonization and degree of compliance of Kosovo's excise legislation with that of the EU, and to identify the obstacles and challenges during this very important process in Kosovo's path towards the EU.

Harmonization of customs legislation in general and indirect taxes in particular, including excise and VAT taxes - still remains a challenge not only for Kosovo legislation versus *acquis communautaires* but it is also a problem within the European community itself. Even in the founding treaties of the EU, we cannot find any special provision that provides for the full harmonization of indirect taxes, respectively excises and VAT, and to some extent leaves it to the member states to set their own rates, depending on the specific circumstances. in which they are found.

While Kosovo is moving towards the process of European integration, and in the near future it will be part of the European family and has already signed the Stabilization and Association Agreement 2015, customs tax revenues for goods and products coming from the European Union Gradually decrease, meanwhile, revenue will be needed in the budget to finance spending / costs and I think the real opportunity to offset this reduction in customs revenue is only by setting excise duty as a separate tax / fee as excise duties are rarely or almost never included in any agreement. is will begin to decrease and will later be eliminated almost completely.

The paper also analyzes the fiscal effects achieved in the case of the application of excise tax in Kosovo, expressed through tabular statistics and we can say that the general impression is that the benefits gained from its application are high, above all, emphasizing environmental protection and social health.



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Николовски, А.,



# THE IMPORTANCE OF GIFTS AND THE IMPORTANCE OF GIFTING A WATCH IN THE OTTOMAN PERIOD

Melek Nuredini, page 107-115

## ABSTRACT

As in the past, a special effort has been made to send the best gift not only each other but also between states. The emergence of traditional practices in the Ottoman Empire, gifts and gifts exchanged and diversified as a result of changing and developing social and economic conditions over the centuries, became an important element of ceremonies. Gift giving among the rulers has become an activity with political, social, cultural, psychological and economic functions in this period. The states that wanted to win the friendship of the Ottoman Empire and keep their relations well, declared their friendship and loyalty with the gifts they sent with ambassadors and travelers and sent different gifts. In the researches, the importance, value and differentness of these gifts are seen. Research shows the importance, value and diversity of these gifts. It is seen that watches were given as gifts in the Ottoman period. Foreigners who came to the Ottoman lands tried to impress with different kinds of items to be found in the Ottoman lands in the West when they arrived, one of them being the watches imported for the Ottomans produced in the West. In this study, the watches given to the Ottoman rulers are emphasized, and some of the different models and designs of the period are works of art and were allocated only to the sultan.

**Keywords:** gifts, watches, social life, gift giving



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## **Introduction**

The word "gift", which is an Arabic origin word, has passed into Turkish with the acceptance of Islam by the Turks. The plural of "gift" is "hedâyâ", which is sometimes used in historical texts. The Turkish equivalent of the word gift is *hediye*. Sometimes the Persian word "pîş-keş" is also used (Pakalın, 1993, s. 794).

The concept of "gift", which has a very important place in the existence and continuation of all cultures, has been one of the cornerstones of diplomacy in international relations. The issue that constitutes the issue has played a very important role in the departures and arrivals of the ambassadors between the States for any reason. In addition, gift giving is the founder, renovator, reinforcing and reinforcing of social relations in every society. Gift or gift giving, which is as old as the history of humanity and is an indicator of goodwill, is an important communication tool that is used between states as well as between individuals forming the society. So that interstate mutual relations in political relations of the states giving gifts has been active in ensuring a positive and a negative. Sometimes the gifts given mutually between states played a role in the change of decisions, and sometimes they became a means of ensuring peace. In the history of many nations, gifts have been exchanged and given mutually in the enthronement, death, circumcision ceremonies and marriage ceremonies of the rulers. In addition, giving gifts played an important role in the beginning of the states that were in a difficult situation or asking for military aid from the opposing states. It is possible to see such gift-giving rituals intensely in Turkish states as well as in states belonging to different geographies and civilizations throughout history. Thanks to gift giving, which is one of the most important customs and traditions in social life, the gift given to the other party, even if it is small, opens the doors of the heart and is conducive to socialization. While the Ottoman Empire, which received the most gifts throughout history, continued its existence in seven climates for six centuries, it was followed with interest by its neighbors. The states that wanted to win the friendship of the Ottomans and to keep their relations well

declared their friendship and loyalty with ambassadors and gifts. The Ottomans were unfulfilled with these gifts.

The most sought-after gift in interstate gifts is watches. Foreigners who came to the Ottoman lands tried to impress with different kinds of goods to be in the Ottoman lands in the West when they arrived, one of them is the watches produced in the West and imported for the Ottoman Empire. Watches were in great demand in the Ottoman Empire and were accepted by everyone. The watches that were brought to the sultans were invaluable, custom-made and worthy of the sultan. The purpose of the watches brought to the Sultan was to establish political affinity between them in diplomatic terms and to be brought as a gift in private wedding ceremonies. In the introductory part of the book titled *A Clock for the Sultan*, many different types of watches were made, and then the development of watches between the 16th, 17th, 18th and 19th centuries of the Ottoman period, types of watches, who made the watch, the models, which country they came from, which country's watch is better and more valuable, and when diplomatic gifts are brought, the watch is among the most accepted gifts (Kurz, 2015)

### **1. Gifting and watch gifts in the 16th Century**

Watches made between the 14th and 15th centuries are now gradually developed, with better watches and pocket watches being invented in the 16th century. Watches no longer show only time, date, day of the week, signs of zodiac signs, being superior and flamboyant than before, has become a race in this century.

The tradition of gifting watches, which started in the 16th century, continued in the following centuries. In addition to diplomatic gifts, the sultans also gave special orders to many watchmakers. In the making of these watches, British watchmakers took into consideration the tastes and traditions of the Turks and made musical watches that would appeal to the Turks.

In the 16th century, besides the German and French, who were active in watch production, the English and Swedes started production. We learn that a foreign watchmaker went to Turkey at Mehmed II. request. Sultan Suleiman, who is known as an art

enthusiast, attracted the Sultan by watches from Venice, Austria and Hungary. Although these watches for the Sultan are very valuable, they are watches with precious stones and artistic value in terms of figures. Gifts, which came as watches rather than the Sultan, were also sent to the top executives and bureaucrats. In 1583, Turkey Company representative, ambassador William Hareborne, came to the Ottoman state in order to receive the same capitulations given to the French and gave various gifts to the sultan. Among these gifts was a very precious watch (Yıldız, 1992, s. 41).

In this period, it is seen that watches are much more useful now. Instead of the normal watches, pocket, alarm and desk watches have been invented. Watches are now more ornate and take place on the walls and tables of every house, where precious stones are used, in colorful and various shapes. Watches are now more and more ambitious, watchmakers, jewelers, fine carpenters, continued as a teamwork of painters and mechanics experts. All the ornaments and figures on the watch were made of silver and gilding, while the watch was round and adorned with precious stones and pearls. (Reyhanlı, 1983, s. 53). The shape of the watches that were brought for the sultan is detailed and interesting, meaning that it was specially made for the sultan. The shapes of the watches that were made and sent for the Sultan have changed. A hexagonal ball-shaped watches with artistic chains that twist surprisingly when the clock strikes. It's a tower-shaped clock, where Turkish jugglers in various rooms run around looking out when the clock strikes. It is seen that the Turks were running, jumping on their horses and fighting when the clock was ringing, till the ringing was finished, they went back in. This large watch was four-cornered and declared as a work of art. A long clock with a wolf on it with a goose in its mouth, and when the clock struck, the wolf ran away, followed by a Turk with his gun ready to fire, and when the clock was about to strike for the last time, a long clock struck by the wolf. In terms of the types of watches, Elephant Watches, Librarian Watches, Turks on the Boat, Sultan Watch on Horseback, Pocket Watch with Calendar, Musical Watch, Gothic Style Clock, Pocket Watch with Sultan Abdülmecit's portrait, pocket watches that became a brand by writing the designer's name

in that period. It was in great demand in the Ottoman lands. Many different models and types of watches were made for the sultan from the West and brought to Turkey. Some of the watches we have described here are works of art and were reserved only for the sultan. This watch, specially designed for the Sultan and made by a master named Dallam, can be described as the most valuable gift sent to the Ottoman Palace by the British royal family (Gökyay, 1984, s. 210).

Queen Elizabeth I of England Braided watch that he sent to Mehmed III. as a gift This watch, specially designed for the Sultan and made by a master named Dallam, can be described as the most valuable gift sent to the Ottoman Palace by the British royal family (Yıldız, 1990, s. 15).

They expressed their desire by the Queen for a new instrument of an extraordinary kind, fitted with various movements, with musical and other special uses, befitting a prince or monarch. All the works requested to be made in the knitted watch ordered in the contract were described to the smallest detail, but the names of the melodies were not given. Accordingly, there was a queen figure on the upper part of the organ. When the music played, the other figures took turns and bowed before him. The trumpeters were raising their trumpets and playing, and a rooster was crowing at the beginning of the hour. The watch was equipped with figures making many movements (Yıldız, 1987, s. 337). These watch have not survived, only two watches in the Vienna Kunsthistorisches Museum are there. In the Ottomans, the first mechanical watch was made by the founder of the Istanbul Observatory and Sultan. It was made by the astronomer Takiyüddin, the chief astrologer of Murad. III.

As well as many mechanical features, there are also those with high artistic value and ornamented with jewels. Topkapi Palace, today, are kept in a part of the collection of these watches. Selected examples among these are in the Watches Section, some of them are in the mansions of the Palace, and some of them are kept in the warehouse. Again, there are many documents in the palace archive and the Prime Ministry Archive that will shed light on these watches.

## **2. Gifting and watch gifts in the 17th Century**

### **2.1. Galata Pocket Watches**

The tradition of gifting watches, which started in the 16th century, continued in the following centuries. In addition to diplomatic gifts, the sultans also gave special orders to many watchmakers. In the making of these watches, British watchmakers took into consideration the tastes and traditions of the Turks and made musical watches that would appeal to the Turks. As well as many mechanical features, there are also those with high artistic value and ornamented with jewels. Galata, the district of foreigners, started with the French pocket watchmakers in the 16th century, and the Swiss took their place in the 17th century. The pocket watch shop in 17th century Galata was no different from a contemporary shop anywhere in the world. There were not only Swiss pocket watchmakers in Galata, but also others like Salomo, who was a multilingual Jew.

Evliya Çelebi, while describing the tradesmen of Istanbul, also mentions the watchmakers and states that they decorate their shops with Spain, France, Can Petru, Kaşper, Belbel, Yusuf Çelebi watches (Özön, 2004)

Pocket watches of this period had different figures as East and West. The figures used in the West did not use the same figures on the pocket watches that came to the East. The figures of the watches that came to the East generally used figures such as the moon and the crescent. There is even a lunar course to observe all aspects of the moon.

Arabic signatures are frequently found on pocket watches made in or for Turkey in the 17th century. It became a tradition to send diplomatic gifts to the East in the 17th century, and the gift brought by every ambassador was a precious watch decorated with precious stones befitting a sultan. The value of the watch has never been questioned, because it is known that the most valuable befits the sultan.



### **3. Gifting and watch gifts in the 18th Century**

The watch trade, which was seen in the last quarter of the 17th century, developed rapidly in the 18th century, and even in the second half of this century, English watchmakers completely conquered the Turkish market. Making of watches in Turkey seems to have come to an end in the first years of the 18th century. The last European pocket watchmakers who went to Galata are no longer in demand. Only the watches of very famous people were used. The types of watches used in the 18th century are fringe and musical watches.

18th century English pocket watches appear as plain watch models outside of the balance edition. Fringed watches were invented towards the end of the 17th century and brought to the East from the West in the early 18th century. The fringe watches are now in the corners of the palaces and are located in the big and rich houses as big and ostentatious.

Towards the end of the 18th century, wooden musical watches began to be imported. The music played in the musical watches made by the British, is Turkish and it is surprising that the figures found in the watch are in Turkish clothes.

English watches, which started to come to the palace as royal gifts in the 17th century and were sought after by various segments of the society as a luxury item in the commercial area, continued to be important in the commercial area for many years.

### **4. 19th Century**

Although interest in English watches peaked towards the end of the 18th century, it declined in the 19th century. However, at the end of the 19th century, a development in the opposite direction emerged. After the English musical watches, in the first years of the 19th century, Swiss watches and watches with bird sounds in different forms took place. From these watches, specially designed and embroidered motifs for Turkish customers were made according to the Turkish tradition. Gradually, the models of the watches changed and they were in a style worthy of the 19th century and more useful watches were invented. There were many European watchmakers who became famous in this

period, the most important of which is undoubtedly the best watchmaker of the time, Pierre Jaquet-Droz. Then Abraham Louis Breguet came and became one of the most sought after names in pocket watches (Yıldız, 1992, s. 45)

Romantic spirit and new models became fashionable in the first years of the 19th century, and watches decorated with Bosphorus views were made for Turkish customers.

## CONCLUSION

The fact that watches have a great place in daily life has also changed the value of watches and their shape. After the 13th century, with the slower progress of technology in the Islamic world, westerners took their place in technology. Watches were exported to the West and imported to the East, and the interest in watches increased in the Ottoman period, and there was an interest in the models and new designs of that period, different from each period. The watches sent and designed for the sultans, on the other hand, were eye-catching and befitting the sultan. Sultans watches are embroidered with jewels, their shape is different from other watches, and they look different from other watches in terms of size. The watches designed by western watchmakers were the most used and desired watches of that period.

The tradition of gifting watches, which started in the 16th century, continued in the following centuries. In addition to diplomatic gifts, the sultans also gave special orders to many watchmakers. In the making of these watches, British watchmakers took into consideration the tastes and traditions of the Turks and made musical watches that would appeal to the Turks. As well as many mechanical features, there are also those with high artistic value and ornamented with jewels. The spread of English watches in the Turkish market actually began in the last quarter of the seventeenth century, and especially in 1680, watch exports from England to Turkey reached a significant level.

English watches produced for the Turkish market in the last quarter of the 17th century were generally made by great

craftsmen. The watch trade, which appeared in the last quarter of the seventeenth century, developed rapidly in the 18th century, and even in the second half of this century, English watchmakers completely conquered the Turkish market. Information on this subject is obtained from various ambassadors and customs records. Pocket watches are the majority among the watches sold for the Turkish market in this century, but pendulum and musical watches are also very popular. If we take a look at the watches made in the second half of the 18th century and which are in the Topkapı Palace Museum today, it can be thought that some very valuable watches may have been gifts sent to the ambassadors by the kings of England, or they may have come to the palace as a result of such orders.

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