INTERNATIONAL ACADEMIC CONFERENCE ON LAW, POLITICS & MANAGEMENT

PEER-REVIEWED CONFERENCE PROCEEDINGS

EDITOR – MALKHAZ NAKASHIDZE

May 28-29, 2015
VILNIUS, LITHUANIA
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Jarmon Sirigunna, Suan Sunandha Rajabhat University, Thailand - Consumers’ Loyalty Factor and Satisfaction Factor: A Case of International Tourists
MESSAGE FROM THE ORGANIZING COMMITTEE CHAIR

Welcome to the International Academic Conference on Law, Politics and management – IACLPM 2015!

The IACLPM 2015 provides opportunities for the delegates to exchange new ideas and experiences, to establish business or research relations and to find partners for future collaboration. The mission of IACLPM 2015 is to provide a platform for researchers, academicians as well as other professionals from all over the world to present their research results in Law, Politics and management. The goal of our conference is to support, encourage and provide a platform for young researchers to present their research, to network within the international community of other young researchers and to seek the insight and advice of successful senior researchers during the conference. We hope the conference will be an ideal network for people to share experiences in several fields of social sciences.

Many people have interested in IACLPM 2015 and many of them worked very hard for the conference. Thanks to the authors who have submitted papers and actively have participated in the conference. I would like to take this opportunity to express my sincere thanks to our colleagues from Mykolas Romeris University for supporting this academic event and special thanks to our honorable speakers Prof. Dr. Mindaugas Jurkynas and Prof. Dr. Toma Birmontienė for accepting our invitation to be keynote speakers and participate in the IACLPM 2015.

On behalf of the IACLPM 2015 organizing committee, I would like to see you next year at the IACLPM. We would be very pleased to receive your suggestions and comments regarding the conference and wishes for future event.

I wish you a pleasant stay in Vilnius and successful conference!

Dr. Malkhaz Nakashidze

Founder & Director
International Institute for
Academic development
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**Thursday, May 28, 2015**

11:00 – 12:30  
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**Session Chair:**  
Dr. Jolanta Bieliauskaitė, Mykolas Romeris University, Lithuania

Dr. Agnieszka Wedeł-Domaradzka, Kazimierz Wielki University, Poland - Difficult questions and im(possible) answers in court cases concerning the beginning and the end of human’s life – the principle of subsidiarity perspective in the judicial practice of the ECHR

Dr. Václav Šmejkal, Skoda Auto University, Czech Republic - Competition law and the social market economy goal of the EU

Dr. Rumppak Puekveerawattana, Suan Sunandha Rajabhat University, Thailand - The Study of Tha-Kha Community Capacity in Enhancing Conservation Awareness and Interpretation for Coconut Sugar Production Based – Agrotourism for Sustainable Management

Mr. Federico Onnis Cugia, Marche Polytechnic University, Italy - A legal analysis of exchange-traded products

Mr. Ilia Ruzanov, Samara State University, Russia - Agency model and governmental support of business: Russian viewpoint

Mr. Sakul Jariyachamsit, Suan Sunandha Rajabhat University, Thailand - Factors Influence the Decision of Foreign Tourists to Travel in Thailand

Ms. Nalin Simasathiansophon, Suan Sunandha Rajabhat University, Thailand - The Impact of AEC on English Communication: Case Study of Thai Travel Agent

Prof. Darijus Beinoravičius, Prof. Milda Vainiutė, Mykolas Romeris University, Lithuania - Separation of powers principle consolidation in the world’s constitutions: the comparative analysis
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Ms. Nadezhda Anatoljevna Ponomarenko, The Russian Presidential Academy of National Economy and Public Administration, Russia - Systems Analysis in the Study of the Political Elite

Ms. Cholpassorn Sithiwarongchai, Suan Sunandha Rajabhat University, Thailand - The Management of Quality of Working Life: A case of Small Bus Drivers

Dr. Anchana Sooksomchitra, Suan Sunandha Rajabhat University, Thailand - The Communication Process to Enhance the Level of Participation on Community Radio

Mr. Aticha Kwaengsophap, Suan Sunandha Rajabhat University, Thailand - Satisfaction in the Standard of Quality in the Thai Restaurant Business

Ms. Chonlada Choovanichchanon, Suan Sunandha Rajabhat University, Thailand – An Investigation of Customers’ Satisfaction of the ASEAN English Camp

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Friday, May 29, 2015

10:15 – 11:45

Session IV. Politics and Management

**Session Chair:**
Dr. Aleksander Glogowski - Jagiellonian University in Cracow, Poland

Mr. Vlastimil Bernas, Charles University in Prague, Czech Republic - Netherlands Overseas Territories in Comparative Perspective

Dr. Aleksander Glogowski, Jagiellonian University in Cracow, Poland - Pakistan after US/NATO Operation withdrawal from Afghanistan

Dr. Yiping Li, The University of Hong Kong, Hong Kong - Tourism commodification of the historical Shanghai: Is there a balance of power?

Dr. Axinte Sorin Mircea, Romanian Association for Innovation, Romania - Pushes and pulls - or
### Session V. Politics and Management

**Chair:** Dr. Malkhaz Nakashidze - Batumi Shota Rустaveli State University, Georgia

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### Session VI. Law and Management

**Chair:** Dr. István Sándor, Eötvös Loránd University, Hungary

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Ms. Phathanan Chaiyabut, Suan Sunandha Rajabhat University, Thailand - The Investigation of Service Quality on Thai Airways: the Perspectives of Passengers

Dr. Virginijus Bitė, Tomas Lavišius, Mykolas Romeris University, Lithuania - Searching for Legal Preconditions of Social Business

Ms. Guliko Kazhashvili, Ivane Javakhishvili Tbilisi State University, Georgia - Procedural Guarantee in the Implementation Principles of Civil Justice

Mr. Somdech Rungsrirawat, Suan Sunandha Rajabhat University, Thailand - Administration Model for the College of Film, Television, Multimedia and Performing Arts, Suan Sunandha Rajabhat University

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Mr. Saowapa Phaithayawat, Suan Sunandha Rajabhat University, Thailand - The Effects of Social and Politics on the New Ethical Phenomenon of Anamnikaya Sect in Thailand

14:45 – 16:15

Session VII. Politics and Management

Session chair:

Dr. Yiping Li, The University of Hong Kong, Hong Kong

Dr. Ali Dayioglu, Near East University, Cyprus - Maronites in North Cyprus

Ms. Sutha Pongthawornpinyo, Suan Sunandha Rajabhat University, Thailand - The Management of Job Dissatisfaction: A Case of Employees’ stress in Electronic Parts Factories

Dr. Suwaree Yordchim, Suan Sunandha Rajabhat University, Thailand - English Classroom Management Model through E-Learning for Thai Students

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Ms. Prangtip Katklin, Suan Sunandha Rajabhat University, Thailand - The Guidelines for Higher Education Management of Suan Sunandha Rajabhat University for ASEAN Entrance

Ms. Chotika Kheannil, Suan Sunandha Rajabhat University, Thailand - Staff’s level of Happiness at the Workplace: A Case Suan Sunandha University
Toma Birmontiene is a professor at Mykolas Romeris University teaching, constitutional law, comparative constitutional law, and other topics for many years. She is co-author of many scientific studies and textbooks and author of many articles on different subjects of constitutional law, human rights law and health law. Professor Birmontienė has held a number of visiting lectureships at various European universities, prepared different study programmes, extensively published on numerous issues of human rights, women’s rights, the guarantees of social rights, as well as on the issues of compatibility between international and national law.

Professor Birmontienė possesses considerable judicial experience. She served a nine-year tenure as a justice of the Constitutional Court of the Republic of Lithuania (03 2005–03 2014). In the position of a justice of the Constitutional Court.

Following the restoration of the statehood of the Republic of Lithuania, Professor Toma Birmontienė extensively dealt with the questions of legal reform and human rights while working in different positions. From July 2004 – March 2005, she was an adviser to the President of the Republic of Lithuania, Head of the Legal Department of the Office of the President of the Republic. In 1995–2004, as the Director of the Lithuanian Centre for Human Rights, she tackled the problems of human rights during the transitional period and the period of accession to the European Union.
KEYNOTE SPEAKERS

Prof. Dr. MINDAUGAS JURKYNAS
Vytautas Magnus University, Lithuania

Professor Dr. Mindaugas Jurkynas works at Vytautas Magnus University in Kaunas, Lithuania and is Head of Public Administration Department and the Scandinavian and Baltic studies Master Programme.

His scholarly focus encompasses small state studies, patterns of cooperation and conflict in Northern Europe and transformation of new democracies in Central and Eastern Europe.

Prof. Jurkynas served his stint as Lithuanian Prime Minister’s advisor on foreign policy and national security in 2006-2008 and was Editor-in-chief of the Baltic Journal of Political Science. His publications can be found in Electoral Studies, Journal of Baltic Studies and in co-edited volumes released by Routledge, Palgrave and Edward Elgar publishing houses.

Prof. Jurkynas is also involved in political consultancy for public and private sectors.
The beginning and the end of human’s life in the light of the principle of subsidiarity and the judicial practice of the ECHR

Agnieszka Wedel–Domaradzka
Kazimierz Wielki University in Bydgoszcz, Poland
awedel@ukw.edu.pl

Abstract: Currently, there is a debate on the future of the ECHR. During this debate some attempts to reform the system of Convention for the Protection of Human Rights and Fundamental Freedom and its long tradition of protection. One of the aspects of the reform is to include the principle of subsidiarity in Convention’s regulations. This paper is an analysis of this specified principle in the context of the difficult issues associated with the beginning and the end of human’s life. The work undertaken is focused on analysis of cases in which the Court was required to decide if the national standard of protection of human’s life in liminal moments is compatible with the Convention. So in this special situation there is a need of answer for a question: where does the higher law end, and where does national law begin? In cases concerning the begin and the end the answer is more complicated that in others. Therefore there is a need to evaluate if, when and how the ECHR includes the principle of subsidiarity into the judgments and how the Court will able to achieve the challenges.

Introduction

The challenges of beginning and the end of life are one of the reasons why we should look into the specifics of the European Court of Human Rights (ECHR). The specificity is due, first, to the fact the dynamic development of technical equipment or medical sciences which does not always keep up with legal systems. Second, even assuming uniformity sources of European culture, the common roots of Christianity, or similar legal protection mechanisms, we must remember that there is an "inherent tension in international human rights law between affirming a universal substantive vision of human dignity and respecting the diversity and freedom of human cultures"[1]. The aspect that may in many cases gives a solution to the problems arising out of that diversity is the principle of subsidiarity. The purpose and meaning of existence of that principle is to support the national system of human rights protection [2]. As indicated by Jasudowicz, due to the fact that the international protection of human rights and the interests of the international community to exclude the possibility of perceiving the protective system in terms of the exclusive competence of the internal state [2]. It is significant that is has also being considered as one of the principles of interpretation [3] used during the process of Convention’s provisions interpretation and help to determine which of the regulations, national or international, confer a better level of protection [4].

Thus, it becomes necessary to raise questions concerning the following points. Whether it actually the principle of subsidiarity will be a mechanism that will fit easily in terms of the Convention and judicial practice of the ECHR. Does such sensitive issues as the beginning and end of human life is possible to incorporate the principles of subsidiarity and whether or not it might cause the system of legal protection weaker. Simultaneously if there poses a threat that the consequence of subsidiarity can become a limiting application of the Convention only to clearly defined therein violations of the law. Finally, whether if we consider that respect for the rights enshrined in the Convention lies first and foremost with the authorities in the States rather than with the Court, how far the Court would intervene if these regulations in the national were missing.

1. The principle of subsidiarity in the legal system

The principle of subsidiarity is also the source for the other doctrines and ideas to help resolve conflicts between the universal standard of human rights and the legitimate diversity of legal systems. An example of this type of arrangement is the doctrine of the margin of appreciation developed by the ECHR and the margin of appreciation functioning as a proof of subsidiarity in international protection of human’s rights.

The importance of the principle of subsidiarity has increased significantly and has moved from the sphere of jurisprudence to the sphere of normative regulations especially in discussions about reform
of the functioning of European Convention on Human Rights protective mechanism [5]. As indicated by the Interlaken Declaration and created on its canvas documents [6], the principle of subsidiarity is one of the fundamental principles which underlie the whole system of the Convention [7]. This is due to the introduction to its system of assumptions relating to emphasize the essential role fulfilled by governments, parliaments and national courts [8]. They are responsible in the first instance for ensuring the lever of human’s rights protection in national systems. At the same time draws attention to the subsidiarity principle introduced by the joint responsibility of the Member and the Court. Implementation of the principle of subsidiarity, according to the Declaration intend to promote the activities to which the Court was called and which consist in refraining from examining issues of fact or national law, and which have already been decided. The Court has repeatedly emphasized that it is not a fourth instance court, and that the Court will not take any action to extent that the court should take place [9]. It also emphasizes the need for a uniform and unambiguous application of the criteria under which the decision about the admissibility of case, jurisdiction of judicial authority and "full consideration of its subsidiary role in the interpretation and application of the Convention" also [7]. This statement should be understood, however, as a guideline, according to which the task of ensuring respect for rights guaranteed by the Convention rests primarily on authorities that make up the national system. Separate issue is the relationship of the subsidiarity principle known from the Convention system with a similar principle existing in the European’s Union legal system. Despite the similar name the scope of interpretation of both principles is varied, which should be considered as a consequence of diversity both legal systems. The Convention for the Protection of Human Rights and Fundamental Freedoms in contrast to the EU legislation does not contain any explicit reference to the principle of subsidiarity, it is rather the result of evaluating the activities of the system as a whole and indirect regulations contained in Art. 1 of the Convention[5]. It states that it is the High Contracting Parties shall secure to everyone within their jurisdiction the implementation of the rights of freedom provided by its content. In Additional Protocol No. 15 to the Convention the preamble was supplemented by the Member’s States declaration of the bear of the responsibility for the protection of the rights and freedoms enshrined in the Convention and the protocols thereto adopted. This responsibility has been limited assessment of the applicability of the margin, however, subject to the supervisory jurisdiction of the ECHR [10].

The Court’s role was instead reduced to achieve the objective of ensuring compliance with the obligations that derive from the Convention on the parties [10]. This range was also confirmed by the Court itself, which in the reasons for the judgment in so-called the Belgian linguistic case stated that there is a guarantee for national authorities in the selection of measures which they consider to be appropriate in relation to matters within the Convention. The Court action undertaken as a result of the case brought before it relate to the compatibility of these measures with the requirements of the Convention [11]. It was even more highlighted in the case against Switzerland, in which the Court held that it is not justified the interference the sphere of action national and local authorities, as this could lead to the usual character of the auxiliary system of protection [12]. Thus, this means that the jurisprudence authority, which is the Court, very precisely and carefully guards not to violate the leading role of national system protection assumed in the Convention. It is obvious that the strategy is beneficial not only because of the Court’s case–law load, but also in relation to the variation that occurs even in countries with similar cultural traditions.

To ensure the effectiveness of the Court’s actions there is not without significance that the legal position results from the general principle of international law. We can not forget that the document constituting the Court, the Convention for the Protection of Human Rights and Fundamental Freedoms is an international agreement concluded between sovereign entities that have agreed to only cover its legal system protective mechanism of the Convention. Consequently, the Court’s role is strictly adherence to the scope of what has been appointed and it is the reason that his actions will be more conservative than intrusive. According to the authors of "Interlaken follow–up" The Court with regard to a possible lack of application of the procedure to intervene in their internal legal systems should respect the States’ autonomy. It is not the Court's role to create a single legal system, as in the case of the EU, but it is obliged to ensure the effective operation of the regulations laid down in the national orders. The Convention does not have such an effective mechanism to unify the application of the law as developed by the Court of Justice
of the EU on tasks resulting from the preliminary ruling procedure. In addition, and probably the most important from the point of view of matters relating to the beginning and end of human life, national courts using the internal acquis have a better opportunity to assess the situation in the context of the changing legal, cultural, or even moral aspects. As a consequence, they have a better possibility of granting adequate compensation. Undoubtedly complement principle in the context of strengthening relations provisions of convention is also possible to formulate an advisory opinion by the ECHR, and thereby strengthen the relationship between the systems of jurisdiction: the Court and the national judicial authorities [13].

2. Subsidiarity in cases relating to the beginning and end of human life

Cases related to the beginning and end of human life belong to the category of cases in which the Court seemed reasonable to leave the "wide" margin of appreciation. According to the accepted interpretation of "margin of appreciation" is inclusive of a "fourth instance", "actual facts", the "principle of proportionality" and "the means necessary in a democratic society," one of the tools by which the Court can effectively implement the principle of subsidiarity[14]. It needs to be recognized that in these cases, it is precisely regulation showing the principle will be widely used. This is due to the lack of consensus among States Parties to the Convention about an uniform standard. The basics of the principle of subsidiarity analyze are specific cases. In this cases ambiguous assessment was evident in the context of judicial differences and evidenced by the resulting separate opinions and comments in the public sphere as well.

Beginning of life issues and the "status" of that beginning will be discussed on the basis of issues ECHR held in relation to the abortion and dispose of embryos issues. In a case against France [15] the Court had to deal with the problem of effective investigation on the basis of national adequate redress for conducting improper medical treatment, which resulted in damage to fetuses and consequently the need to terminate the pregnancy. The procedure was carried out, and Mrs. Thi–Nho Vo and her partner have initiated criminal proceedings against the doctor and civil accusing him of causing Mrs. Vo temporary disability and involuntary deprivation of life of her unborn child. Their claims were further supported by the analysis of irregularities in the operations of the hospital. The proceedings were pending at the national limit of three instances. The Court of First Instance held that the doctor is guilty of the exposure to the risk of loss of life of the patient, but acquitted him of the charge of deprivation of unborn child’s life. The Court of Appeal reversed the judgment recognizing the child's manslaughter plea. In conclusion of judgment national courts have relied on international instruments, including the Convention and the Convention on the Rights of the Child (CRC) and found that invoked category viability, which is the basis of liability doctor is very vague and undefined. Besides the Court indicated that there are changes with the development of medical science, and thus it is necessary to shift the limits within which we apprehend a person's life. It stressed the importance of the opinion formed during the preparatory work for the French legislation also. Jean–François Mattéi’s opinion indicating that "embryo is in any event merely the morphological expression of one and the same life that begins with impregnation and continues till death after passing through various stages" [15]. The Court of Cassation has not shared of the scope of the Court of Appeal understanding and held that the charge of murder in about 20–24 week fetus does not fall within the definition of French law and international instruments interpretation was wrong. The analysis of the subsidiary nature of the judgments it should be noted that this case is specific. Specificity is due to the fact that it is necessary to deal with the problem of the protection of rights in relation to a woman who wanted the pregnancy and the child had a chance to be born healthy. Pregnancy could not be continued only because of doctor's erroneous actions.

At this point must therefore ask whether the protection of such a pregnancy should not be wider within the scope of Art. 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms and if everyone's right to life should be protected. Unless should be agree with the Convention adopted by the complexity of the fundamental questions about the beginning of human life, the more need be aware of the difficulties forcing only one moral code [15]. As pointed out Gronowska, "Cancellation of the final solution of the problem at European Court of Human Rights seems to be the more correct, that until now in most of the States Parties to the Convention on this matter is not settled yet and are still pending in this regard intense debate" [16]. As can be seen, with a
separate opinion attached to the judgment, at the same time can not be assumed that the unborn child is not using any protection, as even the unborn life is worthy of protection. In its judgment the Court decided to recognize a very wide margin of appreciation, depending on the regulation at national level, only by reference to national law in the protection of life. This does not mean, however, that it is impossible to reverse the trend. It happened, after all, that the Court included a fragment of the reasons for its judgment of the German Federal Constitutional Court, which recognized that the scope of protection granted by Art. 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms may also apply to unborn life [17]. Moreover, the actions of the Court are more important in the context of increasing risks stemming from the development of medical science. According Gronowska vo v. France judgment’s seemed to be a good opportunity for more explicit consideration of the Court, "due to the advanced state of the fetus and its good health condition could be considered as a matter of "border" and therefore not so great awakening doubt" [16].

The case Evans v. The United Kingdom referred to the determination of the legal status of embryos resulting from in vitro fertilization. The applicant, who had to undergo oncological treatment decided on the collection of ova and in vitro fertilization. Completing the statements relating to the future use of frozen embryos, both Evans and her partner agreed to make IVF and agreed to a joint submission treatment. This aspect of the statement was crucial because it prevented the use of embryos only with the approval of just one of the partners. After recovering but parting with a partner also Ms. Evans wanted to use the embryos partner came to the clinic and make a statement withdrawing consent to the use of embryos. As a result, Evans asked the court for an order restoring consent to their use. However, both the court of first instance and appellate court rejected the claim, stating that the purpose of domestic law is to protect both parties involved in the process of obtaining and storing embryos [18]. Bringing the application to the ECHR Evans claims a breach of both the right to life and the right to privacy and non-discrimination. The Court also referred to the diverse legal structure "permission to use", which provides the legal systems of the States Parties to the Convention. The Court pointed out that "in the absence of any European consensus on the scientific and legal definition of the beginning of life, the issue of when the right to life begins comes within the margin of appreciation" [18]. Because under the English legal system it was not possible to grant the rights of the embryo, there was therefore a violation of this provision. The same opinion was the Grand Chamber one. It was consider that the case of an infringement of the right to life concluded that there can be no question about the need to protect postulated by Ms. Evans’s lawyers protection due to the fact that the embryo under English law does not have rights or interests, and there is no possibility to effectively be enforce on the basics of the right’s to life protection [18]. Referring to the scope of the breach of the right to privacy, the Court pointed out that the rights of both donors are equivalent, and thus it is impossible to admit to protect one side does not infringe the rights of the other [19]. It was also emphasized that the British system does not block other opportunities to become a mother in any way: it is permissible for the adoption of a child, or to benefit from the donation of gametes in the context of IVF. For the analysis of a complaint of discrimination, a comparison of its situation with that of a man who is also a result of a medical procedure loses the possibility of becoming a parent in a natural way. According to the Court, in which case the embryos frozen and will not be able to insist on their implementation. Thus, under British law, the legal situation of women and men are equal. Some judges disagreed with this argument pointing to the special position of women in the aspect of parenting [20]. Resolving this case ECHR referred the case Vo v. France discussed earlier and stated that due to the lack of consensus relating to the scientific and legal definition of the beginning of life, the best solution is to provide a margin of appreciation and is in its broad aspect because of the moral and ethical sensitivity in vitro treatments. Moreover, the Court held that the judgment should take into account the lack of consensus on regulations relating to the ability or inability to use the implementation of fertilized embryos, in relation to which the consent was freely given and then withdrawn. There is also no consensus as to the time in which these embryos can be used. This last point is particularly important due to the fact that modern medicine allows for long term storage of embryos. Thereby it would appear that it is necessary to create a national provisions which regulate such a possibility; in particular that, here again due to the development of medical science, the boundary may be shifted in time. This follows from the case that the States Parties refer to discretion of protection, while recognizing that the protection of embryos created in vitro compared with
in vivo embryos does not have a specific character [21].

In the Tysiąc v. Poland it was necessary to analyze a violation of procedural safeguards in proceedings for an abortion in accordance with the Polish law. The ECHR declined to answer the question about the status of the fetus also. The applicant has consulted with three experts who presented the possible risks associated with pregnancy, however, refused to issue a certificate entitling the applicant to have an abortion. A complaint was brought to the Court by the applicant, infringement of Art. 3 of the Convention. The Court, however, did not share the applicant’s opinion. ECHR pointed out that it would be possible only in case medical treatment would be refused. In contrast, when examining a complaint on basics of Art. 8 violation, the Court referred to the argument concerning the effective possibility of asserting the rights guaranteed by the legislator under national law. ECHR noticed that a Polish legal system does not provide procedures for the settlement of disputes between the pregnant woman and her doctors, or between the doctors themselves as to the justification for the abortion [22]. Dispute resolution mechanism which was available only for doctors. The doctors had an opportunity to receive a second opinion from another doctor if it was consider appropriate for diagnostic or therapeutic reasons. Adjusting the Court's view does not constitute a guarantee for the patient to obtain the opinion of another doctor or undermine medical opinion in case of dispute. Therefore, the applicant was deprived of the effective protection mechanism since it depended only on the doctor whether the case will also consulted another specialist or not. In addition, the Court emphasized that the applicant was not entitled to the procedural instruments allows to prove the validity of right to respect for her private life on the basis of national legislation [22]. Regarding the ECHR it also influenced the effectiveness. It comes from the Polish law mechanism associated with a potential risk of incurring criminal liability of a doctor taking action within the permissible exercise of therapeutic abortion cases. With regard to the use of the principle of subsidiarity in that case would be to focus on the analysis of Judge Borrego separate's opinion. Highlighting the lack of a uniform stance on the issue of abortion in the countries of the Council of Europe, pointed out that most legislations adopt regulations intermediate neither too liberal nor too restrictive. Polish regulations should be situated in this group of States. According to the judge’s opinion it could not be agree with the perception of the abortion issue in isolation from national standards and assessment on the basis of internal relations. In the case when it comes to difficult problems, with diversified assessment, subsidiarity should be used, especially in the context of a high acceptance of the implementation of one of its mechanisms which is margin of appreciation. It is not acceptable for the assessment of this situation were made without taking into account the context of the problem in the legal system. As noted by Judge Borrego in D. v. Ireland, the Court did not hesitate to take into account the national context, indicate that "the sensitive, heated and often do polarized nature of the debate in Ireland" [23]. In the case of D v. Ireland, the Court's approach to abortion and to protect the unborn child was full of respect, because it was the case an essence of the problem could be found and a new, inconsistently regulations are involved. Consequently, it requires complex regulation and specific analysis of values and moral principles characteristic of the legal order of the State concerned. Furthermore, there is a precisely relationship between the equal right to life of the mother and the "unborn child" [24]. With such an understanding based on it can be concluded that although the same principle of subsidiarity must be preserved having specific moral principles of the society, and the relationship between the mother and the life of the unborn child should be regulated and in both cases protected.

Confirmation of this is the Court further jurisprudence; in case concerning abortion in Ireland, the Court pointed out that "that legislation regulating the interruption of pregnancy touches upon the sphere of the private life of the woman" [25] because of closely connection between women private life and a fetus. And this requires adequate competing of rights.

Also in the case of P. and S. v Poland on a possible submission to abortion by a minor, whose pregnancy was the result of a crime, the Court found that the authorities have not fulfilled their positive obligation to ensure respect for the applicants effectively their private life [26]. In both judgments, the Court stressed the importance of the interests of mother and child, however, particularly focused on the analysis of the issue whether and to what extent a woman can take advantage of the law guaranteed on the national legal system.
However, as follows from the analyzed decisions – also from the case A, B and C v Ireland, the Court agrees with the recognize of the legal interest of an unborn human, but was acting as a subsidiary verifies that it is executed accordance with the mechanisms of domestic law. Such an attitude taking into account the diversity of opinion seems to be appropriate. Wishing to introduce the model a majority on the issue of abortion, the Court would have rather liberalize the availability of abortion. Therefore, the States Parties of the Convention mostly have more liberal legal solutions than Ireland or Polish law. In countries with less liberal approach to abortion could cause more harm than preservative of the Court.

Summing up it need to be underline that the creation of legal regulations is therefore not the Court’s role but Court’s role is to test whether Member State effectively allows to use the rights already granted. These rights, however, will depend on the national legislative authorities. They are not forced by Convention’s system in any way. Court decides to interference if and to the extent that the national judicial authorities do not provide effective protection investigation. Art. 8 can not be interpreted as conferring a right to abortion [26], however, when the State, acting within the scope of its discretion (in the spirit of the principle of subsidiarity) adopts laws allowing abortion in certain situations a State is not allowed not create a legal framework to limit the possibility of effective access. The main problem is not a guaranteed right which might be different in different States, but the subject of the rights. If a fetus is or will be recognized by State authority, should the Court ignore a diversity of the status.

Simultaneously difficult and complicated relationships are related to the principle of subsidiarity in cases in which ECHR focused on the end of life. Confirmation of the case–law assumes, a wide range of responsibilities of the State of a negative reflected in the grounds of the judgment in Pretty v. United Kingdom demanding criminal record assistance to commit suicide [27]. The application was brought by the suffering from the disease of motor neurons Mrs. Pretty, concerned an alleged infringement by the United Kingdom of the applicant's fundamental rights. These deficiencies have to rely on the refusal of the Director of Public Prosecutions to resign of Mrs. Pretty’s husband prosecution, on the basics that assisted Mrs. Pretty to commit a suicide. This position has also adopted by the House of Lords stating that the issue of this "immunity" would be inconsistent with Art. 2 of the ECHR. Mrs. Pretty bringing the case before the Court insisted on the legal protection of the British authorities, alleging a violation of the right to life, the right to protection from degrading treatment, the right to respect for private life, the right to freedom of thought and the right to non–discrimination. The Court analyzed the first of the alleged violations stated that the right to die can not be regarded as an element of the right to life, because it is his antithesis. Thereby it does not give the possibility to decide whether or not to stay alive [27]. In relation to the second ground of protection against inhuman and degrading treatment, the applicant argued that the inability to freely assisted suicide exposure her to suffering in the last stages of her illness [27, p. 45]. In the Court's opinion, such an interpretation is not admissible because protection from inhuman and degrading treatment must be recognized in the context of the right to life guaranteeing non–lethal use of force. This means that there is no legal possibility to have the State permit or facilitate the tasks of the death of an individual. The task of the State is to stop (or refraining others) of causing serious injury to individuals. Possible infringement could only be based on situation in which the suffering of Mrs. Pretty rise due to the circumstances, for the occurrence of which the responsibility of to State authorities can be assigned, and which would result in actual bodily harm or suffering of a physical or mental. According to the Court, the suffering of the applicant, even assuming their major severity, were the result of naturally developing illness, which did not affect the obligations of the State [27, p. 47, p. 51; p. 52].

In its judgment, the Court also rejected Mrs. Pretty’s argument in terms of the lack of discretion whether to end of life, which, in hers view, constituted a violation of respect for her private life. According to the Court, such an interpretation is not permitted due to the lack of coverage by the right to privacy "right to die". The State protects privacy in so far as it relates to how life should look like, and not, as is to be completed. Also alleging infringement of freedom of thought, conscience and religion by excluding the applicant's views on the issues of suicide, has been dismissed by Court, due to the fact that not all views can be classified as a beliefs in the sense protected by that provision [27, p. 81; p. 82]. The last of the allegations relating to discrimination also was not included due to the lack of similarity between the applicant's situation and healthy people.
able to commit suicide, in particular because of the refusal to grant by law regulations of any "right to commit suicide".

Case Pretty v. United Kingdom was the case and unprecedented and multifaceted from the outset. Although related to assisted suicide, but the arguments of the Court allowed to give its importance also in the analysis of limiting points of human life. The applicant argued that the impossibility of committing a suicide makes her less protected against possible infringements of a discriminatory nature then the respect of individuals who may commit suicide and thus independently decide on range of their own lives [27, p. 85–86; p. 88].

Pointing to these arguments, it should be noted that it is clear and assertive in the extent to which the assessment is subject to a right to die. As it comes from judgment Art. 2 of the Convention is concrete, Art. 2 is specifically formulated and refers to the preservation of life, for which the decision constitutes a manifest danger of death also. Please note that in this situation, the analysis refers to the rights of the same entity that wants to use them. In this case, the judgment cited relating to the origin of life can be considered lenient.

In this case, the Court pointed out more clearly the standard of the right to life and not let interpret the right to die from the right to life. Also pointed a framework for restricting the right to privacy. This last point might be seen controversial because the subsidiarity point of view.

Case Koch v. Germany [28] completed in 2012 was related to permanent incapacity for independent functioning resulting from paralysis of Mr. Koch’s wife. The Federal Institute for Drugs and Medical Devices has not delivered a lethal dose of the substance to commit suicide at her request. During the procedure, the applicant was transported to Zurich and there the applicant has committed suicide with the help of Dignitas association. In March of 2005 the Institute confirmed its earlier decision. A similar effect resulted in further proceedings in the national level of legal protection. Administrative Court also noted the lack of legitimacy of the applicant to file a complaint in this case because the applicant appointment not his rights violation. In his complaint to the Court the applicant showed, however, that this situation violated his right to respect for family life due to the fact that the decision was his wife’s one. As he pointed it was closely associated with his person because of his personal feelings and he was intended to fulfill the will of his wife.

In resolving the allegations, the Court expressly referred to the principle of subsidiarity. The Court found that the activities of the national courts should focus primarily on examination of the merits of the applicant's claim, and in this regard, the Court decided to limit his discussion to examine the procedural aspect of the violation of Art. 8. According to the Court, the refusal of the national courts to examine the merits of the applicant's request infringement of the applicant's right to respect for his private life in breach of Art. 8 of the Convention.

In this decision some departure from previous practice was noticed. This may be due to the tendency to expressly include the principle of subsidiarity to the activities of the Court. While in the previous cases, the Court used the principle of subsidiarity as indirectly tool of a margin of appreciation, whereas in this case, decided to discontinue consideration of substantive and focused on procedural matters.

### 3. The prospect of the implementation of the principle of subsidiarity

As is apparent from the direction of reform and of changes to the designated Court, the principle of subsidiarity becomes not so much a new dimension, but becomes a postulate. The Court must extend it not only regularly, but also effectively. And it is this effectiveness is more problematic here because subsidiarity is a challenge for the values of certainty and coherence. The danger, which can not fail to notice is the risk of legal pluralism. This risk is particularly pronounced in the case of analysis made in the context of the cases of the beginning and end of human life. As indicated by the decision presented, the Court has so willingly goes back to the margin of appreciation concept, which is allowed to protect both the dignity and diversity of human society [1, p. 42]. As appropriately emphasizes Carozza, subsidiarity principle is somewhat paradoxical, because "It expresses both a positive and a negative vision of the role of the State with respect to society and the individual". On the one hand we have to deal with a positive duty to Court intervene where legislation or national mechanisms fail, the other is left to a wide range of freedom, requiring the Court to refrain from interfering in those cases
where the legal systems do not contain a common standard. Therefore this last aspect can be a real threat to human rights in the context of matters relating to the beginning and end of human life, because such actions result in the creation – as determined by Gronowska – "European–national level" hybrid [29]. Especially that the ECHR is a "living instrument" and the scope of the rights protected by Court need to be interpreted dynamically.

Factual implementation of the principle of subsidiarity implies the need to comply with the Court's own jurisprudence and the need to create of mechanisms that allow for the proper execution of judgments of the Court by the States Parties to the Convention. This should concern both general measures and action of a remedy in respect of cases which might be the basis for the existence of similar problems before the Court. The activities of this nature are not always associated with an indication of the specific decisions, but rather are limited to the determination of infringement or non–infringement of the standard, or to grant relief eventually.

It should be noted also that the State has an obligation to adapt their national legislation to the standards that have been adopted in the framework of the Council of Europe, without waiting for the specific settlement [30]. It is this fact, that what has rightly pointed out by Balcerzak, closely affected by the effects of a judgment that will have preventive sphere will comply with the subsidiarity principle to strengthen the national system of protection [31]. The task can be especially difficult because of the awareness of the Court that there are different legal traditions and different systems of values which was highlighted in the above mentioned rulings.

**Conclusions**

The challenges for the implementation of the principle of subsidiarity are limitations. The first one is the effectiveness of which may not always be able to take place, if the place will be given to subsidiarity. It might be a challenge assuming that the Convention is dedicated to protect the rights that are not theoretical or illusory, but practical and effective. It will be necessary that ECHR remembered the need to consider both of these requirements: first solution of cases that occurred in the domestic legal order and secondly ensure the effectiveness of the regulations contained in the Convention.

Secondly, it seems that such a delicate issue as the beginning and end of human life may require the more unequivocal stance of the ECHR. The interpretation presented by the Court, which States, inter alia commented judgment Vo v. France, has a dynamic dimension, and as a "living instrument which must be interpreted in the light of present–day conditions" [15, p. 82]. The analyzed cases clearly show that the relationship of international law and national law become gradually more dynamic. This means that either one or the other system, the process of applying the law, derive or refer to each other in their regulations or rules. The issue whether or not the subsidiarity can be effective if the Court were very conservative approaches to answer some questions also requires to be considered. Obviously domestic orders should not feel threatened by the actions of the Court. However, its activity could be useful in situations where the national systems can not come to an agreement because of the too high diversity of views.

It must be considered that the principle of subsidiarity requires, in some cases, more clearly interpretation of the Court. It is clear that national authorities have the better – because the more direct – way to learn about the needs of society and the "public interest" than the international judge. However, particularly in situations relating to human life, efforts should be made more explicit. As is apparent from the rights that apply to limiting points of human life, the case law is very strict and unambiguous granting protection of life even if there is no desire to pursue and a quite liberal in regard to setting its beginning. It might be criticized. As noted by Gronowska [29, p. 228–229]. Occupy a neutral stance by Court does not only solve the problem, but it makes it more complicated.

Finally, the principle of subsidiarity might work well in the case of rights clearly and explicitly enshrined in the Convention and under national law. If, however, matters concerning the beginning and end of human life, often based on the regulation of Art. 8 of the Convention legal regulations are no longer quite as clear. Part of the State neither does represent a uniform standard nor has the range of full legal regulation. In such situations, it may turn out that subsidiarity will cause the need of "create" a standard that the State will have to adopt.

In conclusion it should be stressed that the principle of subsidiarity introduction seems to be a good solution from the perspective of number of cases
before the ECHR. However, in proceedings on border issues of human life it seems to be it is necessary that the ECHR should has a cautious approach. The Court should also take into account the possible behavior of States themselves, which can raise the they have the primary responsibility in securing the rights and freedoms defined in the Convention. Where the reference to the lack of European consensus and the difficult ethical questions raised Court granted a wide margin of appreciation but the where there is an acceptance Court make the margin narrower. It remains to hope that the Court with such highly respected – although not uncritically accepted – acquis is aware of new challenges and changes in the interest of the individual.

References


[2] T. Jasudowicz, [in:'] B. Gronowska, T. Jasudowicz, M. Balcerzak, M. Lubiszewski, R. Mizerski: Praw człowieka i ich ochrona, Torun 2005, p. 179. For such an interpretation is supported primarily the content of Art. 35 of the ECHR, according to which the "Court may deal with the matter only after exhausting all remedies under the domestic laws, in accordance with the generally recognized principles of international law, and if the case was brought within six months from the date of the final decision", Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950.

[3] S. Greer, “Constitutionalizing Adjudication under the European Convention on Human Rights”, Oxford Journal of Legal Studies, 23 (3), 2003, p. 407. The author is these principles include the effective protection of the rights of the individual, not to abuse the rights and restrictions implied rights, and implied limitations, positive obligations of the state, autonomous interpretation, dynamic interpretation, proportionality, non-discrimination, and combined the principles of legality, the rule of law and procedural fairness.


[19] That argument does not always find acceptance in the literature, because it indicates that, in the case of Mrs. Evans real opportunities to preserve its ability to fertilized were associated with the use of embryos, while in a similar situation to protect the reproductive capacity would require only man to freeze semen, w: M. Ford, “Evans v United Kingdom:What Implications for the Jurisprudence of Pregnancy?”, Human Rights Law Review nr 8, 2008, p. 177.

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Public Procurement Legal Relations: Distinction from Other Similar Legal Relations

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Abstract: Public procurement is a complex system of different political, economical, legal and other social factors, which are working together to fulfill the requirements of transparency and non-discrimination as well as guarantee fair competition in the process of governmental purchases. This social phenomenon is in detail regulated by legal norms of different fields of law and can be named cross-sectoral. Public procurement as an activity joins public and private sectors into business relation, which arises in a specific way bringing together public and private law requirements. Moreover, there exists a lot of similar legal relations, such as public tender, concession, public and private partnership, project financing etc. and sometimes it is difficult to separate it from public procurement. The specifics of public procurement legal relation as well as main differences are revealed.

Introduction

Governments across the world have a huge purchasing power, which is mostly implemented by public procurement. This field of economic activity of public sector is regulated in detail and has clear globally recognized rules. Still such level of legal regulation often is difficult to realize on the same being flexible and sensitive to the needs of purchasing body. It is notable, that strict regulation of public procurement often lead to boarder understanding of its limits. Contracting authorities in cases if they are not sure, does concrete legal relation is covered by public procurement law, often decided not to take a risk and follow such legal regulation. There are a lot of legal relations similar to the public procurement legal relation which appears between a contracting authority and a supplier. Then subjects of similar relations are applying the same legal regulation, it raises their administrative costs and restricts flexibility in choosing requirements for the goods, services or works, which are needed. The paper gives a brief overview of the similar to public procurement legal relation such as the legal relation of tender, concession, public-private partnership legal relation, legal relation of science project funding, legal relation of the European Union support project funding. A concise analysis of common and distinguishing features of legal relations is expected to set additional specific features of procurement legal relations and provide a broader understanding of complexity of such relation as well as reveal the necessity to clearly distinguish similar relations and do not apply public procurement regulation in case it is not obligatory according to legal regulation.

1. Distinction of Public Procurement Legal Relation from Tender Legal Relation

With regard to legal relations similar to public procurement, public tender legal relation is often mentioned, which is regulated by Book VI Chapter XLIX of the Civil Code of the Republic of Lithuania (CC) [1]. The CC reveals commonalities of the tender legal relation with public procurement. First of all, it is the publicity aspect. Both in the events of the public tender and public procurement, the organizer announces their intention to the public. It also means the organizer's commitment to financially encourage the person who submitted the best tender according to the pre-set and publicly announced conditions. In the case of public procurement, the purchasing agreement is mentioned, and in the event of tender we speak about remuneration or some special right. In both cases, the organizers may determine qualification criteria for the participants and technical requirements for the proposed solution. In the literature, there are opinions that these legal relations are similar in nature. However, they have some essential differences as well.

The analysis of the public procurement relation clearly shows that one of its characteristic features...
is pecuniary interest. Once the procurement procedures are finished and the public contract is concluded, contractual relations occur between the parties. One of the essential features distinguishing public procurement from public tender is the fact that public procurement requires pecuniary interest that is implemented through awarding of contract to the winner of the public procurement. The very essence of public procurement determines obligation of the contracting authority to compensate the winner of the procurement for supplies of goods, services or works performed. In the event of a tender, there is a common situation, where participants compete for specific rights or certain prize, reward, but there is no obligation to realize the idea of the contest through an agreement. In a large part, public tendering is related to creation of science, art, architecture works. However, unlike in public procurement, tender organizer does not acquire exclusive right to acquire the work, but only acquires the priority right to use the work and the obligation to repay the author.

The Supreme Court of the Republic of Lithuania has also advocated on delimitation of legal relations of public procurement and tendering [2]. In its Review of Public Procurement Regulation and Case-Law, the Supreme Court of Lithuania pointed out that the public tender institution established by the provisions of chapter XLIX of the CC should be distinguished from the procurement institution laid down in the provisions of the LPP. It was noted that the goals of the institutions are similar, i.e. with the help of the two institutions it is aimed to achieve the best result for certain remuneration by the means of contest. However, despite the similarity, these institutions differ by a subject and an object of legal relation as well as by procedures applied. [3]

Based on these considerations, the Supreme Court stated that "public procurement is not subject to the provisions of chapter XLIX of the CC mutatis mutandis. Accordingly, for the examination of public procurement disputes part 3 of article 1.125 of the CC stipulating a shortened one-month limitation period applicable to claims arising from the results of the competition shall not be applied."[2]

Special panel of judges has repeatedly examined the issue of jurisdiction of disputes arising from tender legal relation. As in the case of public procurement, so in the event of tender, it was concluded that disputes originating from the tender legal relations, shall be addressed an ordinary court, due to a contractual nature thereof [4]. Otherwise, disputes originating from the public tender were assigned to administrative courts' jurisdiction, where it was shown that the organizer of the tender performed public administration activities while implementing the tender [5]. Hence it is worth paying attention to the legal relation complexity and different treatment depending on the organizer personality and goals of the tender.

The term of public tender is often confused with one of the procurement methods, i.e. design contest, which can be open, simplified, or limited. To distinguish between these different procedures it is necessary to understand the essential differences between public tender and public procurement.

2. Distinction of Public Procurement Legal Relation from Public – Private Partnership Legal Relation

Public-private partnership in the modern world become more and more popular phenomenon. The partnership of these sectors is not a specific procedure. Rather, it is a group of activities, which have similar objectives. Legal literature to define the term of public-private partnership refers to "all long-term forms of cooperation involving representatives of the public and private sectors."[6] There is a very wide variety of public and private sector partnership definitions. Following part 15 of article 2 of the Law on Investment of the Republic of Lithuania “Public-private partnerships” means the ways of co-operation between a state or municipal authority and a private entity as specified by laws, whereby the state or municipal authority transfers to the private entity the activity assigned to its functions, while the private entity invests into this activity and the assets required for carrying it out and receives a remuneration therefor as specified by the laws”[7]. The same part states that the forms of partnerships between the public and private sectors shall be specified by this Law, the Law of the Republic of Lithuania on Concessions and other laws, indicating assignment of a concession to one of the forms of public-private partnership. According to Ž.Šutavičienė, currently existing legal framework allows Lithuania to apply these PPP forms: concession, partnerships of public and private entities and establishing of mixed capital companies [8]. The third form is the establishment of mixed capital companies is not related to public procurement so closely, as a result of the
procedure is establishment of the new entity (in accordance with the Law on the Management, Use and Disposal of State and Municipal Assets [9]), where mixed-capital legal entity is established for some particular activities and a state or municipal assets are invested as the public sector's contribution to the joint venture's capital. The other two forms are quite closely related to public procurement and a more detailed analysis is necessary in order to separate these different legal relations.

Legal relations resulting from concession shall be identifiable as one group of legal relations, which are often confused with public procurement and the above mentioned public tenders. According to the Law on Concessions: "Concession' means the authorization granted under this Law by the awarding authority to the concessionaire in compliance with the concession contract under the terms and conditions set forth therein to engage in the economic activity and commercial connected with the design, construction, development, renovation, transformation, repairs, management, use and/or maintenance of infrastructure objects, to provide public services, manage and/or use state-owned, municipal property ... where the concessionaire assumes under the concession contract all or part of the operating risk and undertakes the relevant rights and duties, while the consideration of the concessionaire for the activity consists solely of the granting of the right to engage in the relevant activity and income from the activity or the granting of the right and income from the activity together with a consideration paid to the concessionaire by the awarding authority in light of the risk assumed by the latter."[10] According to S.Urbonavičiūs, concession is one of the oldest (as from Roman times) form of public and private partnerships, which is often defined as 'the right to use' (sometimes as 'exclusive') certain items, as well as provide public services, which are assigned exclusively to the state/municipal prerogative and for which legislation established a state monopoly.

[6] Concession is considered one of public-private cooperation forms. In general, the public and private sector cooperation is characterised by such features as long-term nature of public-private sector cooperation, the project is partly funded by the private partner, a clear allocation of risks, clear social objectives [6]. Public procurement can be considered one of the forms of public-private cooperation, but only if we understand the public and private sector cooperation in the general sense. However, public procurement are not included in a classic public-private cooperation concept due to their short-term nature, and purchased goods, services or works are financed from the funds of the contracting authority. Thus, it is relatively easy to distinguish concessions and public procurement by the contents of the contract concluded and rights and obligations of the parties. However, these procedures have a number of similarities, especially when comparing the concession award procedure and the procurement procedure. In both cases, certain conditions are prepared, the organizer's intentions, qualification requirements and so on are announced publicly. In the event of concession, the Procurement Office has certain powers assigned thereto [10]. This authority establishes standard forms and requirements for a public works concession award notice. Compared with the control which it exercises upon contracting authorities, in the case of concession it is limited to preparation of standard forms and directives. Concessions procedure is somewhat simpler and less regulated in detail, though quite stringent requirements appear at the outcome of the case. According to the Law on Concessions, decisions relating to concessions whereunder the Republic of Lithuania assumes material property obligations shall be taken by the Seimas of the Republic of Lithuania on the recommendation of the Government of the Republic of Lithuania. Unlike public procurement, provisions of the Civil Code governing public tender apply to the concession mutatis mutandis. A special panel of judges pointed out that "in this case the municipal council in adopting the contested decision and concluding the disputed concession, acted as the entity involved in civil legal relations for the management and use of the property entrusted to the municipality. If a dispute arises from a civil legal relation, it must be regarded as a civil, rather than administrative, regardless of whether or not parties to the dispute are private, or one of the parties is a state or municipal authority. So in this case the dispute is of a civil legal nature and is subject to hearing before an ordinary court."[11] This confirms that the concession is an economic activity of granting authorities not directly related to public administration.

The issue of delimitation of the public procurement and concession legal relations was also mentioned in the ECJ case-law. For instance, in the case C-48/10 [12], a matter of separation of procurement and concession contracts was resolved. Given the fact that the objects of both procurement contracts and concession agreements in some cases can be
very similar, and the identification of the applicable law depends on the qualification of the transaction, this problem is very acute. The ECJ stated that “the difference between a service contract and a service concession lies in the consideration for the provision of services. A service contract involves consideration which is paid directly by the contracting authority to the service provider while, for a service concession, the consideration for the provision of services consists in the right to exploit the service, either alone, or together with payment”[12]. The attention was also paid to the fact that while the method of remuneration is one of the determining factors for the classification of a service concession, it also follows from the case-law that the service concession implies that the service supplier takes the risk of operating the services in question. The absence of a transfer to the service provider of the risk connected with operating the service shows that the transaction concerned is a public service contract and not a service concession.[12] In this case, the ECJ has formulated the rule that a contract by which a contracting party, pursuant to the rules of public law and the terms of the contract which govern the provision of the services in question, does not bear a significant share of the risk run by the contracting authority is to be regarded as a ‘service contract’. Only the national court is in a position to assess that, thus it has, in each individual case, to qualify the transaction and assign it to the service concession or service contract, taking into account all the attributes of the transaction.

In summary, it should be emphasized that despite the procedural similarities, concession legal relations are essentially more comparable to a public tender than to procurement legal relations. Public procurement and concession share similar procedural aspects, but distinct different objectives. Procurement aims to provide the contracting authority with goods, services and works required for its functions, while concessions aim essentially at transfer of a part of certain public functions to the private sector, and remuneration in this case is usually associated with the granting of exclusive rights, rather than a financial settlement for goods delivered, services provided or works performed.

Following the Law on Investment “General government and private entities’ partnership” means a form of public-private partnerships whereby a private entity, under the terms and conditions specified in a general government and private entities’ partnership agreement, invests in the areas of activities assigned to the functions of a general government entity and the state or municipal assets required for carrying out the activities and pursues in those areas the activity specified by this Law for which the private entity is paid remuneration by the general government entity. “[13] Conclusion of such partnership contracts should be subject to a special procedure, but the Law on Investment does not circumstantiate it. In paragraph 4 of the Rules for the development and implementation of public-private partnership projects approved by the resolution of the Government of the Republic of Lithuania, the Law on Public Procurement is cited as one of the legislative acts that form the basis for such partnership agreements. Definitions section of these Rules includes the term of public procurement defined as “a purchase of services and works carried out in accordance with the Law on Public Procurement of the Republic of Lithuania (...) when the investment project is being implemented on the basis of public-private partnerships, or concession, executed by the Law on Concession of the Republic of Lithuania (...) when the investment project is being implemented by concessions.”[14] From here it follows that public procurement is the form of implementation of a public-private partnership, i.e., creating such a partnership government entity buys services or works from the private sector partner by the means of public procurement. Thus, the author believes that public procurement is a procedural form of public-private partnerships implementation. Despite the necessity of procurement procedures while implementing government and private partnership, partnership contracts are concluded for a period of not less than 3 years and no more than 25 years (compared to public procurement contracts, a maximum time limit of the latter may be 3 years). Interestingly, in the literature there is a consensus that public-private partnerships should be seen as one of the forms of public procurement [6]. Such a provision cannot be accepted, since public procurement is only one of the forms of public-private partnership implementation. It is necessary to understand it as a wider social phenomenon, not limited to the purchases carried out through the procurement process, because they represent only a small part of possible activities of public-private partnerships.
3. Distinction of Public Procurement Legal Relation from Research Funding Legal Relation

In academic community, research project funding is very relevant, in some respects it is similar to public procurement. Following the Law On Higher Education And Research [15], besides other resources, funds of higher education and research institutions shall comprise the funds received as competition-based programme funding of research. The same law particularize, that competition-based programmes shall be the totality of measures of research, experimental (social, cultural) development works, the results of which are new scientific knowledge and technologies, the research, experimental (social, cultural) development infrastructure, a higher competence of researchers and other matters necessary to solve urgent problems of the state and society. Competition-based programmes shall be implemented by way of competition funded projects. Part 6 of the same article states, that applicants shall compete for competition-based programme funding by presenting applications which are assessed with due regard being paid to their compliance with the objectives of research, experimental (social, cultural) development projects, and the criteria of their topicality, competence, quality and other criteria. Competition-based programme funding shall be administered by the Research Council of Lithuania and an institution authorised by the Government or the Ministry of Education and Science. Basically, research project funding is similar to a public procurement due to procedural requirements: the requirements for the qualification are announced publicly, application architecture is clearly defined, electronic means are used for reception of applications, and so on. However, in regard to a result, these procedures are substantially different. The aim of the competitive research funding is to select projects which receive funding under project financing agreement, and the projects are evaluated not on the basis of administering authority's needs, but based on the relevance of scientific development. Special dispute resolution procedure is foreseen for competitive research funding. Following Description of the procedure for the submission and examination of appeals concerning the evaluation of research (dissemination) projects and reports [16], an appeal may be submitted for the following: administrative errors or procedural irregularities possibly made during the examination of applications or reports which may be crucial for evaluation of application or report; evaluation of application or report, relied on criteria other than those set in assessment instruments; exceptional circumstances, which could have a negative impact on the evaluation of application or report, and the executing agency and the project manager could not inform the Council prior to the decision; for potential oversight in evaluating the report. An appeal on the expert evaluation of application is not accepted. Appeals are examined by the Board of the Research Council. Neither Law on Higher Education and Research nor competitive research funding legislation does not provide for a possibility to challenge a decision of the Research Council before a court in the event the appeal is dismissed. Logically, such a decision should be appealed to the administrative courts.

Despite these differences, public procurement and competitive research funding share another one aspect. Having assigned the competitive funding, purchase of goods and services for the implementation of the project is implemented by public procurement, because the major part of the educational institutions are contracting authorities, and their activities generally more than 50 percent is financed from the state budget. So it is natural that after a competitive funding, procurement is made in the same way as with other funds.

4. Distinction of Public Procurement Legal Relation from EU Project Support Legal Relation

A similar situation as in competitive research funding in the case of the award of European Union project support. The relations between authorities administering the use of the support and the beneficiaries are often confused with public procurement legal relations. The issue of separation of this type of legal relation must also be resolved taking into account the result to achieve. Allocation of EU project funding has the objective of selection of projects, the implementation of which would be supported by the EU. So in reality, in this case the selection of the best ideas and the most capable persons who presented them is performed as well, and then the project is being implemented by contracts of award and administration of the support. In the meantime, in public procurement, the contracting authority specifically defines goods, services or works subject to purchase, and the successful supplier must deliver, provide or perform them according to time limits and procedures set in procurement specification. These relations share a
procedural nature: the principles of publicity, transparency, non-discrimination are implemented, but in other respects they are different legal relations. Public procurement is in principle used here as well when it is necessary to implement the project identified in support assignment and administration contract. Then, the goods, services and works necessary for the implementation of the project are bought according to the Law on Public Procurement (if a contracting authority), or by somehow simpler procurement rules, which are developed for non-contracting authorities by support administering authorities.

5. Distinction of Public Procurement Legal Relation from Private Procurement Legal Relation

Despite the fact that there is a tendency to transfer business models operating in the private sector to the public sector, we cannot ignore the fact that the public sector substantially differs from the private in the purchasing aspect. Although in the market both public authorities and private organizations acquire needed goods, services or works from the same suppliers, procedural differences are considerable.

If we speak about the private sector procurement activity as the normal course of business, which aims to ensure the functioning of a particular organisation, then with regard to the procurement, we must keep in mind a lot of related factors. Public procurement contains the potential to be an important tool for a variety of interests in the various fields concerned. The aim of public procurement is an award of the contract to enable the contracting authority to acquire necessary goods, services or works, the rational use of dedicated funds in accordance with the principles of equality, non-discrimination, mutual recognition, proportionality and transparency. This main task can be supplemented by the co-positive purposes, eg. Reduce environmental pollution, social exclusion and promote innovation, support for socially vulnerable groups and many others. Unfortunately, public procurement can contribute to the formation of negative phenomena and their distribution, for example, regulatory appropriate to enable certain undertakings obtain illegal income. In the event of public procurement legal regulation, politicians' decisions affect a very wide range of subjects: contracting authorities, suppliers of all possible goods, services and works, procurement controlling authorities, and albeit indirectly, all people using the services of public administration bodies. So thanks to procurement it is not only possible to ensure the smooth execution of state functions (in the sense of supply of materials), rationally use budgetary funds, but also to solve some additional problems, such as: reduce corruption, encourage social responsibility and environmental sustainability, promote innovation, provide a support for certain business entities and many others. In order to maximize the potential of public procurement, a complete systemic examination of the institution is necessary to determine the factors affecting it.

The diagram shows the existing mutual relationship between the factors influencing certain procurement regulation and an opportunity of the public procurement as an instrument of state policy to influence the same factors. The scheme identifies the factors affecting the research object, which at the same time are affected by it.

Interaction of factors of public procurement and its environment

While analysing procurement in the private sector, such effect is often not even discussed, and acquisitions often designed to meet specific material needs.

The authors of the public procurement international research state 'first, the rules and regulations framing and governing how public procurement is conducted make for a very different environment compared to private sector purchasing and supply'. [20] Of course, it is completely clear statement as public procurement today is regulated in detail both by international and national law, and the legal regulation of the private sector, first, is less detailed, and second - it is of dispositive nature, enabling the parties to the relation to have a lot of freedom and be limited only by mandatory law defending fundamental common values. Rigidity and formality of public procurement procedures often lead to the fact that the contracting autho-
rities are unable to react to the market situation or be susceptible to innovation. The private sector often enjoys this fact: deliberately violate the contract conditions, because they know that termination of the contract is too complicated process, and performance of a new procurement is very time- and work-consuming, offer technologically obsolete products or simply using lower qualification of public sector workers engaged in the procurement, or otherwise orient its activity not at the most rational implementation of the purchase contract. Often, the public sector in various forms implements private sector's models. Today, nobody is surprised by a purchase of certain goods or services from the outside (outsourcing), which allows contracting authorities to optimize their operations and focus on its core functions, and purchase supply of materials from the market persons engaged in this activity, through public-private partnership, or other form. According G.Callender, 'the boundaries between public and private are increasingly blurred; however, it is still the case that public procurement practitioners seeking to source capital and revenue goods and services are required to comply with laws and regulations that do not apply to their private sector counterparts [20]. This constraints the public sector and often complicates the application of innovations simply because certain performance optimization innovation is impossible to apply for a complex and time-consuming procurement procedures or a special status of public administration subject in general.

Public sector's procurements seek different goals in comparison to private purchases. According to G.Callender, organizational goals of 'for profit' businesses frame the purpose of private sector purchasing and supply as supporting or delivering profits in terms of return on investment and earnings per share. Public sector organizations are governed by multiple stakeholders, often with conflicting objectives relating to economy, society, politics and innovation/technology. [20] Here 'double' procurement goals are kept in mind - provide specific authority with necessary goods, services and works while efficiently using budgetary funds, and by the same action to influence, for example, the economy, the environment and the development of innovation. In general, public procurement as one of the realms most sensitive for corruption is often politically motivated, which inevitably has a negative influence on the rational use of funds.

With regard to the delimitation of public and private acquisitions it is also important to mention structural differences, understanding them in two dimensions: the volume of procurement and procurement organisation process. First of all we would like to refute the assertion that public sector procurement is particularly important because of their scale, more specifically, the value of money. In this respect, we have to admit that leading international companies' purchasing power and budgets are often higher than those of smaller countries. Eg. In the budget of the Republic of Lithuania expenses are planned in the tens of billions of Litas, while international companies such as Apple or Microsoft plan to spend trillions of dollars. Thus, although the procurement accounts for a significant share of gross domestic product, compared with private sector acquisitions, these figures are no longer impressive. However, in the second aspect - structure of procurement process organisation - the gap between the public and private sectors is high. According to G.Callender, "the organization structures of purchasing in the private sector are determined by executive boards of directors empowered to take decisions and implement them. This is very different to the decision-making structures in governments where policies and directives frame the decision-making behavior of many local organizations". [20] Contracting authority carries out the planned purchases delegating this task to the Public Procurement Commission established especially for that task, Commission's decisions in principle oblige authority's management (with certain exceptions, as nevertheless there retains the possibility to cancel the purchase in the cases stipulated by the law). There is also the possibility of centralised procurement, when the purchase is carried out from the suppliers selected by a special entity that has no analogue in the private sector. Furthermore, the structure of the procurement process in the public sector is quite different: here everything must be planned in detail, almost no scope for any unforeseen needs of authority and often not possible to respond to a sudden change in the situation, as even after the completion of the purchase and the conclusion of the purchase contract, the latter cannot be changed.

Conclusions

Concluding, it can be said that public procurement is a complex social phenomenon, which is influen-
ced by many factors and in detail regulated by legal norms of different fields of law and can be named as cross-sectoral. Public procurement as an activity joins public and private sectors into business relation, which arises in a specific way bringing together public and private law requirements. It can be considered one of the forms of public-private cooperation. Moreover, there exists a lot of similar legal relations, such as public tender, concession, public and private partnership, project financing etc., and sometimes it is difficult to separate it from public procurement. Analysis of the literature and case-law shows that there exist the public procurement legal relation distinction criteria, which would reveal the specifics of thereof, and enable scientists and practitioners to separate specific activities and apply appropriate legal rules. One of the clearest features of public procurement relation is pecuniary interest. Another – special status of one of the party to such relations. The obligatory participant of public procurement is contracting authority. This criterion also sets up the background to make a distinction between public and private procurement. Both forms of procurement have a goal to purchase goods, services or works, but private sector subjects are not restricted with detailed legal regulation and additional objective – to implement the principles of equality and fair competition.

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Detection Techniques of Digital Image Forgery by Using Images Metadata in Digital Investigation

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Abstract: Digital image forgery detection is the technique of discovering evidence of tempering in digital images and proves the authenticity of the images Metadata against attackers. Security attacks on the digital image can lead to loss of image integrity and the difficulty substantiated by investigators, which might help intruders evade responsibility due to the lack of supporting evidence to convict them. This paper proposes a new methodology of forgery detection by combining analyses on Images Metadata and forgery features by using a new method to extract Exchangeable Image File Format (EXIF) of Image Metadata that can help to authenticate digital image files in forensic by distinguishing between the original images and images of counterfeit. This might help to achieving a clear view of events in digital investigations through the use and analysis of the image metadata.

Introduction

Metadata is data that describes other data (data about data). More precisely, Metadata is the description of the data itself. To date, no mechanism has been effective in promoting the use of image metadata to protect from the threats and prove the authenticity of these images, an image may include metadata that describes the original image ID, scene capture , Encoding Process, Color Components, Pixel Aspect Ratio, Color Components, Space Illuminant and focal Length when the original image was created, and many other data.

Over the past few years, all techniques of prove the authenticity of the images, attack, detect and protect of intrusion in cloud have been well studied and their shortcomings understood although infrequent. E. Silva, T. Carvalho, A. Ferreira and A. Rocha [1] presented a new approach toward copy-move forgery detection based on multi-scale analysis and voting processes of a digital image. This is extracted interest points robust to scale and rotation finding possible correspondences among them. E. Silva and colleagues constructed a multi-scale image representation and for each scale, and examined the generated groups using a descriptor strongly robust to rotation, scaling and partially robust to compression, which decreases the search space of duplicated regions and yields a detection map, and final decision is based on a voting process among all detection maps, then validated the method using various datasets comprising original and realistic image closings. J. Zheng, T.Zhu, Z. Li, W. Xing and J. Chang Ren [2] proposed a blind technique capable of detecting traces of feather operation to expose image forgeries by model the feather operation, and the pixels of feather region will present similarity in their gradient phase angle and feather radius. An effectual scheme is designed to estimate each feather region pixel's gradient phase angle and feather radius, and the pixel's similarity to its neighbor pixels is defined and used to distinguish the feathered pixels from un-feathered pixels. Also the degree of image credibility is defined, and it is more acceptable to evaluate the reality of one image than just using a decision of YES or NO. G. Lynch, F. Y. Shih and H. Y. M. Liao [3] presented an efficient expanding block algorithm for detecting copy-move forgery and identifying the duplicated regions in an image, and the experimental results in this paper show that the new method is effective in identifying size and shape of the duplicated region also it allows copy-move forgeries to be detected, where the copied region has been manufactured slightly lighter or darker, under JPEG compression, or with the effect of Gaussian blurring, in an attempt to throw-off detection algorithms. J. C. Lee, C. P. Chang, W. K. Chen [4] proposed a blind forensics approach to the detection of copy–move forgery. The input image is segmented into overlapping blocks, whereupon a histogram of orientated gradients is applied to each block. Statistical features are extracted and reduced to facilitate the measurement of similarity, feature vectors are lexicographically sorted, and duplicated image blocks are detected by identifying similar block pairs after post-processing. Experiment results demonstrate that the proposed method by J. C. Lee and colleagues is able to
detect multiple examples of copy–move forgery and precisely locate the duplicated regions, even when dealing with images distorted by translation involving small rotations, blurring, adjustment of brightness, and color reduction. We are currently working to improve detection in regions with rotation and scaling adjustment over large areas. L. Li, S. Li, H. Zhu, X. Wub [5] presented a method for detecting this kind of image tampering based on circular pattern matching. The image is first filtered and divided into circular blocks. A rotation and scaling invariant feature is then extracted from each block using Polar Harmonic Transform (PHT). The feature vectors are then lexicographically sorted, and the forged regions are detected by finding the similar block pairs after proper post-processing. Experimental results by L. Li and colleagues demonstrated the efficiency of the method. T. Cheng, X. Xu, Y. Cai, S. Fu, Y. Gao, Y. Su, Y. Zhang and Q. Zhang [6] Compared of measurement accuracy between two-dimensional digital image correlation (2D-DIC) and 3D-DIC was also performed. Due to the theoretical restriction, the measurement accuracy of 2D-DIC decreases with the increase of deformation. A maximum discrepancy of about 20% with 3D-DIC was observed in this work. Therefore, 3D-DIC is actually more essential for the high-accuracy investigation of PLC effect.

Llewellyn et al. [7] tried to add metadata and encryption at one end of a network connection then check the metadata and decrypt it at the other end. Wang et al. [8] investigated how to efficiently and securely offload Provable Data Possession (PDP) Built on scheme of outsourcing generic exponentiations which intensively occur in two stages one is the file processing algorithm Profile, which is carried out by the file owner to generate the verifiable metadata for a given file before uploading it to the storage server. The other one is the verification algorithm, which is executed by a verifier to check whether the outsourced file is kept intact. Huang and Fang [9] Huang and Fang proposed a practical application for copyright protection of images with watermarking by using the EXIF metadata of images and error-control codes are integrated into the algorithm and corresponding applications, Huang and Fang focused on the copyright protection for images taken by ordinary cameras by use of robust watermarking, it generally alters selected coefficients of the contents to accomplish the embedding process for robust watermarking is one of the major branches in digital rights management (DRM) systems and digital forensics. Krishnappa and Turner [10] described a software system that was built to successfully manage a large behavioral camera trap study that produced more than a million photographs and the software system has the ability to automatically extract metadata from images, and add customized metadata to the images in a standardized format.

Al-Khanjari and Alani [8],[9] proposed steganography scheme as a new architecture to secure the data in cloud computing by exploiting text properties and described the implementation of the data steganography technique, which could provide more security to the cloud computing environment to achieve the trusted computing technology. Al-Khanjari and Alani [10] provided a full illustration of how to design and protect all files used to implement a secure e-Government websites. This should contain a self-audit of the file and represent a kind of processes that are used to protect data in different types of files including: image, sound, string or any file within e-Government website. Al-Khanjari and Alani [11],[12] spoke about the testability of leak information in source code and how to detect and protect it inside the ITO, presented a privacy preserving algorithm for the neural network learning to detect and protect the leak information in source code between two parties the programmer (source code) and Independent Test Organization (Sensor). We show that our algorithm is very secure and the sensor inside Independent Test Organization is able to detect and protect all leaks information inside the source code.

1. Definition of Metadata

Metadata are descriptively defined as data about data (information about contents of data). So, they are “data” with the prefix “meta” which comes from Greek and means: “among”, “between”, “after”, “behind” or “change”, while in science it is used with the meaning “above”, “beyond”, “of something in a different context” [16]. The word metadata shares the same Greek root as the word metamorphosis. “Meta-” means change and metadata, or “data about data” describe the origins of and track the changes to data. Metadata is the term used to describe the summary information or characteristics of a set of data [17]. Creating and using metadata is indispensable for large data sets, which are stored in computer files or in “analogue” form—like books in a library.
Metaphysics: it is knowledge “beyond physics”
Metascience : means “science about science”
Metaknowledge: “knowledge about knowledge”
Metadata: “data (information) about contents of data”

2.1 Types of Metadata

Three levels of metadata and associated three types of metadata can be identified [16, 17]:

1. **Discovery metadata**: the primary metadata type is discovery metadata. They are used to select spatial data sets and/or spatial data services, this metadata type in digital investigation will help the investigators to answer the questions: “what?, why? when?, who?, where?, how?”. Figure 1 demonstrates the basic information provided by Discovery Metadata. Discovery Metadata Provide basic information including:
   - Name and description of the spatial data set
   - Basic purpose and scope of spatial data
   - Date of acquisition and update of spatial data
   - Producer, provider and main users of spatial data
   - Area to which data relate
   - Structure of the set and method of access to spatial data

2. **Exploration Metadata**: Exploration Metadata in digital investigation also will help the investigators to answer the following questions:
   - What is the content of the spatial data resource?
   - What is their accuracy?
   - What is the origin of the source data?
   - What is the frequency of updates?

   Figure 2 demonstrates the detailed information provided by Exploration Metadata.
   They contain more detailed information to allow the user to:
   - Evaluate the properties of the spatial data set
   - Determine the suitability of the spatial data set in terms of needs
   - Contact the custodian of the spatial data for further information

3. **Exploitation Metadata**: This type defines the set of properties that are needed to read and transfer the data and for data interpretation and practical use. These Metadata gives accurate answers to investigators to the following questions:
   - What is a co-ordinate system?
   - What is the format of spatial data?
   - How to acquire the spatial data?
   - How to import the data?

2.2 Image Metadata [10]: EXIF, XMP, IPTC, and MIX

1. **Exchangeable Image File Format (EXIF)**: The exchangeable image file format (EXIF) is a standard for embedding technical metadata in image files that many camera manufacturers use and many images processing programs support. EXIF metadata can be embedded in TIFF and JPEG images.

2. **Extensible Metadata Platform (XMP)**: Adobe introduced the Extensible Metadata Platform (XMP) to provide a general solution for embedding metadata within files like images and PDF documents.

3. **International Press Telecommunications Council (IPTC)**: the International Press Telecommunications Council (IPTC) released the IPTC Photo Metadata 2008 standard, based on requirements gathered from device manufacturers and photographers, which is implemented as a core XMP schema. Many image-processing applications provide support for XMP metadata.
4. Metadata for Images in XML (MIX) is a new standard for image metadata that, in contrast to the de facto use of EXIF.

3. Electronic Crime Stages
The U.S. Department of Justice (DOJ) published a process model in the Electronic Crime Scene Investigation that consists of four Stages are listed below [18].

1. **Collection:** This involves on:
   - Evidence search,
   - Evidence recognition,
   - Evidence collection and documentation

2. **Examination:** This is designed to facilitate the visibility of evidence, while explaining its origin and significance

3. **Analysis:** This looks at the product of the examination for its significance and probative value to the case.

4. **Reporting:** This entails writing a report outlining the examination process and pertinent data recovered from the overall investigation.

4. The Proposed System

The proposed system provides techniques on how to extract Exchangeable Image File Format (EXIF) of Image Metadata which provide safety, dependability, performance, integrity and confidentiality to the digital investigations and help to authenticate the original digital image in forensic. It is based on extract the data with all EXIF when metadata is requested and displayed. This includes not only standard EXIF image metadata but also custom tags by the camera manufacture such as [19]: Lens, Exposure, Focus, Date and Time Zone Offset etc. The Basic Image Information as shown in Table 1.

### Table 1: The Basic Image Information

<table>
<thead>
<tr>
<th>Target file:</th>
<th>SAG_1173.JPG</th>
</tr>
</thead>
<tbody>
<tr>
<td>Artist:</td>
<td>SAGHROOM AL HAMMADI</td>
</tr>
<tr>
<td>Copyright:</td>
<td>Copyright: Saghroon Al Hammaadi</td>
</tr>
<tr>
<td>Camera:</td>
<td>Nikon D3</td>
</tr>
<tr>
<td>Lens:</td>
<td>62 mm (Max aperture f/2.8)</td>
</tr>
<tr>
<td>Exposure:</td>
<td>Manual exposure, 1/80 sec, f/10, ISO 320</td>
</tr>
<tr>
<td>Flash:</td>
<td>none</td>
</tr>
<tr>
<td>Date:</td>
<td>February 13, 2015 6:15:</td>
</tr>
<tr>
<td>File:</td>
<td>2,712 x 4,135 JPEG (11.2 megapixels)</td>
</tr>
<tr>
<td>Color Encoding:</td>
<td>Embedded color profile: “sRGB”</td>
</tr>
</tbody>
</table>

4.1 The Proposed Image Metadata Scheme Architectural Model

We also propose Image Metadata Scheme Architectural Model as illustrated in Figure 3. It contains the following layers:

- **Physical Layer:** Network Infrastructure Layer represented by the general purpose internet infrastructure and dedicated network infrastructure.
- **Image Metadata Layer:** Images data center.
- **Metadata security Layer:** Date of Metadata, Creator, Original/Digitized Date/Time, Exposure Time, Instance ID, Document ID, Original Document ID, History Instance ID etc. to thousands of image Metadata.

![Figure 3: The Proposed Image Metadata Scheme Architectural Model](image_url)

Figure 3 above illustrates the analysis process of image metadata and substantiated by investigators. Figure 4 shows the original image file of Sultan Qaboos University (SQU).

![Figure 3: The Original Image File of SQU](image_url)

The process consists of two files: the first file is called java class. It contains all the steps, which will be programmed and implemented as designed inside this (class). The second file is known as...
Hyper Text Markup Language (HTML). The first file is embedded within the second file. The HTML file can send any number of (parameters) to the Class file. This requires implementation to prove the authenticity of the images Metadata against attackers and prove the offender, as follows:

```html
<PARAM NAME= Date_of_Metadata VALUE=2015:02:19 19:39:06+04:04>
<PARAM NAME= Original_Date_Time VALUE=2015:02:13 18:15+04:00>
<PARAM NAME= Digitized_Date_Time VALUE=2015:02:13 18:15+04:00>
<PARAM NAME= Exposure_Time VALUE=1/80>
<PARAM NAME= Instance_ID VALUE=xmp.iid:D3F4B33F132068118F62E7618E32FFD7>
<PARAM NAME= Document_ID VALUE=xmp.did:D3F4B33F132068118F62E7618E32FFD7>
<PARAM NAME= Original_Document_ID VALUE=xmp.did:D3F4B33F132068118F62E7618E32FFD7>
<PARAM NAME= IPTC_Digest VALUE=13ce1513b4940e48893e6ad36461b0f0>
<PARAM NAME= History_Instance_ID VALUE=xmp.iid:D3F4B33F132068118F62E7618E32FFD7>
```

Figure 4: The Real User Used the Proposed Image Metadata Scheme

Figure 3 above illustrates the investigator used the Proposed image metadata when the transmission the data, which are needed to processing and substantiated by investigators. By using Metadata, the Image will provide safety, dependability, performance, integrity and confidentiality to the communication when exchanging data.

Conclusion

This paper discussed the important part to prove the offender and which allows investigators to understand the crime and the interpretation of the events by using the exchangeable Image File Format (EXIF) of Image Metadata that can help to authenticate digital image files in forensic by distinguishing between the original images and after the processed, which can lead to loss of data integrity and inaccuracy and the difficulty substantiated by investigators, which might help intruders evade responsibility due to the lack of supporting evidence to convict them.

This is used to prove the authenticity of the images Metadata against attackers and prove the offender by using image Metadata including: Metadata Date, Date/Time Original, Date/Time Digitized, IPTC Digest, Current IPTC Digest, Original Document ID, History Instance ID, History Software Agent, Exif Image Size, Exif Byte Order, Create Date, Modify Date and Orientation and etc.

The following points are concluded from the proposed system.

- Show how to use image Metadata in forensic and to authenticate digital image files,
- Provide adequate protection of public information through secure solutions for handling and exchanging the image Metadata,
- Detect previously unknown attacks, and
- Provide high reliability to investigators when using the image Metadata.

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Separation of powers principle consolidation in the world’s constitutions: the comparative analysis

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**Abstract:** The idea of separation of powers, originated in antiquity, was newly formulated in XVII century by the English thinker J. Locke. This idea was further developed by French thinker C. de Montesquieu. Their ideas had superior influence to development of legal thoughts, to the development of principle of separation of powers itself (V. Blackstone, J. Madison, A. Hamilton, J. Jay, A. V. Dicey etc.). The first legal embodiment of idea of separation of powers is being considered 1787 constitution of the United States of America. During constitutionalism, this principle widely spread in new constitutions of XIX and XX centuries. This article discusses how this principle was developed and implemented in all the stages of constitutional regulatory, including period from the end of XIII century till the end of the World War I, period between the two world wars, period from end of World War II till the XX century’s ninth decade and period from XX century’s tenth decade till now. It is being universally acknowledged, that the state must carry out three main functions: to legislate, to execute them out and to settle legal disputes. The principle of separation of powers, which is one of the most developed principle in constitutional doctrine, bases the organization of government and functionality in democratic state. The proper performance of state’s functions, necessity to guarantee rights and freedoms of persons and to protect society from government’s abuse of powers dictates the need to separate such functions and performance of them entrust to different authorities: legislative, executive and judicial. In this article it is presented examples of states according to different management models, discussed the principle of separation of powers consolidation into constitutions and its implementation’s peculiarities.

**Introduction**

Thinkers of antiquity claimed that power was not always the source of kindness and progress. In Ancient Greece and Rome, it was accepted to limit the power of government by means of moral principles, education and the Divine principles that those in positions of authority possessed; however, there was no existing power-limiting mechanism, and the goal of separation of powers itself was not well-founded or formulated. These fundamental questions were answered as late as in the 17th–18th centuries [1]. The English thinker John Locke’s idea was that powers could not be equal; thus, his doctrine of separation of powers that announced the Parliament at the top of the power structure was fully established in England’s constitutional law. The doctrine for separation of powers in England declared that powers must be separated, and the legislative and executive powers – distinguished. Considering England’s political and legal experience, the French man of letters Ch.-L. Monstesqueieu distinguished between three classical branches of power, developed Locke’s model for separation of powers, and, declaring the necessity for separation of powers, began to formulate the question for the necessity of alternatives for powers.

An important role during the development of separation of powers issue was played by the constitutional law doctrine of the United States of America, which was based on Locke, Montesqueieu, Jean-Jacques Rousseau and Thomas Hobbes’ works. In the U.S., the representatives of separation of powers established the mechanism of “checks and balances”.

The 20th century doctrine introduces such novelties as when the branches of power are distinguished from their executive functions, i.e. standard, administrative, jurisdiction; however, during an analysis of interrelations between powers, it becomes difficult to distinguish between these functions, which is why the fact that abuse of power can be limited by creating distinguish between these functions, and the society is more and more frequently discussed [2]. If a country’s civic society is weak, the separation of powers becomes meaningless due to the fact that it first and foremost arises from the state itself.
1. The principle of separation of powers in Constitutions of the world

The separation of powers is one of the best developed principles in the constitutional doctrine. The powers of a state are divided into legislative, executive and judiciary according to several century-long tradition. Constitutions in various countries of the world establish it differently. We will analyse several of them.

The principle of separation of powers was regulated by paragraph 2 of Article 20 of the 1949 Basic Law for the Federal Republic of Germany [3] which establishes that all state authority is derived from the people. It is exercised by the people through elections and other votes, and through specific legislative, executive and judicial bodies. Also, paragraph 3 of Article 1 establishes that particular main rights are essential for the legislative, executive and judicial powers as a directly applicable right, etc. This principle is implemented by forwarding the main functions of state authority to different state authority bodies. According to the principle of separation of powers in Germany, the legislative authority is a two-house Parliament that consists of the Bundestag and the Bundesrat; the executive authority is the Federal President and the government which consists of the Federal Chancellor and Federal Ministers, yet the judicial government consists of the Federal Constitutional Court, the Federal Supreme Court, the Federal Administrative Court, the Federal Finance Court, the Federal Labour Court and the Federal Social Court[4]. It is maintained that the principle of separation of powers is not strictly maintained under the Basic Law [5]. On the other hand, there are doubts that, with the existing modern political terms in the Western parliamentary democracy, the separation of powers model is sufficient in order to separate powers with regard to the fact that the strongest party or coalition of parties have an opportunity to dominate in the parliament and government, thus diminishing the effect of the separation of powers [6].

In 1999, the principle of separation of powers was established in the Constitution of the Swiss Confederation; the principle is first and foremost particular of the fact that the Parliament, i.e. the Federal Assembly, is given superiority with regard to other authorities (the Bundesrat and the Federal Court). This is maintained under paragraph 1 of Article 148 of the Constitution which points out that the Federal Assembly executes the highest position of authority with regard to the people’s and the cantonal rights. This is explained by the fact that it is elected by the people and that it is assigned special authority within the fields of legislation and its observation. However, this does not mean that the Federal Assembly can give orders to the Bundesrat and the Federal Court. Thus, this regulation that expresses the superiority of the Parliament does not change the essence of separation of powers which has been the basis of the Swiss Constitution for a long time [7].

In 1929, a federal constitutional law of the Republic of Austria [8] established the principle of separation of powers based on organisational and material assignment of state functions for legislation, jurisdiction and administration. Here, only the separation of judicial and administrative powers in all the stages of the process is clearly stated (Article 94); however, the analysis of the constitutional system allows stating the separation of the legislative and executive powers. The legislative power in this particular state is implemented by the two-house Parliament which consists of the National Council and the Federal Council, whereas the executive power is implemented by the Federal President and the Federal Government [9].

Discussing the separation of powers model established in the existing Constitution of Luxembourg [10], it is important to state that it is established implicitly. This conclusion can be drawn based on the analysis of the Constitution’s Chapter 3 “Sovereign Power” (1848) because the three sections comprising this chapter record the following three authorities: the Grand Duke, the Parliament as the legislative power, and the judiciary which establishes that jurisdiction is implemented in the name of the Grand Duke. Article 49a of the constitution establishes that the exercise of powers reserved by the Constitution to the legislative, executive or judiciary authorities may be temporarily vested by treaty in institutions governed by international law [11].

As Constitutions of many states, the 1991 Constitution of the Republic of Bulgaria [12] also establishes a twofold principle of separation of powers, i.e. directly and indirectly. This Constitution (Article 8) assigns state power to the independent legislative, executive and judicial bodies. The legislative power is implemented by the parliament, i.e. the National Assembly, the executive power is
carried out by the President of the Republic and the Cabinet Council, and, finally, the judicial power is implemented by courts [13].

2. Establishment of the principle of separation of powers in the Republic of Lithuania

Lithuania is attributed to the form of government of a parliamentary republic, which is particular of clear mixed (semi-presidential) authority patterns [14]. The state power is organised and implemented on the basis of the principle of separation of powers. The essence of this principle can be understood while analysing the entirety of the principles and regulations established in the Constitution, the constitutional jurisprudence, etc. The principle of separation of powers (literally) is not recorded in the Constitution of the Republic of Lithuania approved in an October 25, 1992 referendum [15]. This is a derivative and complex principle [16].

The main features of separation of powers can be seen in section 1 of Article 5 that establishes the state power structure: “In Lithuania, the powers of the State shall be exercised by the Parliament, the President of the Republic and Government, and the Judiciary”; in section 2 of Article 5 – “The scope of powers shall be defined by the Constitution” (this section relates state power bodies by implementing their powers); in section 3 of Article 5 – “institutions of power shall serve the people” (it reflects the essence of state power body actions); also, in other Articles of the Constitution that regulate the status and authority of institutions that implement state power, i.e. the Parliament’s – in Chapter 5, the President of the Republic’s – in Chapter 6, and the Government’s – in Chapter 7. The status and authority of the judicial power institutions are also established in the Constitution, i.e. that of the Constitutional Court – in Chapter 8, and that of the Courts – Chapter 9.

The Constitutional Court of the Republic of Lithuania interpreted the principle of separation of powers and emphasised that the legislative, executive and judicial powers must be separated and be sufficiently independent yet balanced; each of the power bodies are attributed a competence that corresponds with a particular body’s purpose; a particular content of a body’s competence depends on the particular power’s place in the general system of power and its relation to other power as well as a particular body’s place among other power bodies and the relation of its authority to the authority of other bodies; as the Constitution sets authority patterns for a particular state power body, one state power body cannot take over the same authority patterns from another state power body as well as forward or decline them; such authority patterns cannot be replaced or limited by a law [17]. The latter regulation is of especially great importance. It signifies the fact that Lithuania does not have a delegated legislature, e.g. the Parliament does not have the right to assign the Government to implement the Parliament’s constitutional competence, e.g. to legislate (Article 37, section 2), or set taxes and other obligatory fees (Article 67, section 15), etc.

It is important to state that the constitutional system of the Republic of Lithuania is particular of a dual executive power model: executive power in Lithuania is implemented by the President of the Republic of Lithuania (the leader of the state) and the Government [18]. These bodies comprise the executive power structure. It is also important to note that state powers – legislative, executive and judicial – are equal in terms of their state status. None of the bodies that implement these powers cannot be distinguished and considered a superior (most important) than another because all the bodies that carry out state power are equally important and of equal value [19].

One of the most important features of separation of powers, a mechanism that ensures balance between powers, is the checks and balances system. The separation of powers is not an end in itself; it must guarantee that the power shall not be concentrated in any one set of hands, shall not be overly centralised, because, as Lord Acton claims, power tends to corrupt and absolute power corrupts absolutely. Thus, the separation of powers is the contrary for unity of powers which was prevalent in the Soviet system. In order for power not to be concentrated in any one set of hands, all three powers have authority with respect to one another. The President of the Republic submits to the Parliament the candidature of a new Prime Minister (Constitution Article 84, section 8), which the Parliament either approves or rejects (Article 67, section 6); upon approval, the President of the Republic appoints the Prime Minister, charges him or her to form the Government and approves its composition (Article 84, section 4); however, the new Government is empowered to act after the Parliament approves its programme by majority vote of the Parliament members participating in the sitting (Article 92,
Checks and balances are especially typical of the process of appointing high officials. The President of the Republic submits to the Parliament the candidates for the Supreme Court judges, while the judges are appointed by the Parliament (Article 67, section 10), and when all the Supreme Court judges are appointed, the President of the Republic recommends from among them a Supreme Court Chairperson to the Parliament (Article 84, section 11). The President of the Republic also proposes to the Parliament the candidatures of three Constitutional Court judges (Article 84, section 12), the Parliament appoints the Constitutional Court judges (Article 67, section 10), and, upon appointing all the judges of the Constitutional Court, the President of the Republic proposes, from among them, a candidate for Constitutional Court Chairperson to the Parliament (Article 84).

The model of separation of powers established in the Constitution of the Republic of Lithuania does not include an institution that would be equal to the legislative power. An insufficiently strong civic society cannot adjust the balance of powers. Thus, the model of separation of powers in Lithuania should be evaluated as not fully achieving the aims of this principle.

Conclusions

1. The essence of the principle of separation of powers is the separation of power authorities between different bodies in such a way that none of them could abuse the authority given. The theoretical model of separation of powers as one of the assurances for human right security is established in many of the countries; however, the models for the implementation of this principle differ from country to country.
2. There is no such model of separation of powers that would unambiguously be defined as the best one; this model is dependent on many political, legal, social and other interactional parameters.
3. The model of separation of powers implemented in the Republic of Lithuania is related to parliamentarism. It differs from the models in the United Kingdom, France or Germany because in the United Kingdom or Germany, the balance of the legislature in parliamentary states is implemented by courts. Moreover, active civic societies counterbalance the inconsistencies of authority assignment.

References


Procedural Guarantee in the Implementation Principles of Civil Justice

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Abstract: Civil Procedural Code of Georgia, which enforced on May 15, 1999, is constructed based on the disposition and adversarial principles. 1964 Civil Procedure Code of Georgia was built on the principle of Investigation. According to the current Civil Procedure Code of Georgia, claimant has opportunity to use provisional measures no matter the case is filed or not, in order to protect his rights more effectively. Defendant also has right to use the guarantee of enforcement of the court’s decision. In the framework of the paper the institute of Procedural Guarantee will be review within the Georgian Legislation, Transnational Civil Procedural Rules, and the European Court of Human Rights case law. The paper bears a comparative legal character. The work has theoretical and practical importance. In the Theoretical point of view it is important to consider the principles of the institutions named above. In Practical sense we will see what practice we have and how court evaluates the Procedural Guarantee in the Implementation of Civil Justice. In the conclusion we will sum up the research results.

Introduction

Current Civil Procedural Code of Georgia contains provisions that gives different regulations of the certain procedural actions, which were as well regulated by the previous Civil Procedural Code. [1]

Disposition and Adversarial principles were declared in 1964 Civil Procedural code of Geor-gia, but they were paralyzed by the principle of objective truth, and the court had to take all measures required by law, in order to thoroughly, completely and objectively determine the true circumstances of the case and the parties’ rights and obligations. [2]

Article 199 of the Civil Procedure Code provides ability for the payment of damages, which has suffered from provisional measures, but the Geor-gian Civil Procedural legislation gives us opportunity to use provisional measures to protect the estimated loss. [3] Civil Procedure provides defendant right to compensation for damages. In such a situation this can be described as the reciprocal provision, which shall be used under Article 57 of the CPCG. [4]

In accordance with The Civil Procedural Code of Georgia, court will apply provisional measures only to the initiative of the party. The statutory provision is aimed at protecting the interests of the defendant, that the defendant’s rights are adequately secured in case of misleading, in order to avoid harm to him unreasonably. The provision is exercised when court sees the probability of damage and as well as the defendant's reference. [5]

As we can see, the claimant is secured by the provisional measures and defendant is protected by the interim measures such as procedural guarantee. [6]

The principle is Latin word which means the beginning of the beginning. This term is used in any theory, doctrine, starting provision of basic science, the idea of the basic rules of conduct for the designation. [7] Law principles are rooted in the country’s constitution and reflected in all areas of law. [8]

The principles have a long history. For example, the legal principles such as the principle of economy of time and oral procedure which were used in Rome are actively used even today as one of the important principles of this sector. [9] The principle explains the general phenomenon why should certain fact happen. [10]

There are two basic types of Legal principles in legal literature: general and special legal principles. General principles are defined in the State Constitution. As far as the Constitution is the basic law and all laws should in conformity with the Constitution. Paragraph 3 of Article 85 of the Constitution of Georgia says, the legal proceedings shall be exercised on the basis of equality of parties and the adversarial nature of the proceedings. [11] Special principles of the general principles of parallel form the content of a specific legal field.
Special legal principles outline the special features of a particular branch of law and contain specific provisions for the particular field of law. [12]

1. Principles of the civil justice in Georgia

1.1.1 Principle of Disposition

Principle of disposition in civil process, which is a reflection of one of the fundamental principles of the material law - the will of autonomy, means not only the freedom to dispose of their material, but also the procedural rights. This principle is permeated in every article of the code. [13] 1997 Civil Procedural code of Georgia expressed, the attitude by the fact that the principle was formulated in a special article. [14]

According to this principle parties start the dispute and they make a decision on the claim (application) (Article 3.1), therefore, the court only investigates facts and evidences presented by the claimant and respondent. [15]

The 1964 Civil Procedural Code did not contained the special article on the principle of disposition, however, the parties were granted a number of rights, which could have been caused only by the principle of disposition. [16] Parties were able to withdraw the suit or recognize the claim, or even, admitted to one side of the agreement. But there was the Article 34 and according to this article court could rejected the defendant’s recognition of the claim, or court was able not to approve the proposed settlement if such action was contrary to the law or violating somebody's rights and legitimate interests.

However, the court had its justification to such interference, the court was obliged to be active and to establish the truth of the case, issue a legal and a fair decision. That was how socialists differ Principle of Disposition from Bourgeois Principle of Disposition. [17]

In 1964 Civil Procedural Code there was a significant restriction of substantive and procedural rights. But during the communist regime the content of Article 34 might even be considered a great achievement, because the court rejected the party’s request of the settlement, if it was against the law or violating somebody's rights and legitimate interests.

Supreme Court of Georgia in his decision mentions the principle of disposition which is guaranteed by the procedural law gives parties right to file the suit, or to reject the suit, and the Court's duty is to promote the realization of this principle in a such way that the parties be given the opportunity to gain awareness of the legal consequences that ensue in the action. [18]

1.1.2 Adversarial Principle

The Principle of Equality with the Principle of Competition is established by the Constitution of Georgia and this constitutional significance leads them to become a state principle. Article 85 of the Constitution Part 3 “The legal proceedings shall be exercised on the basis of equality of parties and the adversarial nature of the proceedings”. [19]

One manifestation of the principles is equal consideration of interests of both opposing sides of the procedural action during execution. [20]

In civil proceedings, each party has burden of proving the facts and references, which the parties wish to prove their claims or rebut the factual circumstances justifying the lawsuit claims. [21]

While discussing the Adversarial Principle we need to focus on the Principle of Investigation. According to the principle of Investigation the Court is not satisfied by presented evidence, by the mentioned principle court himself is obliged to collect evidence on its own initiative, to define the subject of proof, take all necessary measures to establish the rights and obligations of the parties. This method became the basis of the 1964 Civil Procedural Code of Georgia. [22]
better side of the case may be defined by those who know it closer, knowing what kind of evidence can be ascertained, and where can this evidence be found. Similarly, the parties are the most interested in the circumstances of the survey. Each side seeks to win and in the process of trying to find and submit to the court all the facts, which is in favor of the opposing party and answer inquiries. [23] Court of Civil Procedure, according to the law is not interested in whose useful decision to be made, the most important thing is to carry out the process of without any procedural violations, court is interested to make a decision established on the full and impartial examined factual circumstances.

1.3 Implementation Principles of the Civil Justice in Transnational Civil Procedural Law

Procedural rules are the rules of the game, the rules by which adjudication is to be conducted. [24] The development of a modern market economy raised disputes between companies from different countries. Therefore, in 90-ies of the twentieth century, establishment of transnational Civil Procedural Law came to the agenda. But how to achieve this goal? One mean can be considered to establish a common Code. Similar attempts were in Latin America, but the Code did not have the binding force.

Some authors argue that the harmonization of procedural law would have negative consequences, such as the country with the efficient, procedural law will have to change the procedural rules and common standards, which may be disadvantageous for the country's justice system. [25] Of course unification supporters radically different arguments have. In their view, the procedural law harmonization is possible and easy to achieve. But harmonization will have fragmented character, which means that we will have a partial unification. The more difficulty is in terms of substantive law, which is running at full standardization. [26]

The ALI (American Law Institute) and UNIDROIT’s (International Institute for the Unification of Private Law) joint project, ‘Principles and Rules of Transnational Civil Procedure’ (2004), aims to combine common law and civil law approaches to civil litigation. [27] The objective of this project, by making a more transparent proceeding, is the encouragement of international commercial relations. [28] Another advantage of attention to general principle is that it can help legal systems move closer together, by reference to ‘best practice. [29] One of the most important aspects to understanding the Project is its “supplementary” character. [30]

Part of the authors, for example Neil Andrews suggested that the ALI/UNIDROIT Principles range from quasi-constitutional declarations of fundamental procedural guarantees to major guidelines concerning the style and course of procedure to point of important details, Neil Andrews mentions that fundamental procedural guarantees are: judicial competence, judicial independence, judicial impartiality, prompt and accelerated justice… Leading principles concerning the style and course of procedure: jurisdiction over parties, venue rules, party initiation of proceedings, rights of access to information…

As for the transnational procedural law. I would like to draw your attention to the rules of transnational civil procedure article 3. The third article discusses the procedural equality. In particular:

2. Procedural Equality of the Parties

3.1 The court should ensure equal treatment and reasonable opportunity for litigants to assert or defend their rights.

3.2 The right to equal treatment includes avoidance of any kind of illegitimate discrimination, particularly on the basis of nationality or residence. The court should take into account difficulties that might be encountered by a foreign party in participating in litigation.

3.3 A person should not be required to provide security for costs, or security for liability for pursuing provisional measures, solely because the person is not a national or resident of the forum state.

3.4 Whenever possible, venue rules should not impose an unreasonable burden of access to court on a person who is not a habitual resident of the forum.

The official document is written in English, thus sometimes there are some misinterpretations. Therefore, the authors of this document are trying
to maximize the definition. For the purposes of these principles mild defined as proportional, important, and fair.

As for the discrimination, authors give us a general nature and explanations as prohibiting discrimination on the basis of nationality, place of residence, sex, race, religion, political or other opinion, national or social origin, sexual orientation, national minority. But, transnational procedural law stresses on discrimination based on nationality or place of residence. [31]

Transnational procedural rules do not exclude the possibility of providing some fees for imposing provisional measures, but the fees should not be imposed on the trial only because he is not a citizen or resident of the country.

2.4 Principles of civil justice in the European Convention on Human Rights

Harmonization of procedural law made some progress. Some of the Convention, which talks about civil and human rights, includes fundamental principles of procedural law, such as equality before the courts, the right to a fair trial, effective, public and oral hearing, as well as judicial review by an independent court.

- . . . Everyone is entitled to a fair ... hearing ... the International Covenant on Civil and Political Rights, Article 14 (1) Article.
- . . . Everyone has the right to a fair ... hearing ... the European Convention on Human Rights, Article 6 (1) Article.
- . . . All persons have the right to proper protection based on a review of his case ... the American Convention on Human Rights, Article 8 (1) Article.

Article 6 of the European Convention on Human Rights guarantees the right to a fair trial in civil and criminal proceedings. The great importance of the right and its fundamentals is clearly demonstrated by the fact that the European Court's judgments concerning the violation of the right to fair trial. Article 6 of the Convention guarantees provided in criminal proceedings is more comprehensive than in civil proceedings. [32]

The concept of "equality of arms" can only have a formal meaning: both parties should have an equal opportunity to bring their case before the court and to present their arguments and their evidence. [33]

The European Court of Human Rights held that the right to equality is one of the most important aspects of a fair trial. According to the principle of equality of legal proceedings each party shall be given a reasonable opportunity to present a case of his arguments before the court so that the other party to incur a substantial inequality.

Interested applicants must apply to the court for the application of provisional measures. Along with the application must file a state fee receipt. Almost all countries have determined the amount of the state fee. The example of a person needs to pay 50 GEL, while the legal entity pays a hundred GEL. In my opinion, the amount of money does not limit the essence of the right of access to courts. Based on the principle of equality of course the defendant may appeal against a ruling on the application of provisional measures, but his complaint must be accompanied by a check from the state fee. In this case, the parties are in equal condition.

Conclusion

Procedural Guarantee is one of the fundamental institute of Civil Procedural Legislation, which allow parties to take protect their rights by additional procedural activity. Within the research we discussed the principles of the Civil Procedure Law of the Institute of procedural software. We discussed the principles of Civil Procedural legislation in the view of procedural guarantee.

Research has shown why the creation of transnational procedural law is necessary. The main reason is to formulate common rules for international commercial disputes, which in its turn will facilitate and accelerate the review process. A working group of the transnational procedural law faced some problems, in particular: all countries do not provide the same procedural legislation for procedural guarantee in terms of fees. Researchers recommend to find the golden bridge between the practices and do not violate the principle of equality of the course.

As for the international conventions and the practice of European Court of Human Rights. International conventions contain provisions that are directly or indirectly echo the principles of proc-
edural legislation such as competition, disposition and the principle of equality. The Court considers that the provision for use of the procedural legal requirements, somehow restrict a person’s right to access to the courts. However, this restriction is justified if it serves the purpose. The restriction shall not prejudice the right of fair trial which is guaranteed by the article 6 of the convention.

ECHR practice says that imposed fees for provisional measures restrict the right of fair trial, but this restriction is justified if it serves the purpose of the restriction. Transnational Civil Procedural Rules and Principles bens such kind of restriction if it is based on discrimination by country.

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Abstract: Banking secrecy is one of the more important columns in the banking system. This point is a guarantee for the client privacy, but at the same time a risk for the state to hide the personal assets and evade taxes. The parliaments and governments all over the world together with their financial institutions are called to ratify the agreement on the FATCA legislation, with which the USA calls all the data bank of persons subject to US tax authorities. The Foreign Account Tax Compliance Act (FATCA) is intended to detect and deter the evasion of US tax by US persons who hide money outside the US. The future of banking secrecy is now marked to the end. The deployment of forces, put in place in recent times to drop banking secrecy, is impressive. The FATCA legislation attempts to combat bank privacy on many levels and for many reasons including the American state’s desire for more effective tax collecting. The same is happening in Europe with the European directive 16/2011 that has the scope for mandatory automatic exchange of information between tax administrations, enabling them to better combat tax evasion and to improve the efficiency of tax collection.

Introduction

Foreign Account Tax Compliance Act (hereafter referred as FATCA) is a specifically written legislation in order to address the tax evasion avoidance by US persons through Foreign Financial Institutions (FFI). Therefore, FATCA's aim is to combat offshore tax evasion by US taxpayers through (via) the use of foreign bank accounts (not in the US). In order to achieve this, FATCA has created a new regime of withholding, designed to penalize Foreign Financial Institutions (FFI) and related entities, that refuse to fully disclose the US persons’ identity, to whom they hold accounts with.

Any non-US bank (which is perceived as a FFI) will be invited to conclude an agreement with US Internal Revenue Service (IRS) under which it agrees to:

1. Identify its new and existing customers in compliance with the procedures for proper care as prescribed by the IRS
2. Report any client that is identified as an American
3. Prohibit 30% of withholding tax from certain payments made to:
   a. American recalcitrant account holders (controversial holders) or
   b. Foreign Financial Institutions that do not comply with FATCA.

On one hand this law will increase the transparency and the consistency of all US persons and assets, whereas, on the other hand, there will be strict penalties to those who do not meet its requirements. If a financial institution, that is in compliance with FATCA, seeks to avoid the execution of withholding procedures, the termination of the relationship with “controversial” clients and financial institutions that are not in compliance with FATCA will be required. What is more, a process needs to be built:

- To inform affected customers and
- To terminate the business relationship with speculator clients – Key facts about FATCA:

- Scope: Closing the gaps for taxation of rateable persons in US,
- the Identification of account holders as well as reporting of US clients data, including account balances regardless of whether their income are derived from the United States or not.
- Detection of US persons who own / are beneficiaries of foreign companies / trustees, etc.

- This agreement among foreign financial institutions has entered into force on December 31st, 2013.

Potentially, there is still considerable work to be done to ensure compliance, as FATCA’s implementation may take longer than the time remaining upon deadline. Financial institutions must perform deep analysis to evaluate the impact FATCA has upon business strategy, as well as in the products and services they offer, customers, procedures and policies, etc. in order for this task to be carried out, a functional working group, needs to be
stipulated, including sales representatives and operations, information technology, finance, and compliance department [1].

1. Foreign Financial Institutions (FFI) must be in compliance with FATCA!

FATCA needs to be applied to All Financial Institutions, regardless of whether their clients are of American nationality or not. Moreover, unless FFIs set up a process with the aim to prove to IRS that their existing clients are not US citizens, a 30% withholding tax will have to be applied.

Not only American citizens will be affected by FATCA, but also this act will significantly increase the burden of any financial institution and some non financial foreign entities, which will have to identify, document and report American accounts. Financial Institutions will generally incorporate each and every investment community member and, as currently drafted, banks (investment/retail or private/wholesale); asset supervisors, asset managers, funds, brokers and insurance companies will be included. For FATCA purposes, the term “US citizen” involves private individuals, as well as financial entities.

- Private individuals are defined as citizens or residents of the United States.
- Entities that are treated as specific US subject include corporations and partnerships either established or organized in the United States, or under the law of the United States of America and any assets or other trust, except for the foreign assets or trusts. However, it should be noted that not every individual identified as a US person is simultaneously relevant to the FATCA act. A distinction needs to be done to differentiate US defined people from US not defined people.

While the latter are outside the scope of FATCA, heads are in the target. IRS has defined several entities categories that are discharged by FATCA.

2. Action Plan

Under FATCA, the personal data of US account holders including name, address and taxpayer identification number (TIN) have to be reported to IRS. What is more, account numbers, the balance of each applicable account receipt details and gross wages or withdrawals will be mandatory required.

Every information recorded for either client will need to be updated, completed and available in electronic form in order to comply with the reporting requirements, which may imply a laborious process of data collection.

Compliance issues. FATCA will increase the reporting level for the United States that needs to be undertaken by financial institutions at the end of every financial year. For this task to be accomplished, issues regarding maintenance, collecting and reporting of data will need to be established, as well as up to which point this process could be automated [1].

3. Legal issues FATCA

The FATCA requires that every customer approve the disclosing the information when necessary and if in any case such approval is denied, the business relationship with the client should be terminated. In this context, the granting of consent on behalf of the ‘account holders’ to waive the rules of data protection would be considered as something “reluctantly given”. Therefore, to make sure local Financial Institutions fully comply with the obligations set forth under the FATCA, forecasted obligations according to FATCA’s, the national legislation has to be changed and adapted. For this reason, the majority of the EU countries, are negotiating an Intergovernmental Agreement (IGA) or have achieved it.

4. Intergovernmental Agreement (IGA)

In order to further improve the applicability of taxation implement FATCA, beyond its approval the US Treasury has published two (2) intergovernmental agreement (IGA) models. The Governments in Europe and worldwide have communicated agreements that are going to be developed to initiate the development of multilateral agreement talks in exchange for tax information. The final FATCA’s regulation constitutes of an ongoing process of American accounts identification, information reporting and tax withheld by the Financial Institutions.

The main differences between Model 1 and Model 2 of IGA are:

Model 1 of IGA requires that Financial Institutions report information about US accounts to local tax authorities, which are then exchanged for information with the IRS, while according to Model 2 of the agreement, Financial Institutions must directly enroll in IRS and report data required by FATCA. Either way, the IRS will receive information related to US account holders. Another advantage
of this intergovernmental agreement is that, the relevant institutions and products, that represent a low risk of tax evasion, can be effectively excluded from the FATCA requirements.

Europe is following the same path, even though much more gradually, with the Directive 16/2011, where the cooperation between member states, for exchange of information on the fiscal sector, is defined, by enacting the end of banking secretaries among member countries since 1 January 2013 [3]. Today, it is an obligation for every country in the EU to disclose any information on their clients, fiscal authorities of any other member country operating in combating tax evasion.

However, these mechanisms do not operate automatically. In the case of FACTA agreement with the US, EU is in a disadvantage position in the fight against tax evasion, but the recent steps taken against the Swiss [4], financial institutes, make us Europeans hope that the best is yet to come [2].

Bibliography


[3] Article 1 of Directive 16/2011 Subject matter: 1. This Directive lays down the rules and procedures under which the Member States shall cooperate with each other with a view to exchanging information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Member States concerning the taxes referred to in Article 2. Article 2 of Directive 16/2011 Scope: 1. This Directive shall apply to all taxes of any kind levied by, or on behalf of, a Member State or the Member State’s territorial or administrative subdivisions, including the local authorities. Article 18 Obligations: 1. If information is requested by a Member State in accordance with this Directive, the requested Member State shall use its measures aimed at gathering information to obtain the requested information, even though that Member State may not need such information for its own tax purposes. [...] 2. In no case shall Article 17(2) and (4) be construed as permitting a requested authority of a Member State to decline to supply information solely because this information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

[4] The undersigned protocol between Italy and Switzerland on February 23, 2015
Trust Regulations in Some Continental European Countries

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Abstract: The legal institution of the trust plays a central and important role in the everyday life and in the economy of Anglo-Saxon countries. The advantages of the trust are undisputable; this flexible and cost efficient arrangement ensures substantial economic yields. The Anglo-Saxon legal institution of the trust is generally considered peculiar because of the simultaneous existence of the legal and equitable title. The legal systems based on Roman law acknowledge only the unity of ownership which is the chief impediment of introducing the trust. The legislators of the Continental European countries have recognized the relevant advantages of the trust in the economy and in the private sphere, and therefore they have tried to create similar institutions which could fill in the same function. It is noteworthy that several civil law countries, such as France, Russia, Lithuania, Georgia, Romania, Czech Republic, Hungary, San Marino all recently introduced legal arrangements resembling the trust. The aim of the lecture is to show a panorama and a comparative law analysis of the trust-like devices of the continental European countries, with a special emphasis on the decisive features of the regulations. The chief question is, whether the trust-like devices developed in the European Continental legal systems suitable to substitute the institution of the trust from legal aspect? The comparison will take into account such characteristics as the ownership of the trust fund, the property separation, the rights of the parties in the legal relationship, the possibility of tracing, the requirements for the trustee, the duration of the trust etc.

Introduction

The development of English law slightly diverged from the traditions of Continental Europe. This is mainly attributable to the uniqueness of common law, which essentially signifies the law developed by the royal courts of England. It is a generally held view in jurisprudence that English law is fundamentally different from Continental European law. The principal cause for this is the fact that English law was not embedded in the Continental European legal systems built on the foundations of ius commune, which evolved from the traditions of Roman law.

Roman law, as the dominant historical source and antecedent to most Western European legal systems, can be generally defined as being based on property law. Early modern jurisprudence inferred the distinction between absolute and relative legal relationships from this ancient Roman theory of the law of writs, which theoretically substantiates the independence of property law. Roman jurists also elaborated the concept of ownership as the principal category of property law, drawing a fine distinction between ownership and possession, holding or property, and drew up rights in others’ ownership on an institutional level, establishing, overall, the modern dogmatic system of property law.

With respect to the adoption of the trust, the premise is whether regulation with a function similar to the arrangement of the legal and equitable title can be introduced in an environment of civil law, or whether a different legal institution is unfit to fulfil the role of the trust, and thus the regulation of the trust is only possible through the adaptation of the law of equity and equitable rights.

1. Liechtenstein

Liechtenstein was the pioneer in Continental Europe with regard to introducing trust law. The method used in Liechtenstein is a combination of the German Treuhand and the English trust; it is mainly regulated under the rules of agency, but with limitation on the settlor’s right of instruction. [1] There is also debate in literature as to whether Anglo-Saxon regulation was simply adopted, or whether Liechtenstein implemented a combination of German Treuhand traditions and the rules of the English trust. [2]

Pursuant to Art. 897. PRG, a trustee (or Salmann) is a natural person, firm or legal entity to whom
another (the settlor, Treugeber) transfers movable or immovable property or a right (as trust property, Treugut) of whatever kind with the obligation to administer or use such property in his own name as an independent entity for the benefit of one or several third persons (beneficiary, Begünstiger) with effect towards all other persons. [3] In the law of Liechtenstein, the trust may be established for the benefit of a specific person or for a purpose (Zwecktreuhanderschaft).

According to authoritative opinion, the Anglo-Saxon institution of the trust had a fundamental effect on the drafting of Liechtensteiner property management rules. [4]

Three forms of the trust may be established under the regulations of Liechtenstein: the legally not independent Treuhand (Art. 897 ff. TrUG), the partially legally independent Treuhand, where property management is carried out by a natural person (Treuunternehmer) (§ 1 Abs 1 TrUG), and the legally fully independent property management carried out by a trustee with legal personality (§ 1 Abs 2 TrUG). [5]

The legal relationship of property management may be created inter vivos, or in the case of death. Similarly to English law, three elements must be clearly defined: the settlement, the trust property, and the beneficiary or purpose. [6] For the management of the property, dispositional powers must be vested in the trustee (Treumacht). [7] It follows that it is not essential to transfer ownership of the manageable property through a property management contract; it is sufficient to empower the trustee to dispose of the property. [8] As a general rule, the trustee assumes liability, or joint and several liability in the case of more than one trustee, toward third parties for the fulfilment of obligations undertaken in the course of managing the property, if the trust property does not provide sufficient cover. Such liability may be excluded during the establishment of the Treuhand. The trustee has the right to resign[9], however this right may be excluded in the formation deed. The legal relationship of the trustee may be terminated for a variety of reasons, such as death, incapacity, winding up, liquidation or court decision in relation to a legal entity. Such causes arising in relation to the trustee, however, do not entail the termination of the Treuhand, unless the parties expressly set this out. Upon the death of the trustee, the court has the power to appoint a new trustee upon the request of the beneficiary. The same procedure is possible in case of the termination of a legal entity trustee without a successor. [10]

Under the property management contract, the settlor is obliged to transfer the property to the trustee; this may be enforced in court. As a general rule, once the Treuhand is established, it may not be withdrawn unless the formation deed provides otherwise. [11] The rights of the settlor are regulated under TrUG Art. 917. [12]

The rights of the beneficiaries (Begünstigte, Destinatäre) are primarily set out in the formation deed of the Treuhand, i.e. the settlor has the right to determine such rights. The TrUG also defines many rights of the beneficiary, although these are predominantly dispositive rights. The beneficiary has the right to request the enforcement of the formation deed of the Treuhand. [13]

The trust property constitutes third party property (Fremdvermögen) in execution or bankruptcy proceedings launched against the trustee. This may be attributed to the theory of the transfer of property under conditions precedent. [14]

If the trustee, or at least one of the trustees in the case of more than one trustee, is residing in Liechtenstein, the appointment of the trustee must be registered if it is for a duration of more than 12 months. [15] Registration does not have a constitutive effect with respect to the creation of the legal relationship of property management. The case of a resulting trust arises only if there is a mistake in the transfer of the rights of the beneficiary. [16]

The court holds power of supervision over the trustees. Family property management is an exception to this rule, as are trusts wherein the parties set out different supervisory powers in the formation deed, or where they exclude the supervisory power of the court. [17]

The laws of Liechtenstein do not prohibit perpetual property management. This is generally attributable to the fact that the fideicommissum may also be established in Liechtenstein. [18] It should be noted that the so-called “stillschweigende Treuhandverhältnis” works in close correlation with the institution of entailment. [19]
The Saunders v. Vautier rule applies; thus, if the beneficiary has a legal capacity, he may request the distribution of the trust property. [20]

For property management to be deemed a resident, at least one trustee must have residence in Liechtenstein. The trustee is obliged to fill the position for at least one year; thereafter, he has the right to resign with three months’ notice effective at the end of the calendar year, or with shorter notice in well-grounded cases. The parties may derogate from this rule in the property management deed. [21] As a general rule, the trustee is obliged to act in person; he may derogate from the delegatus non potest delegare rule only in exceptional cases. If the trustee employs an agent, he becomes fully liable for the agent’s actions.

The trustee must manage the property separately from his own property, and keep records thereon. Under certain circumstances, the trustee may contract with himself (In-Sich-Geschäfte). The obligations of the trustee extend to account management and book-keeping, and the annual report. The trustee is liable if not acting with the prudence of a regular businessman.

The activity of the trustee is also subject to the Sorgfaltspflichtgesetz (FL-SPG) (Due Diligence Act). [22] He must therefore also comply with customer identification and anti-money laundering rules.

If third parties acquire a share of the trust property in knowledge and in breach of the Treuhand, the settlor, co-trustee, beneficiary or the trustee appointed by the court have the right to take action against them. [23]

1. International trust

There are countries which drafted trust laws which are very advantageous for foreign investors. I would like to highlight two such legislations, Cyprus and Malta. [24]

1.1. Cyprus

Cyprus was a British colony until 1960. English law left a prominent mark on its legal system, and after 1960, much of English legal practice established earlier was maintained. In the early 1990s, efforts were made to develop Cyprus into an international financial centre. [25] The International Trusts Law 1992 of Cyprus, governing international trusts, entered into force on 24 July 1992. [26]

Under the law, it is also possible to establish an international charitable trust whose purpose may be the fight against poverty, education, advancement of religion, or other purposes that are beneficial for the community. The public prosecutor has the power to enforce such trusts. Currently the duration of the private trust is maximised at 100 years[27]; the duration of the charitable trust is not limited.

In accordance with English rules, the courts have power to modify the deed of trust.

Regulations in Cyprus were substantially amended in 2012. Pursuant to the amendment, the settlor and beneficiary of the trust may be a resident of Cyprus, thus not only international trusts are permitted to operate in the country. The settlor may reserve certain rights; he can be the enforcer or even the protector of the trust, for example. The trustee has the option of investing in real property located in Cyprus. The time limit of the trust was also reviewed.

The law defining the conditions of trustee activities was adopted in December 2012(Regulation of Fiduciaries, Administration Businesses and Company Directors Law of 2012).

Under the law, only persons holding authorisation issued by the Cyprus Securities and Exchange Commission may carry out trustee activity. Lawyers and registered accountants are exempted from this rule, because they are under the supervision of a professional organisation, and so are investment and credit institutions, which, however, must fulfill the requirements of the Investment Services and Activities and Regulated Markets Laws of 2007. The above persons and companies, with exemption from the law, are only offered the option of applying for authorisation to conduct trustee activity; in such a case, they are under the supervision of the Cyprus Securities and Exchange Commission.

1.2. Malta

The Maltese legal system rested on Roman law and the French Code civil. It was, however,
exposed to substantial English influence during more than 150 years of British rule, which resulted in a mixed legal system. The effects of English law did not extend to the direct adoption of the trust, nor to the adoption of the practice of equity. [28]

The Offshore Trust Act was introduced in 1988, which is almost entirely based on the rules of the Trusts (Jersey) Act of 1984. The law permitted the establishment of international trusts, but not domestic ones. Due to the anti-money laundering rules of the OECD, the Financial Action Task Force (FATF), and legal harmonisation obligations arising from accession to the European Union, the law was amended in 1994, and entered into force on 1 January 2005. Pursuant to the amendment, the “offshore” rule was repealed, and tax benefits were reduced. Pursuant to a new rule, it became possible to relocate the seat of a trust established in other countries to Malta (redomiciliation). The amendment introduced the institution of the protector and the possibility of tracing under the rules of equity. The amendment, however, continued to disallow the establishment of domestic trusts. [29] Similarly to the case of Italy, however, a practice emerged to apply the institution of the trust in a domestic environment. [30]

In addition to the Trust and Trustees Act (TTA) amended on the basis of the Trusts (Amendment) Act 2004, the civil code of Malta was also amended. In the civil code, within the scope of personal rights in the relationship between relatives, the property of the trust is also taken into account in relation to the trust’s beneficiary (Art. 20). It is also set out that the custodian or guardian may not fill the position of trustee in relation to minors and beneficiaries with a limited capacity to act (Art. 163). Supplementary rules are inserted under a separate title in relation to property law (title IIIA, “Of Trusts and Their Effects”). Based on a rule of reference, the code applies special rules to trust property (Art. 958A). Pursuant to the code, the trustee has the right to lawfully dispose of the trust property to third parties [Art. 958A (3)], and the trustee is obliged to preserve the net value of the trust property. In the part concerning the law of obligations, certain provisions were introduced in relation to proprietary relationships between spouses and family members. [31]

TTA Art. 3 does not contain a definition, but rather the description of the trust. [32] With regard to the description, it is important to note that equitable ownership was not adopted in Maltese law, which is reflected by the “hold as owner” rule in the text of the law. It should be noted as well that the trustee may also be a beneficiary if he is not the sole beneficiary. [33]

Pursuant to TTA sec. 9(8), 9(15), it is possible to authorise the trustee to designate new beneficiaries in the deed of trust if these are identified by name or can be individually, reasonably identified from a specific group of persons.

Sections 44-57 of the Trust and Trustees Act 2005 (Chapter 31 of the Laws of Malta), amended on the basis of the Trusts (Amendment) Act 2004, regulate the authorisation of the trustee’s activity and conditions relating to his operation. The Financial Services Authority of Malta has also issued a Trustee Code of Conduct, which is applicable to all trustees, whether registered or not.

Beneficiaries are entitled to information concerning the trust property, but they are unable to take action against the trustee as long as he regularly manages the property. If the management of property is in breach of the rules, the beneficiary has the right to enforce his rights in court, but only the first ranked beneficiary is entitled to this option. If the beneficiary is not aware of the other beneficiaries, he has the right to request information from the trustee as to whether he qualifies as a beneficiary. [34]

2. Treuhand

We can find the structure of Treuhand in the practice of German, Austrian and Swiss laws. There are several common features in these regulations, which can be led back to the historical roots of the Treuhand.

3. Germany

Under German law, the Treuhand may be established in three ways: through a full transfer of legal title (fidziarische Vollrechtsstreuhand), through a transfer of legal title with conditions precedent (deutschrechtliche Treuhand), and with a mandate granting dispositional rights (Ermächtigungsstreuhand). Under all three arrangements, the trustee may independently dispose of the trust property. The Treuhand that serves property management by
way of representation (Verwaltungstreuhand) historically evolved from security transactions.

Under a fiduciary transfer of a thing, the transfer is made for the purpose of property management. In such a case, beneficial and legal ownership is split. The transfer of the thing or property is effective vis-à-vis everyone, but the new owner is liable in personam to the previous owner for the appropriate management of the property. This transaction also has a version wherein the thing is transferred for the benefit of the previous owner (uneigennützige Treuhand or Verwaltungstreuhand). In addition, the transaction may serve to secure a debt. [35] In such a case, the fiduciary transfer serves the interests of the new owner (eigennützige Treuhand or Sicherungstreuhand). [36] The most common cases of the latter are the Sicherungsübereignung, Sicherungsabtretung and the Eigentumsvorbehalt.

The function of the Treuhand is broader and only partly similar to that of the strawman (Strohmann), who, in the business sector, acts in his own name with the aim of keeping someone else in the background, so that this person may remain unknown to the outside world. In the case of the strawman, the property management relationship is always established; the strawman is the trustee and the person in the background is the settlor. In the relationship with the strawman, however, a separate beneficiary is not necessary for establishing such a relationship; the settlor may also be beneficiary. [37]

At the core of German regulation, the trustee was required to manage and invest the property for the benefit of its previous owner, and to return it to the owner upon expiry or other termination of the property management contract. The property management contract was concluded in relation to a fiduciary conveyance, or in cases commonly applied today, where it aims to preserve the anonymity of the beneficial owner, and it is the trustee who acts vis-à-vis third parties. The relationship of the trustee is recognised to the extent that if third parties intend to take action against the trustee, the personal creditors of the trustee may not seek satisfaction from the trust property. The settlor, however, only holds a right in personam against the trustee. [38]

In German law, the Treuhand doctrine was thus introduced alongside the fiduciary transfer of title, which gave rise not only to a right in personam, but also to a right in rem. [39] Accordingly, the transferor transfers ownership to the trustee. Such ownership, however, is limited in time or by the method of property management etc., in accordance with the terms of the property management contract. Thus, the German instrument applies a combination of rights in personam and in rem. The drawback of this method is that the beneficiary is unable to claim the trust property in rem. [40]

In the Treuhandvertrag the parties define the trust property. It is optionally possible to limit property management to the transferable property, or to extend it to the yields and surrogates thereof. On the basis of the principle of immediacy (Unmittelbarkeitsprinzip) applied in German legal practice, namely, as a general rule, the contract does not extend to property received later from the settlor, or to profits on the trust property. It follows from the principle of immediacy that changes and surrogates of the trust property do not constitute an object of the trust property, either. [41]

The Treuhänder is obliged to manage the property separately from his own, as separate property (Sondervermögen). In view of the fact that following the acquisition of legal title to the trust property, its owner becomes the trustee, the trustee has the right to validly alienate it to third parties, and neither the settlor, nor the beneficiary may take action against the transaction. In the definition commonly used in literature, the trustee “may do more than he is permitted”. [42] The settlor only has the right to assert a claim by right in personam under the pactum fiduciae against the trustee for breach of the agreement. He does not, however, hold a right to assert claims against a third party acquiring the property, whether the transaction was concluded in good faith and gratuitously. [43] There is exemption from this rule if the third party acted in bad faith. In such a case, a claim for damages may be asserted against him; claims may also be made on grounds of unjust enrichment.

The German courts do not hold general powers to oversee the operation of the Treuhand.

The trustee is obliged to avoid conflicts of interest and manage the property separately from his own; he is obliged to keep cash on a separate bank account. In theory, the same applies if liquidation proceedings or execution is launched against the trustee. In German legal practice, however, the
property managed by the trustee qualifies as separate property, and the creditors of the trustee have no right to lay claim to it. German legal practice draws a distinction between legal and beneficial ownership; the claim of the settlor is deemed to be quasidringlich, or quasi in rem. It follows that in execution and liquidation proceedings launched against the trustee, the claim of the settlor for the trust property is deemed to be similar to a claim in rem. If, however, the trust property originates not from the settlor, but from a third party, the claim of the settlor will be deemed to be only that of a creditor, i.e. an in personam claim. The same rule applies to cases in which it is clear to the outside world that the trust property is not owned by the trustee (e.g. cash managed by a notary or lawyer). [44] Such protection, however, does not extend to surrogates of the trust property. [45]

The so-called fiduciary foundation, without legal capacity, is an established institution in German law. Under this legal arrangement, the property settled for a purpose is managed by a public or private fiduciary appointed by the settlor. [46] The biggest benefit of this legal arrangement is that its registration is not necessary, as there is no independent legal entity; the legal relationship remains on a contractual level. [47] The fiduciary foundation, however, also has many disadvantages, such as lacking protection against creditors, or lacking control over the trustee, and the difficulty of its long-term maintenance. [48]

Case law in Germany is explicitly opposed to the introduction of the trust. [49] Pursuant to rules relating to the testamentary executor and pupillary substitution, however, legal instruments very similar to the institution of the Anglo-Saxon testamentary trust could be created. [50]

3.1. Switzerland

Demand for the introduction of the trust has been raised at several forums in Switzerland, but it has not been introduced. [51] Although Switzerland signed the Hague Convention, it was implemented only after some delay in 2006. [52] The trust was an unknown legal institution in Switzerland, although the Swiss are aware of the concept in relation to many international tax treaties. Many professional initiatives have also been taken to harmonise the practical rules of property management under the trust. [53]

There are three forms of the fiducia (fiducie, acte fiduciaire) in Switzerland. The term fiducie-liberalité is used for institutions that carry out trustee duties corresponding to the common law trust. The term fiducie-gestion signifies fiduciary property management in the sense of fiducia cum amico, where the trustee acquires a legal title, but is obliged to manage the property in accordance with the contract. Fiducie-sureté means fiduciary transfer of title, however this is applied only in a limited form under Swiss law. [54] Rules of the fiducia evolved from agency (mandat, Auftrag), which can be withdrawn or terminated any time. [55]

In Swiss legal practice, the sale contract, including the right of repurchase, and the property management agreement are deemed to be valid legal titles for the transfer of ownership. The ZGB, however, applies tighter regulations to the lien; Art. 717, for example, it does not permit the establishment of a pledge without transferring possession of the pledged property. Under Swiss law, the property management contract is applied in accordance with the rules of the Obligationsrecht (OR) relating to the agency contract.

In Swiss law, property management may be carried out under a contractual arrangement, where the settlor transfers the property to the trustee with an appropriate title and method for the transfer of ownership. Under the contract, the settlor only holds a right to in personam action against the trustee. If a third party purchases the property from the trustee for value and in good faith, he acquires legal title to such property. In the event of a breach of contract, the settlor may claim damages only from the trustee, but not from third parties. This legal arrangement is, in fact, an agency contract between the settlor, as principal, and the trustee, as agent. [56] In Swiss law, the family foundation and business associations can fulfil a similar function, which, however, significantly varies from the arrangement of the trust. ZGB Art. 335. defines the purposes of family foundations; such purposes may not be construed in a broader sense. [57] Under Swiss laws, neither the founder of the foundation, nor its beneficiaries hold a right in rem against the trustee of the foundation, should he not use the property in conformity with the purposes of the foundation. [58] The foundation is a legal entity, while the trust is not. Both, however, may
In the laws of Switzerland, the Treuhand (Fiduzia) is the unique equivalent of the trust. It has no legislative basis, but its rules have been drawn up in detail in case law. It is difficult to provide a taxonomical classification of the Treuhand in Swiss law, but relevant case law is analysed in depth in legal literature.

In the case of the Treuhand, the settlor (Fiduziant, Treugeber) transfers the property (Treugut) to the trustee (Fiduziar, Treuhänder). The Fiduziar acquires legal title to the property and undertakes a contractual obligation to use the property for the benefit of the settlor or third parties, as instructed by the settlor. [60]

Thus, similarly to regulation under German law, the fiduciary legal act is composed of two parts: firstly, the rights in rem, involving the transfer of ownership or other rights, and secondly, the fiduciary agreement. This arrangement generally corresponds to administrative property management (Verwaltungstreuhand), which, in most cases, is judged in case law under the rules applicable to the agency contract (Art. 394 OR). In the minority of cases in case law, this contract is construed to be a sui generis contract, subject mainly to the rules of agency, and to a lesser extent, to the rules of deposit. The federal Supreme Court qualifies the trustee as an indirect representative, and his obligations under the pactum fiduciae are judged only within the bounds of the internal relationship of the parties. [61]

In most instances, the fiducia is recognised as a legal title in Swiss law. In the case of the Sicherungstreuhand, the federal court definitively qualified it as a legal title[62], and left this question open in relation to the Verwaltungstreuhand. [63]

In the case of the latter, legal literature qualifies the fiduciary transfer as an adequate legal title, as it is valid either by application of the rules of agency, or as a sui generis contract. This also means that the transfer of ownership is only an accessory legal title and is not the actual cause of the transaction. [64] It follows that the fiduciary transfer of title is not deemed to be a simulated legal act (Simulationstheorie).

The participation of an intermediary (Strohmann, Mittelsmann, convention prêté-nom, per interpositam personam) is not invalid in and of itself if the purpose of the parties is not the circumvention of law. [65]

The settlor only holds a right in personam against the trustee, while the trustee holds full legal title to the trust property. [66] The limitation of the trustee’s rights under the pactum fiduciae is invalid vis-à-vis third parties. It is important to note that the beneficiary holds no rights against the trustee whatsoever; he has no right to enforce the fulfilment of the obligations assumed by the trustee, and holds no legal title to take legal action against the trustee; his status is equivalent to that of a plain creditor. [67] The biggest disadvantage of the fiducia compared to the trust is the trustee’s full legal title (Vollrechtsstheorie); thus, in the event of his insolvency, the beneficiary is not ranked above the other creditors. [68]

4. The fiducie

4.1. France

Act No 2007-211 integrated the rules of the fiducie into chapter XIV, sections 2011-2031 of the French Code civil. Section 2011 of the Code civil defines the fiducie as a contract under which a company (settlor) transfers assets or rights to another person (trustee), who manages these separately from his own property for the benefit of one or more beneficiaries. The French regulation was also influenced by the European Union. [69] The law enacted in 2007 significantly limited the fiducie’s scope of application. This scope was extended with the law of 4 August 2008, which was further amended on 18 December 2008. Statutory regulation was supplemented with the regulation adopted on 30 January 2009, which also permitted natural persons to establish a fiducie. Certain provisions of the securitised fiducie were amended by the act of 12 May 2009. [70] The act on the registration of the fiducie was enacted only in May 2010. [71]

The parties to the fiducie must be established in a Member State of the European Union or in a state that entered into a double taxation treaty with France. Under French regulation, the fiducie may only be established by contract or law[72], and it must be registered by a state body (registre national des fiducies) set up specifically for this
purpose, otherwise the contract is deemed invalid. The contract must be reported within one month. A reporting obligation also applies to the designation of a beneficiary at a later time and to the transfer of rights arising from the contract. This legal arrangement is in many ways pushing the limits of traditional dogmas of private law in Continental Europe. Firstly, it permits the temporary transfer of ownership, and secondly, it enables the management of assets and rights separate from that of the property of the trustee.

Legal title does not necessarily have to be transferred to the trustee. [73] The settlor (constituant) entrusts existing or future assets, rights or security to the trustee (fiduciaire), who manages these for the benefit of one or more beneficiaries. [74] French law does not classify the legal status of the trustee; he is not deemed to be either an agent, nor an administrator, only the manager (agissant, actor) of the trust property (patrimoine fiduciaire). [75] The trustee is generally the legal owner with legal title, but he is obliged to manage the property separately from his own, i.e. he becomes a dual entity. The beneficiary only holds a right in personam to the trust property. [76] It follows that the creditors of either the trustee or the settlor may not assert claims for the trust property, that is, it may only serve as security for obligations arising from the management of the separate entrusted property. On the other hand, the French property management model shows major variation from the Anglo-Saxon version; many of its rules significantly limit the scope of application compared to the trust.

Initially the settlor could only be an organisation falling within the scope of corporate tax. This strict rule, however, drew vehement opposition, and as of 1 February 2009, it was extended to allow natural entities to act as settlor. The law was even more stringent in limiting the position of the trustee to credit institutions, investment and insurance enterprises. This was in contrast to Marini’s draft law, which would have permitted any natural or legal entity to fill this position. [77] The law was amended in August 2008, permitting lawyers to also fill the position of trustee.

Separate records must be kept on the trust property, and the trustee is obliged to provide information to the authorities. For tax purposes, the fiducie may be applied only by business associations subject to the corporate tax act and the French Code monétaire et financier, that is, which carry out activity in the financial sector. It is noteworthy that gains and profits from the trust property are taxed independently. Thus, French regulation did not introduce the duality of ownership applied in the case of the English trust. [78]

Originally, the fiducie could be established for a maximum period of 33 years, although the parties could agree on the contract’s extension upon its expiry. The amendment to the law increased the period to 99 years. Under French legislation, the parties are free to agree on the method of property management, the rights of disposition over the trust property, and the limits to such rights. The founder or settlor may appoint a third party (e.g. lawyer) as protecteur to exercise control over the activity of the trustee, similarly to the protector in Anglo-Saxon law. The parties may also freely determine the remuneration of the trustee. This is not a mandatory provision of the contract.

There had never been any limitations with respect to the person of the beneficiary; it can be either a natural or legal entity. The settlor and trustee may also be beneficiaries.

The property management contract must be made in writing, although a deed is sufficient for this purpose. A public instrument is necessary if the property includes real property or rights to real property, and the trust property must be disclosed in the administrative records (conservation des hypothèques). Property management may also be established by law.

The property management contract is terminated upon the death of the settlor, and the trust property is returned to the heirs of the settlor. It is also terminated upon expiration of the fixed period. [79]

French regulation established the legal option of creating a separate entity of property, which is not deemed to be an independent entity ex lege, yet functions as if it were a separate legal entity. Its applicability in business offers a wide range of possibilities, as it can serve as an appropriate legal instrument in relation to credit security, syndicated loans and investments involving higher risk. French regulation also sets out provisions that may
be adequate for the prevention of tax law infringements and for ensuring transparent operation.

4.1. Luxembourg

The legal system of Luxembourg is essentially based on French law, that is, the Anglo-Saxon concept of dual ownership is not integrated in private law. On the other hand, Luxembourg is a financial centre, so it could not afford to omit the introduction of a legal institution similar to the trust. The application of the fiducie was first possible in the Grand Duchy of Luxembourg in 1972 in relation to the issue of bonds. Legal regulation pertaining to the fiducie was adopted in 1983, its scope limited, however, to financial institutions. [80]

This was followed by the Act relating to the Trust and to Fiduciary Contracts of 27 July 2003; under Art. 6(1) of the law, the trust property is deemed to be assets separate from the trustee’s property.

The fiducie constitutes a contractual relationship, in which the settlor (fiduciant) transfers legal title to another person (fiduciaire). As a major difference to the trust, the trustee becomes an owner with full legal title, and the fiducie may not be established unilaterally, without the trustee’s acceptance of appointment. As further significant variation, the trustee may not be a natural entity. [81] In addition to already authorised financial institutions, the amendment of 2003 permitted investment enterprises, securities issuing companies, pension funds, insurance companies etc. to conclude property management contracts.

The fiducie must be created in writing. The fiducie contract varies from agency in two important ways: firstly, the principal may waive his right of instruction, and secondly, the fixed-term contract may not be terminated by ordinary notice. The rules relating to the agency contract are otherwise applicable to the fiducie. Thus, as a general rule, this is a gratuitous contract and is not enforceable against third parties. In case law, the right of the fiduciant, fiduciaire and beneficiary is recognised to make a well-grounded request in court for the discharge of the trustee or the early termination of the fiducie. [82] Under Luxembourgian law, the fiducie may only be applied within a narrow scope, in the financial sector. The position of the trustee may only be filled by a financial service provider, who is obviously subject to laws governing the financial sector.

The scope of application of the fiducie extends to the fixed-term management of property (fiducie-gestion), fiduciary transfer of title (fiducie-sûreté), fixed-term management of property, at the end of which the trustee is obliged to distribute the property to the third party (fiducie-libéralité), and credit transactions where the settlor transfers the property to the trustee for the purpose of its lending to third parties (fiducie-crédit). [83]

Luxembourg ratified the Hague Trust Convention of 1985 on 16 October 2003, and it entered into force on 1 January 2004. This means that the Anglo-Saxon trust is recognised in Luxembourg. The trust, however, will not be equivalent to the Luxembourgian fiducie. [84]

5. Italy, the use of the Hague Convention

The Italian legislature has plans to introduce the institution of the trust. [85] Italy offers an interesting case, because it ratified the Hague Convention in 1989 by way of Law No 364 of 6 October 1989, which entered into force in 1992. [86]

Italian legal practice did not wait for the Italian legislature to adopt internal regulations in conformity with the convention instead trusts were established under foreign laws, in accordance with Article 6 of the convention. [87] The Genovese professor of comparative law, Maurizio Lupoi, was first to note that the Convention allows for the recognition of domestically established trusts. [88] He grounded his position on the fact that the settlor has the choice of governing law under Art. 6 of the Hague Convention. This approach initially ran into opposition[89], but it eventually became the dominant view; Italian lawyers and notaries began to establish trusts under the rules of foreign substantive laws. Thus, Italian entities settled Italian property on trust in Italy, under foreign laws, such trusts ultimately deemed to be domestic trusts (trust interno). [90]

The Italian courts dealt with the validity of the trust interno in approximately 100 cases; it was declared void only in two cases. The Tribunal of Bologna handed down its judgement on 1 October 2003, which summarised the position of the Italian courts. [91] In a case involving a married couple in the process of divorce, the court ruled that the husband is obliged to support the children from
their marriage, but not the wife. Before the delivery of the judgement, the husband established a trust interno under English law, with a company as a trustee, and the husband and his children as beneficiaries. The wife sought to have the trust interno declared void. The court, however, declared that the legal system of Italy recognises the trust by ratification of the trust convention, hence it does not infringe the principles of the Italian legal system.

Four questions of law arose in Italian case law in connection with the validity of the trust interno. One question concerns the uniformity of ownership. Pursuant to Art. 2740 of the Italian civil code, ownership is not divisible, that is, an entity is liable with all of his property toward his creditors. The Italian courts, however, firmly declared that the application of the trust interno does not infringe this rule. Would the trust be incompatible with the principles of the Italian legal system, Italian legislators would not have decided to ratify the convention. On the other hand, the Italian legal system recognises other arrangements of property separation; investment funds, pension funds, and the operating form of a company limited by shares, for example, are similar in this respect, as these also involve property for purposes (patrimoni destinati ad uno specifico affare).

The other question concerns the incompatibility of the trust interno with the numeros clausus of property rights. The Italian courts, however, argue that the trustee becomes the owner of the trust property, and the fact that he manages the property only for the benefit of a specific person or a purpose, does not in itself establish a new right in rem.

According to the third counter-argument, the trust interno infringes certain mandatory rules of the laws of succession, as it deprives the lawful heirs of their claim for the legitime. In Italian case law, the trust interno does not in any way limit the enforcement rights of the heirs more than any other act of the testator serving the alienation of his other property. In the case of the trust interno, the heirs may also take action, under generally applicable rules, against the unlawful alienation of their distributive share or legitime.

The biggest problems arose in connection with transposition of the land registry entries resulting from the trust interno. In many cases, the Italian land registries denied the registration of the trustee’s ownership, as the laws did not provide for the establishment of a trust as a title of registration. In the course of time, however, this practice also gained acceptance.

The Italian courts also established judicial powers for the appointment of the trustee and the modification of the deed of trust. [92]

In Italy, the trust is deemed to be a taxable person, and it must possess a tax number in accordance with the relevant financial regulations (codice fiscale). If the trust is operated in Italy during most of the year, it is deemed to be an Italian taxable person. [93]

With the spread of the trust interno, trusts were established for a wide range of purposes. [94] The Italian trust interno is not equivalent to the English trust. The trust is established by Italian settlors, it is managed by Italian trustees, who are usually specialists and banks, and the beneficiaries are Italian. The trust is established in Italy in a notarial deed in the Italian language. The latter principally serves to evidence the date of the trust interno’s creation. It is relevant in procedures launched for the declaration of insolvency, for example, and is necessary for the transposition of the ownership of real property. The only non-Italian substantive law regulating the trust interno essentially originates from England and Jersey.

6. San Marino

To date, San Marino has not adopted a civil code, which means that the ius commune constitutes the foundation of its legal system. The institution of the fideicommissum was known through common European law.

The Hague Convention was ratified in 2005. The contract called affidamento fiduciario and the trust were introduced in San Marino in 2010. [95] The affidamento fiduciario is a contract that combines the elements of the fideicommissum and the trust. Under the law, it is possible to establish a trust for the benefit of a specific person or for a purpose. The requisites of the trust are the three elements defined under English law: the intention to settle property, person of the trustee and the property to be administered. In the case of a purpose trust, a protector or enforcer must be appointed, who is responsible for ensuring compliance with the rules.
of the trust. If the trust is established for the benefit of a person, it is necessary to name the given beneficiary and to designate an enforcer. This is necessary because a trust may also be established for the benefit of an unborn child, and the enforcer has the right to take action against the trustee to enforce the trust, even if there is no beneficiary.

Under Art. 6 of the law, the trust must be registered. The central bank of San Marino exercises control over the trusts. Pursuant to Art. 18 of the law, anyone may assume the position of trustee, but separate legislation is applicable to professionally conducted trustee activity. Professional property management activity may only be carried out by financial institutions authorised by the Central Bank of San Marino.

The modern trust regulation of San Marino varies substantially from trust rules applied in Anglo-Saxon countries; it is essentially geared toward the modern private purpose trust. [96]

7. Trust-like regulations in Central and Eastern Europe

7.1. Russia

The regulation concerning the trust was promulgated on 24 December 1993. [97] Pursuant to the regulation, a contract is concluded between the settlor of the trust and the trustee; the settlor transfers the property to the trustee, who manages the property for the benefit of the beneficiary. Property transferred in this manner was granted protection in the event of the trustee’s insolvency. This arrangement was drafted specifically for privatisation purposes; the state was the settlor, and the federal state treasury was the beneficiary. The trustees were institutions, e.g. banks, investment funds and insurance companies, which managed the shares of the converted state-owned companies for a fee. [98] The new Russian civil code substantially amended this legal instrument.

The first part of the Russian civil code entered into force on 1 January 1995. [99] Pursuant to Art. 209(4), legal title may be transferred to someone else for the purpose of property management. [100] The second part of the Russian civil code entered into force on 1 March 1996. Chapter 53 regulates property management. [101] Pursuant to Art. 1012 of the Russian civil code, under the agreement between the parties, one party (settlor) transfers the property to the other party (trustee) for a fixed period, and the other party undertakes to manage the property for the benefit of the settlor or a beneficiary designated by him. The transfer of property does not extend to the transfer of legal title to the property. [102] Thus, under the new regulation, the settlor retains legal title to the trust property, while the trustee only acquires the right to manage the property. The trustee carries out his duties for remuneration, but is not entitled to profits from the trust property.

This contractual arrangement does not quite reach the level of the Anglo-Saxon trust, but it is more than a simple agency or mandate. Although the settlor may terminate the contract at any time, the trustee holds exclusive rights to manage the property. On the other hand, the trustee requires the prior written consent of the settlor for important decisions concerning the property, such as the cessation of the business association through the exercise of voting rights attached to shares included in the property, modification of its capital, decision on the amendment to the deed of foundation. The trustee must manage the property separately from his own property, and keep it on a separate account. This arrangement is mainly applied in Russia for the operation of investment funds and pension funds. [103]

The adoption of the Anglo-Saxon version of the trust was opposed by Russian jurists mainly on the grounds that it would have infringed the requirement of the indivisibility of ownership, and the law of equity is similarly unknown in Russian law. [104]

7.2. Ukraine

The private law of Ukraine is traditionally based on Roman law, with a strong influence of the French civil code. [105] The new civil code enacted on 1 January 2004 was strongly influenced by the German civil code (BGB). The new civil code regulates property management in Book V (The Right of Obligation), Section III (Separate Types of Obligations), Sub-section 1 (Contractual Obligations), Chapter 70 (Property Management).

According to the regulation, under the written property management agreement the settlor transfers the property to the manager (trustee) to be
managed for a specific period of time. The trustee manages the property in the interest of the settler or a third person, a beneficiary. [106] The trustee is entitled to remuneration for his activity. The property can be almost anything; there is a restriction only in case of monetary funds and certain securities, which are allowed only when the legal relationship is established by law. The trustee can only be an enterprise and the property management agreement must be registered by the state. The managed property must be handled separately from the assets of the trustee.

7.3. Lithuania

In the earlier civil code of Lithuania, in force from 1964, property management was regulated in relation to public property. The new civil code was enacted on 17 May of 1994 and came into force on 1 January 2000 [107]; it introduced property trust law for the private sector as well. The regulation was essentially only renamed, as the substance of the legal arrangement remained the same. [108] The property trust law is an in rem right which is regulated in Book Four (Material Law), Part I (Things), Chapter VI (Right of Trust) of the Lithuanian civil code.

The trustee right is an independent in rem right, with which the trustee is allowed to exercise practically the same rights as the owner.

7.3. Georgia

Art. 724–729 of the Georgian civil code of 1997 regulates the legal institution similar to the trust (sakutrebis mindoba), which was shaped upon the influence of Anglo-Saxon law and the Roman law fiducia. [109] Property management is established by a written trust contract (sakutrebis mindobis khelshekruleba), under which the trustee (mindobili mesakutre) is obliged to manage the property for the benefit of the settlor (sakutrebis mimndobi). Thus, this is not a tripartite relationship. The law allows the transfer of the legal title of the trust property, and pursuant to Art. 725(1), the trustee manages the property in his own name, at the cost and risk of the settlor. Profits from the property are also due to the settlor. As a general rule, the property management contract is gratuitous, but the parties may derogate from this rule. The trustee is liable toward third parties for duties relating to the trust property. [110] Provisions relating to agency provide the legal framework for the property management contract.

7.4. Romania

In Romania, civil code No 511/2009 (amended by No 71/2011.), Art. 773–791 introduced the fiducia, a property management arrangement similar to the trust. The Romanian concept of the fiducia shows notable similarities to the French law of the fiducie. [111] The fiducia may be established by law or a notarised contract. Hence, it may not be established by testament. Pursuant to Art. 773 of the Romanian civil code, one or more settlors (constitutori) transfer legal title or other rights to one or more trustees (fiduciari), who manage it for a specific purpose or for the benefit of the beneficiaries (beneficiari). The trust property constitutes property separate from the trustee’s own property. Under Romanian regulations, the position of trustee may only be filled by a credit institution, investment company, insurance or reinsurance company, notary or lawyer. [112]

The establishment of the fiducia must be reported to the competent tax authority within one month. The fiducia becomes effective vis-à-vis third parties once the deed of foundation has been registered (Electronic Archive of Security Interests in Personal Property). If the trust property includes real property, it must be registered in the land register. The maximum duration of the fiducia is 33 years.

7.5. Czech Republic

The civil code of the Czech Republic (No. 89/2012.), in force as of 1 January 2014 also regulates property management. The regulation of the trust was introduced in a form of a trust fund (svěřenský fond). Legislators applied the concept of property without owner for drafting the regulation, a method similar to the civil code of Québec. [113] Only trust funds set out in a Statute, which is a public instrument, are valid. The trust may be established by contract or testament. The trust may be declared for commercial, investment, private purposes or for public benefit.

Upon establishment of the trust, the settlor no longer holds legal title to the trust property, which will become property without owner, to be managed by the trustee for the benefit of the
beneficiaries. [114] Despite the fact that the property of the trust fund does not have a legal owner, the trustee is listed in some public registries. Accordingly, the purpose of the property and its status as a “trust fund” must be indicated in legal relationships relating to the property. Both the settlor and the beneficiary may exercise control over the trust property. In addition, the court may also order the trustee to take appropriate actions.

The trustee is appointed by the settlor, or otherwise by the court. The trustee is required to accept the appointment, otherwise the trust cannot be established. The trustee can be a legal person only if it is an investment company operating according to Act No. 240/2013 on Investments Companies and Investment Funds. The settlor also designates the beneficiary, otherwise the settlor is deemed to be the beneficiary.

7.6. Hungary

The new Hungarian Civil Code regulates the fiduciary asset management contract in Chapter XLII, within the scope of agency-type contracts. [115] The regulation was drawn up on the basis of the model of the trust in English law and that of the Treuhand in German law.

Under the rules of the new Hungarian Civil Code, the fiduciary asset management contract is an in personam legal instrument that implicitly carries substantial in rem effects. [116] The new Hungarian Civil Code sets out a contractual arrangement; its validity is bound to a written contract. The regulation is of a general scope; details are regulated in two separate pieces of legislation, [117]: Act XV of 2014 on Trustees and the Regulation of Their Activity, and Government Decree No 87/2014 (III.20,) on certain rules concerning the financial security of fiduciary property management undertakings. As a general rule, regulation is dispositive; contracting is principally for consideration.

Under the fiduciary asset management contract, the trustee has the duty to manage the things, rights and claims transferred to his ownership by the settlor in his own name, for the benefit of the beneficiary, for which the settlor is obliged to pay a fee. If the settlor and trustee are one and the same person, fiduciary property management is established by the irrevocable unilateral declaration of the settlor set out in a public instrument. A legal relationship of property management settled by testament is established by the trustee’s acceptance of his appointment to such position, under the terms set out in the testament. Rules of the fiduciary asset management contract are applied as necessary to fiduciary property management established by a unilateral legal act. Rules of the agency contract are applicable as necessary to fiduciary property management.

The rights of the settlor extend to the definition of the settled property and the appointment of the trustee. This is, however, a bilateral legal act, as it also requires the acceptance of appointment by the trustee. The settlor transfers ownership, rights and claims or other negotiable goods to the trustee, and the settlor issues a declaration as to the manner of the management of the property. In the legal relationship of property management, it is also possible to set out other conditions, such as its duration (maximum 50 years), terms, right of unilateral termination, remuneration of the trustee, appointment of additional trustees, regulation of the delegation of other agents, and the beneficiary’s right to transfer. The settlor reserves the right to remove the trustee, appoint a new trustee, replace the beneficiary, modify given parts of the settlor’s declaration, and to determine or modify the duration of property management.

The settlor and the beneficiary may monitor the activity of the trustee falling within the scope of property management, but the costs of such monitoring are incurred by the settlor. It is a mandatory rule that the settlor may not instruct the trustee.

Under the contract, the trustee may not be the sole beneficiary. The settlor and the trustee, however, may be the same person. The trustee has the duty to provide information, manage the property as instructed in the declaration of the settlor, avoid conflicts of interest and manage the property separately from his own.

If the trustee is authorised to designate the beneficiary under the contract, the trustee has the right to determine the share of the beneficiary.

The management of the property includes the exercise of rights arising from ownership, other rights and claims transferred to the trustee, and the fulfilment of obligations arising therefrom. The trustee may dispose of the assets belonging to the
trust property under the conditions and within the limits set out in the contract. If the trustee breaches his above obligations and illicitly transfers assets belonging to the trust property to a third party, the settlor and beneficiary have the right to reclaim these for the benefit of the trust property, so long as the third party did not purchase the assets in good faith or for consideration. [118] This rule is applicable as necessary to the illicit encumbrance of the trust property.

The trustee is liable toward the settlor and beneficiary for the breach of his obligations in accordance with general rules of liability for damages. If the trustee carries out his duties gratuitously, rules of liability for damages are applicable to his breach of gratuitous contracts. The settlor and beneficiary may claim the management of any financial gain as part of the trust property, which was realised through the trustee’s breach of his obligations arising from property management.

The trustee is liable for the fulfilment of the undertaken obligations with the trust property. The trustee assumes unlimited liability with his own property for the satisfaction of claims arising from commitments charged to the trust property, if these cannot be satisfied from the trust property, and the other party was not and could not have been aware that the commitments of the trustee exceed the limits of the trust property.

If the settlor dies or ceases without a successor, and there are no other settlers to the trust property, the court may recall the trustee from his office upon request of the beneficiary, and simultaneously appoint another trustee if the trustee seriously breached the contract. Several beneficiaries may exercise such right jointly, provided any of them may request the court to terminate the appointment of the trustee and to appoint a new trustee. The court may not appoint a person as trustee, against whom all beneficiaries object.

Section 6:312 of the Civil Code sets out rules on the separation of property. The trust property constitutes property separate from the trustee’s own property and other property managed by him, which the trustee is obliged to register separately. The parties’ derogation from this rule is void. Assets registered as property managed separately from the trustee’s own property and other property managed by him are deemed to fall within the scope of trust property until proven otherwise. Any assets substituting the managed assets, insurance indemnities, damages or other value, and profits thereon, constitute part of the trust property, whether registered or not.

The spouse, life partner, personal creditors of the trustee, and creditors of other properties managed by the trustee may not lay claim to the assets of the trust property. The trust property does not constitute part of the trustee’s inheritance. The beneficiary and the settlor may take action against the spouse, life partner, personal creditors of the trustee, and creditors of other properties managed by the trustee, to secure the separation of the trust property.

The beneficiary has the right to legally enforce the fulfilment of the trustee’s obligations. Within this context, it is necessary to examine rights exercised by the beneficiary against the obligor in the case of civil third party beneficiary contracts. [119] The beneficiary has the right to claim the trust property and profits thereon, and to receive information, while the trustee is entitled to remuneration and the reimbursement of his costs. Similarly to the settlor, the beneficiary does not have the right to instruct the trustee.

In terms of liability, the new Hungarian Civil Code does not allow the creditors of the settlor and trustee to assert claims for the trust property. The creditors of the beneficiary, however, may apply for execution of the property, notwithstanding that the distribution of the managed assets and profits thereon to the beneficiary is not due yet. This rule is modified by Act XV of 2014 to the extent that the creditors of the settlor may terminate the property management contract if the execution procedure launched against the settlor is unsuccessful, or does not produce any results within a foreseeable time.

8. Some comparative remarks

In connection with the regulations analysed I would like to compare the regulations from to relevant aspects. I think that the ownership rights in these legal arrangements are very important, this aspect influences the asset partitioning, and also the rights of creditors, as well as the right of the beneficiary to take actions against third parties
receiving from the managed asset without bona fide and countervalue. The other aspect is the duration of the asset management relationship.

8.1. Ownership right

If we compare the analysed trust-like regulations we experience several different solutions for legal arrangements having the same function as the trust. Without considering all the relevant aspects, I would like to point out some remarkable features.

a) The settlor remains the owner

Under the new civil code of Russia and Ukraine, the settlor does not transfer ownership to the trustee, that is, the trustee only holds a right in personam to manage the property. We can see very similar solution in the Lithuanian regulation, although there the settlor receives management right as a special in rem right.

The institution of property management in Malta, Israel and Georgia is similarly regulated only within the framework of agency. These legislative models apply a “cautious” approach to the Anglo-Saxon institution of equitable rights; they do not effectively resolve the issues underlying its adoption, nor do they actually adopt it. On the other hand, the persons who are party to the legal relationship may at their discretion transfer ownership of the trust property to one of the parties.

b) The trustee is the owner

In Germany, Austria and Switzerland, the instrument of fiduciary property management, the Treuhändler, is almost completely identical. Two legal acts are executed between the Treugeber (Fiduciatant) and the Treuhändler: one with in rem effect and another with in personam effect. The Treugeber transfer the trust property to the Treuhändler, whereby the Treuhändler becomes owner (beneficiary of rights and claims), that is, he exercises all rights (Vollrecht) attached to the property vis-à-vis third parties. In addition, a contractual relationship is established between the Treugeber and the Treuhändler (pactum fiduciae). The contract sets out the rights the Treuhändler may not exercise and the proprietary rights he is obliged to exercise in relation to his absolute ownership. Obviously, this second legal relationship remains on the level of in personam rights, that is, it has no effect vis-à-vis third parties. A beneficiary (Begünstigter) may be designated in the in personam legal act, for the benefit of whom the Treuhändler is obliged to manage the property. Under an alternative legal arrangement, the Treuhändler does not acquire ownership or absolute rights to the trust property, i.e. he only holds rights of representation. This arrangement, however, is simply regulated by the rules of agency.

As a major disadvantage of the German scheme compared to the trust is that in the event of the unlawful alienation of the trust property, it does not allow the Treugeber to enforce the restitution of the trust property against third party purchasers. In practice, other legal institutions are used to remedy this deficiency (prohibition of alienation and encumbrance, repurchase right, unjust enrichment), but the effectiveness and in rem nature of these is questionable.

In Swiss law, pursuant to OR Art. 35. Abs. 1, it is possible to declare a mandatum post mortem, that is, in the case of an agency contract otherwise bound to a person, the legal relationship of property management is maintained after the death of the Treugeber. It should be noted that trusts established abroad were not recognised in Switzerland for a long time.

In France, the act on the regulation of the fiducie was adopted in 2007; its rules are set out in sections 2011-2030 of the Code civil. French regulation requires the transfer of ownership of the trust property to the trustee on condition that the trustee manage the property separately. [120]

The managed property must be registered. The duration of property management is maximised at 99 years, but it may be extended. Romanian regulation, for example, is essentially based on the French regulatory model.

c) Right without entity, appropriated property

Although the trust is not an independent legal entity, the trust property is an independent entity as appropriated property (patrimoine affecté, independent patrimony). [121] Among more recent legislative methods, the Czech civil code adopts this arrangement, which is based upon the model of Québec.
d) Contract with in rem effects

In the Hungarian Civil Code, the structure of fiduciary asset management is based on a contractual legal relationship and it operates mainly in personam. The regulation is exceptional because it provides in rem effects of the legal relationship as well. We can find the asset partitioning, upon which the trustee is the legal owner of the managed property, but he has to handle it separately from his own assets, and the creditors have only a narrow opportunity to lay claims against it. On the other hand the settlor and the beneficiary have the right to lay claim against third persons who acquires the managed assets as not bona fide purchasers. This means that the right of the settlor and the beneficiary is more than a simple in personam right. The Hungarian regulation can fulfill the function of the trust in this manner.

8.2. The duration of the trust relationship

The trust is an important legal arrangement for the purpose of asset planning. This function can be achieved with a relatively long-term relationship. The trust relationship may last for maximum 5 years in Russia and Ukraine, except where the law permits a longer duration[122]; in Lithuania it is maximum 20 years, once again, except where the law permits a longer duration; in Romania it is maximum 33 years, maximum 50 years in Hungary, maximum 99 years in France and 100 years in the Czech Republic in the case of a private purpose trust, while in Georgia there is no time limitation.

[123] We can find rules for the duration of the legal relationship in Germany, Austria, Switzerland etc. as well. We may observe that these time limitations are quite short in Russia, Lithuania, Romania and even in Hungary, compared with the international trends. If we consider that the trust very often functions as asset planning for longer periods of time, then the Russian and Ukrainian models are not suitable to achieve this purpose.

References


[8] Art. 897 TrUG, namely, only sets out the requirement to make available the property (“zuwenden”) and not to transfer ownership (“zu Eigentum übertragen”). Bösch, op. cit. p. 303 ff.


[10] Art 909. TrUG.


[15] Art. 900 Abs. 1 PGR. The Öffentlichkeitsregister contains the following information: name of property management, date of establishment, duration, and name/company name and address/registered office of trustee. Art. 900 Abs 2.PGR.

[16] § 105 Abs. 1 TrUG.


[19] If, namely, the legislative requirements relating to entailment do not provide otherwise, rules relating to the stillschweigende Treuhand are applicable. Bösch, op. cit. p. 67.


[21] Moosmann op. cit. p. 239.


[23] “Haben Dritte zum Treugute gehörende Sachen oder Rechte in Kenntnis ihrer Treuhandeigenschaft vom Treuhänder, ohne dass dieser verfügungsberechtigt war, erworben, so kann der Treugeber, ein Mittreuhänder oder ein Begünstigter oder endlich ein vom Landgericht bestellter Treuhänder, sei es einzeln oder als Streitgenosse mit andern den Herausgabe- oder Bereicherungsanspruch zu Gunsten des Treuhandvermögens geltend machen.” Art. 912 Abs 3 TrUG.

[24] We can find similar trust regulations in the Channel Islands as well.


[27] The currently proposed amendment aims at abolishing this time limit. Neocleous: op. cit. p. 20.


[32] “A trust exists where a person (called trustee) holds, or has vested in him, property under an obligation to deal with that property for the benefit of persons (called the beneficiaries) whether or not yet ascertained or in existence, or for a charitable purpose which is not for the benefit only of the trustee or for both such benefit and purpose aforesaid.” Art. 3. TTA.

[34] Ganado and Griffiths, op. cit. p. 214 ff.


[37] The participation of a strawman is not unlawful in itself; in many cases, it constitutes a relationship of indirect representation between the parties. See Thurnher, op. cit. p. 33 ff.


[41] Liebich and Mathews: op. cit. p. 22. The *Unmittelbarkeitsprinzip*, however, is not applied in German legal practice to collective real estate investment funds (Kapitalanlagegesellschaft).


[49] In its judgement No 13. 6. 1984., the Bundesgerichtshof stated that the legal structure of the trust “is incompatible with the dogmatic foundations of German law” (“mit den dogmatischen Grundlagen des deutschen Rechts unvereinbar”). Iva ZR 196/82, IPrax 1985, 221, 223. Klein: op. cit. p. 175.


[52] The decision to implement the Hague Convention was made in 2006; it entered into force on 1 July 2007.


[55] Art. 404 OR.


[61] Seiler: op. cit. p. 49.

[62] This is fully accepted in Swiss law and is not deemed to infringe the numerus clausus of property rights. Eichner, op. cit. p. 77.

[63] See BGE 86 II 227; 72 II 240; 56 II 447. Seiler p. 51. The pactum fiduciae is not recognised as an adequate legal title particularly in relation to the transfer of the legal title to real property. Eichner, op. cit. p. 87 ff.

[64] Seiler, op. cit. p. 53.


[66] In legal literature, however, the settlor is deemed to be the ultimate beneficial owner. P. P. Supino, Rechtsgestaltung mit Trust aus Schweizer Sicht, St. Gallen Studien zum internationalen Recht, Dike Verlag AG, St. Gallen, 1994, p. 86.


[70] For detailed analysis of laws, see L. Vékás, Bizalmi vagyonkezelés a francia magánjogban (= Fiduciary Property Management in French Private Law), Gazdaság és Jog 2010/9–10. p. 3 ff.

It is unclear as to why the text of the law includes the option of the fiducie established by law. Szemjonneck, op. cit. p. 568.


Mallet-Bricout, op. cit. p. 144 ff.

Szemjonneck, op. cit. p. 570.

See Vékás, op. cit. p. 8.

Szemjonneck, op. cit. p. 579.


Partsch and Houet, op. cit. p. 60 ff.


This was a measure of goodwill by the Italian government toward the business sector, indicating that Italy was committed to creating an investor-friendly legal environment. M. C. Cumyn, Reflections regarding the diversity of ways in which the trust has been received or adapted in civil law countries, in: L. Smith (ed.): Re-imagining (op. cit. p. 66.

Cumyn, op. cit. p. 33.


Gambaro, for example, represents a contrary view. Waal, op. cit. p. 760.


In addition, a legal periodical, Trusts e attività fiduciarie, and a professional association, Il trust in Italia, have been established.

[96] Vicari, Country (op. cit.) p. 84. Vicari A new (op. cit.) p. 5 ff.


[98] The federal contracting agency, Roskontrakt, became the largest asset management organisation. Reid p. 47. The subsequent application of the trust is related to privatisation in Russia. In 1992, a presidential regulation ordered the conversion of state-owned companies into companies limited by shares; their shares were to be managed under a trust arrangement.

[99] Sobranie zakonodatel’stva RF 1994 No. 32 item 3301.

[100] The earlier term “trust owner” was replaced with “trust manager”, which is associated with agency, representation. Reid, op. cit. p. 48.


[103] Reid, op. cit. p. 54 ff.


[106] Art. 1029(1) of the Ukrainian civil code.

[107] Lietuvos Respublikos civilinis kodeksas, LR CK.


[110] For detailed analysis of regulation, see Gvelesiani, French (op. cit.) p. 126.


[112] See I. Gvelesiani, Romanian “Fiducia” and Georgian “Trust” (Major Terminological
Similarities and Differences), Challenges of Knowledge Society 2013/3, p. 286 ff.

[113] In connection with the Québec rules of trust see Cumyn, op. cit. p. 72. Reid, op. cit. p. 27.

[114] “The ownership of the assets of the Trust Fund shall be vested in its own name on account of the fund trustee, property in the Trust Fund is neither the property manager or property of the founder, or the property of the person to be filled from the trust.” Czech civil code, 1448.§ paragraph (3).


[119] Under the rules of common law, in the case of third party beneficiary contracts, the beneficiary has no legal device to enforce the provision of the service set out in the contract. This rule has been regularly broken, for example, in the United States to grant increasingly more rights to the beneficiary. H. Hansmann and U. Mattei, The Functions of Trust Law: A Comparative Legal and Economic Analysis, 73 New York University Law Review (1998), p. 451.

[120] Pursuant to section 1011 of the Code civil, “La fiducie est l’opération par laquelle un ou plusieurs constituants transfèrent des biens, des droits ou des sûretés, ou un ensemble de biens, de droits ou de sûretés, présents ou futurs, à un ou plusieurs fiduciaires qui, les tenant séparés de leur patrimoine propre, agissent dans un but déterminé au profit d’un ou plusieurs bénéficiaires.”

[121] The trust is regulated in the Civil Code of Quebec Title Six (Certain Patrimonies by Appropriation), in force as of 1 January 1994. Art. 1261. is clear in its definition: “The trust patrimony, consisting of the property transferred in trust, constitutes a patrimony by appropriation, autonomous and distinct from that of the settlor, trustee or beneficiary and in which none of them has any real right.”

[122] In the absence of the statement by one of the parties on the termination of a contract upon the expiry of its validity term, it shall be deemed to be prolonged for the same period and on the same conditions which were provided by the contract. Art. 1016 (2) of the Russian Civil Code

[123] Art. 1016(2) of the Russian civil code, Art. 1036(1) of the Ukrainian civil code, Art. 6.959(2) of the Lithuanian civil code, Art. 779b) of the Romanian civil code, Art. 6:326(3) of the Hungarian civil code, Art. 1460(1) of the Czech civil code.
The Development of Constitutional Law and Politics Relationship in the Process of Liberal Democracy Establishment in Lithuania

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Abstract: The paper analyses the mechanism of the establishment and maintenance of liberal democracy in Lithuania. This is a political and legal process where politicians have to obey the requirements of constitutionalism consciously. From this approach three periods of the development of the relationship between constitutional law and politics are distinguished: (1) the period of priority of politics over constitutional law; (2) the period of the priority of constitutional law over politics and (3) the period of the maintenance of constitutional law as the methodological basis of political-legal thinking in the political life of the state.

Introduction

Contemporary states of Western civilization function in the form of liberal democracy, which is a result of a coalescence of democracy and liberalism. Its establishment begins with political efforts to seek a written constitution, which defines the conditions for democratic elections, limits powers of government and guarantees basic human rights. But this is not enough. Democracy as a constitutional task requires legal certainty guaranteed and protected by a state.

This article aims to disclose the development of the relationship between law and politics from the restoration of independence of the state to building and consolidating of liberal democracy in Lithuania.

1. The priority of national politics over the constitutional law after the restoration of the independence of the Republic of Lithuania

The independence of the Republic of Lithuania was restored on 11th March 1990. In the initial phase of state-building the priority of politics over constitutional law entrenched. This situation was objectively determined by the necessity to take active political actions in order to build independent state and the remaining Soviet political thinking. It is therefore not surprising that the Provisional Basic Law of the Republic of Lithuania, adopted on 11th March 1990 (hereinafter - the Provisional Basic Law), was not the original constitutional act, but a reflection of 1978 Constitution of the Lithuanian SSR, which has been adapted to the new constitutional reality. However, this document has been particularly important in establishing the constitutional basis of the sovereignty of the Republic of Lithuania and in strengthening legitimacy and constitutionality of the functioning of young parliamentary democracy in 1990 -1992 [1, p. 19]. On the other hand, there were provisions that did not meet the spirit of constitutionalism. E.g. art. 114, para. 5 of the Provisional Basic Law states: “The Judges and assessors of the court shall be accountable to the institutions of power which elected them and may be recalled according to the procedure established by law”;

The restoration of Lithuanian statehood was the building of an entirely new social reality after a long period of Soviet occupation. In fact, the destruction of the Soviet system is related to the non-recognition of the old social norms and granting them with different definitions since the new social reality requires the urgent creation of new models of conduct and their implementation. On the one hand, liberated nation is at least intuitively aware which standards of conduct must be abandoned, but on the other hand, it is still unclear what standards of conduct are the most reasonable and relevant for building the liberal democracy. Therefore, A. Vaišvila was very far-sighted when he stressed that, in order to redirect Lithuanian public life towards democratic values, it is necessary to modernize the legal consciousness of the nation and especially lawyers, since namely the legal consciousness is the creator of a new state and legal reality [3, p. 19].
The aim to create a national legal system, expressed at the beginning of 1989, was rather impulsive, without theoretical reflections of reality or legal knowledge. In the realm of the interaction between the destruction of the Soviet legal system and the creation of a new legal framework Lithuanian political elite sometimes developed “new behaviour models” which differed from Soviet ones, but nevertheless, they did not correspond to the spirit of Western civil society. The development and implementation of these models were based on “new liberalism” according to which publicity and privacy are best defined by the relationship between the market and the freedom of choice, rather than the state, allegedly protecting “public interest”. The argument that the separation of public and private sphere must be left to the market shaped the prevailing context of theory and practice of public policy during the last two decades of the XXth century [4, p. 22]. The Soviet legal regulation type – “forbidden everything that is not expressly permitted by law” – was replaced by another extremity – “allowed everything that is not directly prohibited by law”. The union of three different and even contradictory social phenomena - Sovietized legal mentality, “neo-liberal” ideology and privatization - created legal collage which distorted the newly developed legal system, privatization and the market [5, p. 44-45].

On the basis of this legal collage the institutional deviation [6, p. 97-105] prevailed in Lithuania. It manifested itself through the pervasive public social disorganization, crime, and social deformity, the deep root of which is legal nihilism.

2. Adoption of the Constitution of the Republic of Lithuania and the establishment of constitutional law supremacy in the national legal system

The broader view to the initial period of the restoration of the independent state (1990-1992) reveals the changes of the political process and new problems that objectively determined the necessity to draft the Constitution of the Republic of Lithuania (hereinafter – the Constitution). It was adopted by citizens in the referendum of 25th October 1992 and, according to the sovereign will of the people, established the new stage of constitutionality development in Lithuania. It is significant that, despite many decades of oppression, the people of Lithuania have found intelligent power, political will and the wisdom to realise that the Constitution is not only the act of government but also it is the act of the people [7, p. 542]. Thus, the adoption of the Constitution made the regulatory framework for the cohabitation of the people as the political community and established the state as the common good of society [8].

The Constitution is one of the constitutions adopted by Central and Eastern European countries at the end of the XXth century (during this period, new constitutions were also adopted in Bulgaria, Romania, Slovenia (1991), Estonia, the Czech Republic, Slovakia, Poland (1997) etc.). It is a result of a particular epoch, which is characterized by both its own specifics, as well as similarities of the countries of the same era and the same region, which found themselves in a similar social, economic and legal situation. Constitutions of these countries are characterized by the following common features: detailed human rights and fundamental freedoms; constitutionally regulated political pluralism, activities of political parties and media; protection of ethnic minorities, market economy and private property relations. They aim to establish a “rationa- lised” parliamentary or semi-presidential form of government and reflect the idea of the legal social secular state. The constitutional text often directly formulates the principle of separation of powers, European constitutional control model, etc. [9, p. 29]. These constitutional principles are the legal reality evaluation standard, which enables to assess the condition of public relations as well as the real political, economic, and social order of the state [10, p. 184].

The essential feature of the state under rule of law is the conformity of ordinary legislation with the Constitution [11, p. 69]. It is based on the principle of the supremacy of the Constitution, which means that the Constitution stands on the top of the hierarchy of legislation and no legal act may contradict the Constitution, no one can violate it, the constitutional order must be protected and the Constitution itself consolidates the mechanism which allows to determine whether legal acts (or their parts) are not in conflict with the Constitution. This principle also implies a different approach to constitutional law: the Constitution is perceived as a primary act of a constituent government, the supreme law (the law par excellence), the kernel and the most important area of the entire legal system [12, p. 16]. Therefore, the issue of protection of the Constitution becomes undoubtedly relevant.

The Constitution can be protected in different ways. Important legal guarantees are encoded in the order
of adoption, alteration and abolishment of constitutions, state authorities and the highest officials’ oath, which emphasizes the observance of the Constitution, etc. Moreover, all participants of the legislative process are obliged to ensure that the preparation, consideration, adoption and publication of legislation drafts should be assessed from the constitutional approach.

Presidents of many states promulgate laws. This fact implies their right to refer the law back to Parliament for reconsideration. President’s disagreement with the legislature’s position may be based on various grounds, including the fact that a law is unconstitutional.

Yet, the guarantee of the Constitution protection cannot rely only on the will and competence of the highest political officials. In fact, democratic government must be limited even more severe than any other forms of government, because it is less resistant to the pressure of special interest groups that affect the survival of the majority[13, p. 181]. Therefore, the courts of general jurisdiction and other (e.g. administrative) courts play an important role in the constitution protection system. They have a special status for they are inter alia the subjects of constitutional judicial proceedings. However, the most important role in ensuring the protection of the constitution is played by constitutional control institutions.

The Law on the Constitutional Court was adopted the Parliament (hereinafter - Seimas) on 3rd February 1993. This law specified constitutional provisions on establishment and functions of the Constitutional Court. According to the Constitution, “The Constitutional Court shall have the right to refuse to accept a case for consideration or to prepare a conclusion if the application is based on non-legal reasoning” [14]. The Law on the Constitutional Court provides that “The Constitutional Court shall investigate and decide only legal issues” [15]. Even though the Constitutional Court is legal body, the cases it hears often tend to have political repercussions [11, p. 79].

The Constitutional Court began officially register claims and to hear cases after the appointment of all the judges in 1993. Thus, with its first ruling the Constitutional Court started the process of consolidation of priority of constitutional law over politics. Retrospectively it can be said that it was not only necessary, but even significantly delayed phenomenon of constitutionalism as Lithuanian legal system already had some problematic features. The results of quantitative and qualitative analysis of Constitutional Court 1993 - 2004 period rulings [16, p. 27-28] reveal that:

1. During 1993-2004 period the Constitutional Court heard 164 cases and adopted the same amount of resolutions. 103 (62.80%) resolutions state that some Lithuanian laws or their parts, the decisions of Seimas and Government are in conflict with the Constitution and other laws.

2. 1993-2004 Lithuanian legislation violated:

2.1. Human rights and freedoms (the right to property and the principle of legal equality were violated mostly);

2.2. Provisions of the Preamble of the Constitution (in most cases - the constitutional principle of the state under the rule of law);

2.3. Articles, which define constitutionality of Lithuanian state (mostly para. 1 and 2 of the art. 5);

2.4. Articles, which define nation's economy and labour (mostly art. 46 and 52).

3. The consolidation of the supremacy of constitutional law in politics

The Constitution provides that the Constitutional Court shall decide whether the laws and other acts of the Seimas are not in conflict with the Constitution and whether the acts of the President of the Republic and the Government are not in conflict with the Constitution or laws. Thus, the main function of the Constitutional Court is to guarantee the supremacy of the Constitution in the legal system. This function is also linked to a national security. The Law on Basics of National Security adopted on 19th December 1996 provides that the legal basis of the national security shall be inter alia the Constitution of the Republic of Lithuania. While this law does not indicate the direct duty of the Constitutional Court to ensure the national security, it is absolutely clear that the functions performed by this Court are very important guarantee of the democratic principles of society development enshrined in the Constitution, constitutional legality, respect for the Constitution and the trust in national institutions [17, p. 433-434].

Other functions of the Constitutional Court also confirm its unique place in the constitutional system. This Court not only guarantees the constitutionality, but also: 1) consolidates constitutional legality; 2) maintains the peace insocial-political life; 3) solves legal-political conflicts; 4) guarantees the continuity of the political proce-
The Constitutional Court also presents conclusions: “1) whether there were violations of election laws during elections of the President of the Republic or elections of Members of the Seimas; 2) whether the state of health of the President of the Republic allows him to continue to hold office; 3) whether international treaties of the Republic of Lithuania are not in conflict with the Constitution; 4) whether concrete actions of Members of the Seimas and State officials against whom an impeachment case has been instituted are in conflict with the Constitution”[14]. Thus, according to A. Abramavičius, the Constitutional Court not only ensures protection of fundamental rights enshrined in the Constitution and monitors if the limits of the state authorities’ powers were not crossed, but also has the direct impact on the development of law and legal practice [19, p. 16].

The functions of the Constitutional Court reveal the fact that this Court, unlike the courts of general jurisdiction, is a political actor in a sense. However, the Constitutional Court uses legal forms to solve political conflicts. It encourages participants of the political processes to base their actions on constitutional values that are universal and better effect the essence of the political culture. When constitutional values are violated, the Constitutional Court removes from the legal system the norms that are conflict with the Constitution.

According to the art. 106 of the Constitution of the Republic of Lithuania, the right to apply to the Constitutional Court is provided to not less than 1/5 of all members of the Seimas, the Government, the President of the Republic and the courts. The Constitution does not provide literally the jurisdiction of the Constitutional Court to decide competence disputes between the highest state authorities. However, the Court, while assessing the constitutionality of legislation of legislative and executive authorities, discusses very often whether the state authorities did not exceed their powers enshrined in the Constitution and whether they did not intrude in the area of other authorities’ powers. Thus, the Constitutional Court not only assesses the issues of competence, but also ensures the actual implementation of the principle of the separation of powers.

It is important to note, that the right of the group of Parliament members to appeal to the Constitutional Court is a democratic institution, which enshrines the possibilities of the parliamentary minority (opposition) to defend the supremacy of the Constitution. Current issues of political life confirm the fact that the parliamentary majority does not always guarantee constitutional legitimacy. Therefore, the additional opportunities for parliamentary minority are necessary.

Despite the fact that the Constitution is a directly applicable legal act, which means inter alia that any person may defend his rights on the basis of the Constitution[20, p. 178], the discussion on the possibility to submit the individual complaint to the Constitutional Court, held in 2006-2007, brought no real change. However, in the context of this debate, the Seimas approved the “Conception on Consolidation of Individual Constitutional Complaint” (hereinafter - the Conception). The preamble of this Conception notes that notes, which have old democratic traditions and respect the principle of the rule of law recognize this personal right, possibility and necessity to defend the violated rights and freedoms [21]. According to A. Abramavičius [19, p. 15], the aim to consolidate the individual constitutional complaint reflects the intensified trend of constitutionalisation of law. The makers of the Conception [21] assume that this institution and its effective implementation mechanism could contribute to the increase of public trust in the Constitutional Court and to reduce the amount of appeals to the European Court of Human Rights.

Conclusions

The establishment and maintenance of liberal democracy is a political and legal process where politicians have to obey the requirements of constitutionalism consciously. From the approach of the implementation of these requirements in Lithuanian policy it can be distinguished three periods of the development of the relationship between constitutional law and politics:

1. The period of priority of politics over constitutional law. The precedence of politics over law was settled during the Soviet occupation, because the socialist doctrine of law is subordinated to political interests.

After the restoration of the independent Lithuanian state and in the initial phase of state-building the
priority of politics over constitutional law did not disappear. This situation was objectively determined by the necessity to take active actions in order to build independent state and the remaining Soviet political thinking. The pursuit of freedom encouraged legislators to preach dispositive legal regulation: “allowed everything that is not directly prohibited by law”. These conditions were favourable for the formation of the legal collage.

2. The period of the priority of constitutional law over politics (1992 - 2004). At the beginning of this period the Lithuanian political community adopted the Constitution of the Republic of Lithuania in the referendum of 25th October 1992. This Constitution meets the requirements of constitutionalism of liberal democracy.

In 1993 the Constitutional Court of the Republic of Lithuania was founded. This Court is a judicial authority, which decides whether laws and other acts of the Seimas are not in conflict with the Constitution, and the acts of the President of the Republic and the Government are not in conflict with the Constitution or laws and thus guarantees the supremacy of the Constitution in the legal system and constitutional justice. During this period the Constitutional Court rulings mostly recorded the discrepancies between the requirements of human rights and the principle of the state under the rule of law and the legislation adopted by Seimas and other authorities of the Republic of Lithuania.

3. The period of the maintenance of constitutional laws as the methodological basis of political-legal thinking in the political life of the state (since 2004). The beginning of this period coincides with the entry of the Republic of Lithuania to the European Union and the North Atlantic Treaty Organization. This period reflects the tendency that the state’s politicians deliberately seek to obey the values and norms of the Constitution of the Republic of Lithuania.

References


Termination of a Franchise Agreement under Bulgarian Law

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Abstract: Since the franchise agreement was first established and gained popularity within the common law jurisdictions, it has its specific features and typical clauses. However, with its spread across the European countries, and precisely within those having civil law systems, some of the typical franchise clauses become either unnecessary or could acquire slightly different interpretation. The paper examines the typical provisions regarding the termination of the franchise agreement and the possible remedies for the parties of the agreement under the Bulgarian law. The aim of this investigation is to distinguish which typical clauses for the franchise agreement are indispensable and which are unnecessary as they already fall within the regulation of the commercial law. It also investigates the possible remedies for both the franchisor and the franchisee in case of breach of the agreement under the current regulation of the commercial contracts in Bulgaria.

1. Current applicable statutory regulations

Although franchise agreement is gaining popularity in Bulgaria, it is not regulated by the legislation - there are no special provisions regarding franchise agreements. As the franchise agreement is among the non-regulated agreements, the general provisions of Commercial and Civil law are applied – primarily Commercial Act and Obligations and Contracts Act (OCA). The only legal definition of franchising is set forth in the supplementary provisions of the Corporate Income Tax Act, according to which “franchising” is defined as the totality of industrial or intellectual property rights relating to trademarks, trade names, logotypes, utility models, designs, copyrights, know-how or patents, granted in return for a royalty, to be used for the sale of goods and/or provision of services. [1]

Although Bulgarian Franchise Association’s Code of Ethics [2], UNIROIT and other independent organizations provide sample regulations and recommendations, there is no regulation on franchise agreement which is obligatory for the parties. They are bound by the terms and conditions of their franchise agreement and by the applicable imperative statutory provisions. One positive side of this, especially for franchisors, is that no special registration or permission is required before a franchise is offered or established, regardless of whether the franchisor is local or foreign person or entity. Also, there are no legal requirements or legal minimum for disclosure of information to the franchisee by the franchisor. The amount of disclosed information to be presented to the fran-
chisee is left at the discretion of the parties during the negotiation process.

Although it may seem that applicable law is broad and does not provide enough security, considering the many special features which differentiate franchise agreement from any other contract, the current regulation in fact does provide sufficient protection and remedies for the franchise agreement parties as well as for third parties and customers. This is partly due to the fact that good faith in performance of parties is among the basic principles of the legal acts and court practice. Also the abstract provisions stipulated in the applicable statutes ensure enough flexibility to be applied in any particular case whenever necessary.

2. Main features of franchise agreements regarding their termination

Any contract could be terminated for various reasons. In this paper we will divide the termination conditions into two main groups: termination in cases when at least one of the parties is at fault or termination of the franchise agreement in cases when none of them is at fault.

Before we examine the termination procedures and consequences, we must point out the conditions under which a termination of an agreement is possible. In order to terminate one contract, including a franchise agreement, it has to be concluded. It also has to be valid under the current legislation. Valid is a contract which does not contravene or circumvent the law, does not infringe upon good morals, does not have impossible subject, the parties were legally capable at the time of its conclusion when a consent has been reached and the contract has been concluded in the form prescribed by law. The contract has entered into effect and there are no defects which could lead to its nullity.

Franchise agreement, since it is not regulated by any statute, falls within the group of informal contracts – no specific form of franchise agreement is required for its validity. However, due to its numerous and sophisticated clauses, it is usually in written form.

In general, when a contract is rescinded, the rescission has retroactive effect. But since franchise agreement is classified as contract which involves continuous or periodic performance by its parties, its termination releases the parties from their obligations always only for the future, i.e. no retroactive effect is possible in case of rescission of franchise agreements. Other such contracts are lease agreements, service agreements or rental agreements.

3. Termination of franchise agreement when none of the parties is in default

3.1. Relevant provisions under current legislation

Legal statutes mentioned in Sec. 1 apply in cases of termination of franchise agreements. Besides them, as in most legal systems, the basic Roman law principle pacta sunt servanda is explicitly implemented in Bulgarian legislation under art. 20a of OCA [3]. It confirms that whatever the parties have agreed on is equal to a statute for them.

Also, another basic principle is the one concerning parties’ freedom of contract. Under art. 9 of OCA it is stipulated that parties may determine the content of the contract insofar as it does not contravene the mandatory provisions of the law and good morals.

3.2. Termination on conditions explicitly agreed in the franchise agreement

In most cases the conditions under which franchise agreement could be terminated are explicitly agreed by the parties in the franchise agreement. Franchise agreements are usually concluded for terms of 5, 10 or more years. And unless renewed, with the expiry of the fixed in the agreement term, the franchise is terminated. Fixed-term contracts are in effect until the expiry of the provided time limit. Until then the parties are bound by the obligations and conditions stipulated in the agreement. Any of the parties has the right to claim and, if necessary, resort to state duress to enforce the contract. For this reason, termination of the contract before the expiry of the term is in general forbidden by the statutes of Bulgaria. Possible exceptions are reviewed further in the paper.

Furthermore, the parties could agree on certain requirements or conditions, which, if not fulfilled, would lead to termination. Such requirements in franchise agreements usually are achieving specified amounts of sales, maintaining high quality of good/services or opening predetermined number of new establishments.

Parties must beware that due to the right of parties to enter freely in agreements and their binding effect, as long as termination conditions have been
fulfilled, this would lead to termination of the franchise agreement on grounds of contract’s terms and conditions mutually agreed by the parties. Unless the contract is voidable, it cannot be rescinded or annulled neither by the court nor by the parties. Unless mutually agreed by the parties with another annex or additional agreement, the explicitly agreed is legally valid and no objections are possible. If the parties have agreed so, the franchise agreement shall be terminated regardless of the investments and commitment of either party to the franchise. The court has no legal power to interfere and terminate or refuse termination if clauses of a contract are fulfilled.

3.3. Termination on conditions not explicitly agreed in the franchise agreement

Although it is less common for franchise agreements, it is possible, whether from the beginning or after a renewal of the agreement, that no fixed term of the franchise agreement has been agreed between the parties. It could become more problematic when none of the termination conditions provided in the franchise agreement have occurred, but one or both of the parties desires to terminate it. Reasons for this vary: change of economic conditions, new business strategy of one of the parties, etc. The option for the parties to stipulate the right of one or the other, or both, to unilaterally terminate an agreement has no general regulation in Bulgarian law. Nonetheless, this option has never been questioned.

[4]

In Bulgarian legislation there are no general provisions regulating cases where one party desires to terminate an agreement with an indefinite term. However, there are only special provisions applicable to limited number of contracts. Such contract is lease of property where if no term is specified, the contract shall be terminated upon one-month notice to the other party.

We must highlight the fact that under Bulgarian legislation there is no limitation or prohibition of any of the parties of a franchise agreement to terminate it. When one of the parties of a franchise agreement desires to terminate an agreement without a fixed term, two courses of actions are possible. The first one is more favorable - mutual agreement on the termination could be reached. This way parties could negotiate and agree on the termination and its consequences. The termination will be on ground of mutual agreement.

The second way includes cases where no agreement between franchisor and franchisee is reached. Regarding franchise agreements, there is not a statutory minimum term of the notice period which must be given in advance to the other party when neither the franchisor, nor the franchisee has violated the agreement of indefinite duration. However, taking into consideration the conditions of the franchise agreement and the dependence of the franchisee on the franchise business, a parallel could be drawn between franchise and commercial agency agreement. [5] Although in Bulgaria commercial agency provisions are not applied to franchise agreements, still, in cases of claim and lawsuit, analogy could be applied only for the advisable terms of the termination notice. Under Bulgarian Commercial Act for agreements with duration of two or more years at least 3-month notice of termination in advance has to be given to the agent. For the avoidance of franchisee’s claim for damages caused by insufficient notice period of termination, if an agreement between the parties is not reached, at least 3-month notice period should be enough to forestall any grounds for a claim by the franchisee.

Due to the non-existence of legal norms that govern unilateral termination of franchise agreement without any party being at fault, for avoidance of possible future disputes, we would recommend that such conditions and consequences of termination be agreed and explicitly stated in the contract beforehand, including notice period, compensation, post-termination covenants, etc.

4. Termination of franchise agreements when one of the parties is in default

It is hardly doubtful that the aim of every contract is its performance and rarely does any of the parties desire non-performance. Nonetheless, this could happen. Non-performance could be result of either breach of one of the parties or of circumstances which are beyond parties’ ability to act or change the conditions.

Unlike the cases we examined so far, unilateral termination of an agreement in cases of non-performance is regulated in Obligations and Contracts Act.

4.1. Termination of franchise agreements when one of the parties in default is liable

If one of the parties of franchise agreement does not perform, the party not in breach has the right to
rescind the agreement. The legal procedure and consequences are stipulated under art. 87 OCA.

Franchise agreement could be rescinded on ground of other party’s default if, firstly, a valid contract has been concluded and has entered into force. Also, while one of the parties have breached at least one of its obligations under the agreement, the other party must have performed or be ready to perform its obligations.

As already stated in Sec. 2, the rescission will have effect only on future obligations of the parties. In case of franchise agreement there is no retroactive effect.

Fundamental non-performance

An important requirement must be met concerning the committed non-performance by one of the parties. It is important that the breach be fundamental. A breach is fundamental or material, when there has been non-performance of an essential obligation of the agreement.

In fact, the lack of strict definition of fundamental non-performance allows the parties and the court, if necessary, flexibility and opportunity to weigh up every fact and take into consideration the whole factual situation. This is fairly suitable considering the complicated nature of franchise agreement. The only criterion for the fundamental nature of the non-performance is the other party’s interest. Paragraph 4 of art. 87 OCA explicitly states that rescission shall not be admissible if the part not performed is immaterial with regard to the creditor’s interest. [6]

A parallel could be drawn between the “good cause” or “reasonable cause” for termination required in common law jurisdictions and fundamental non-performance. Usually “good cause” is defined as failure of a party to substantially comply with the requirements [7] of franchise agreement. Various examples for good cause to terminate could be found in the US jurisprudence. Among most common are abandonment of a franchise, failure of the franchisee to maintain certain standards or meet requirements, such as good quality of services or goods provided, sale of competing products in case of granted exclusivity [8], insolvency of one of the parties or failure of the franchisee to pay royalties, to report income, sales or other information or conceal of such [9]. Any non-performance of a franchisor’s essential obligation, such as failure to provide license and undisturbed use of its trade mark, assistance, training, etc. could also lead to termination of the franchise agreement upon unilateral declaration of will of the party not in breach.

Of course, there might be a disagreement between the franchisor and franchisee with respect to the fundamental character of the breach. If the breaching party reckons that the termination has not been fulfilled or if it challenges the right of the other party to rescind the contract, the breaching party has the right to file a claim for performance or compensation for the non-performance of the other. In such legal proceedings upon objection of the respondent, the court will exert control over the existence of the required conditions for rescission. If the court finds that the requirements for rescission had not been met, it will rule as if the contract had not been rescinded [10]. In the legal proceedings the court takes into consideration the contract provisions, parties’ rights and obligations, the type of non-performance and whether it is fundamental compared to the best interest of the party not in breach.

Liability for non-performance

The party in default must be liable for the committed breach. It is established through a rebuttable presumption that the party in breach is liable. That is to say if the party in breach claims it is not liable for the default, the burden is upon it to prove it is not liable for the non-performance. In this case it is irrelevant whether the non-performance is due to negligence or intention.

Right to cure

Of course, the party not in breach may choose not to terminate the agreement. However, if it decides to do so, the termination shall not occur immediately. The party not at fault willing to terminate the franchise agreement has to comply with the procedure under art. 87 OCA: the party not at fault is obliged to give notice of the default and of its will to terminate the agreement along with an opportunity to the other party to cure the default. The notice must contain sufficient period of time to enable the party in default to take necessary measures to cure the breach. During the period between the notice and the date of termination, the contract is still in effect. Not until the expiry of the time given and if there is still no performance, the party not at fault has the right to terminate the agreement.
Although there is no minimum cure period, it is essential that the period given is sufficient. Again, the lack of specific statutory terms ensures adjustment of the legal provision to the actual case. The only requirement for the period to cure is to be reasonable. The time has to be enough so that the party in breach could truly perform in accordance to its obligations. For example, if a royalty or advertising fee is due, a 7 or 10-day term usually must be sufficient. However, if the obligation to be performed is opening a new establishment within certain area, obviously few days or even month will not be sufficient.

Failure to comply with the notice requirement means the contract shall not be terminated even though the party had right to terminate. Moreover, if the time for cure provided with the termination notice is not enough according to objective criteria, the franchise agreement shall not be deemed terminated despite the declaration of will for termination. Only after sufficient time has expired and the party in breach has not performed, will the franchise agreement be unilaterally terminated.

The importance of such notice is evident from two court decisions in which the court has ruled out that franchise agreements have not been terminated despite the existent non-performance because the notice of additional time to cure and the notice of consequent termination have not been delivered properly. Although a notary invitation has been delivered, as the parties not at fault could not present proof of receipt, the court ruled that the franchise agreements in question were still not terminated. In one decision “the court finds that the objection for terminated franchise agreement has no grounds as it is not proved that the declaration of will of the respondent has been delivered to the claimant.‖ [11]

Expressed declaration of will to terminate

As long as the conditions stated above are present, the party not in breach has the right to terminate the franchise agreement by unilateral declaration of its will. Without an expresses declaration of will of the party not at fault the franchise agreement shall retain its validity despite the violation. The party must state its will to terminate the agreement. When either party fails to perform, this does not releases the other party from its obligations under the agreement.

Although it may seem that two separate notifications must be delivered for termination of the agreement, in fact only one notice is enough as long as it gives sufficient period of time to cure and states clearly that unless the party in breach performs within the stated term, the agreement will be terminated due to failure of the party to perform.

Usually in case of franchising the rescission is carried out without court’s interference. [12] Also, as franchising agreements are usually in written form, the notice of termination must also be made in writing.

The right to rescind a contract shall expire after five years since the violation has been committed or since the day following the one on which a consideration must have been paid.

An emphasis should be placed on the fact that the provisions of art. 87, par. 1 OCA are dispositive. This means that Bulgarian legislation allows waiver of this right of time period to cure. Franchisor and franchisee have the freedom of contract to agree on different conditions for the termination of their agreement in case of non-performance. Once again we must remind, though, that under Bulgarian law count interference is inadmissible as the parties have concluded valid contract so clauses of the agreement must be reviewed very carefully. Unless nothing different is explicitly agreed between them, the statutory provisions will be applied.

Incurable breaches

The additional time to cure is granted by the legislator to the party in breach in order to perform and preserve the existing agreement. For this reason, paragraph 2 of art. 87 OCA sets forth that if performance is not possible, or in other words, if the breach is incurable, the party not in breach is not under the obligation to give notice with sufficient time to cure. In such cases, only the party’s unilateral declaration of will that the agreement will be terminated is required. Moreover, if the party not in breach no longer has interest of the breaching party’s performance, the agreement would also be terminated immediately upon the declaration of will for termination. For example if the franchisee has already bought necessary equipment or goods from another supplier.

Once again the question when a breach is incurable is left to the parties (and the court if a claim is lodged) to decide.
A default could be incurable because it is already a fact from the past that cannot be changed. For instance, abandonment of franchise establishment or failure of franchisee to achieve required number of sales for the past year. Another example would be a franchisor which had the obligation to provide certain number of training or qualification courses for franchisee’s personnel during the first year of the franchising. [13]

Other type of incurable breach when the party not in breach is allowed to terminate the franchise agreement immediately upon its declaration of will to do so is when the breach “goes to the root of the matter or essence of the contract” [14]. In the USA courts have ruled that violations of criminal statutes, tax fraud, submitting fraudulent documents to the franchisor [15], are also incurable breaches.

Keeping in mind the importance of trust in the relationship between the franchisor and franchisee, undoubtedly any act or non-performance that would lead to the breakdown in the relationship of trust is also considered as fundamental and incurable breach. Such conclusion is drawn from the regulation of mandate and agency in Bulgarian statutes. When entering into any of these two agreements, trust is of essence in the relationship between the parties, and their termination is not limited in time and no reasons have to be stated. This provides us with grounds to consider that any non-performance or action which could reasonably lead to breakdown of trust between parties is an incurable breach sufficient for the termination of any franchise agreement.

In case of incurable breach also an expressed declaration of will to terminate the contract is necessary. The party giving the notice of termination has to ensure its delivery to the breaching party. The only difference is that no period of time to cure is necessary because the default cannot be cured by any means. Termination of the franchise agreement will be final upon notice with immediate effect.

This statutory provision is also dispositive and is applied unless nothing different is explicitly agreed between the parties.

4.2. Termination of franchise agreements when none of the parties in default is liable

One of the most popular cases when a party is not liable for its non-performance is the occurrence of force majeure. Even if such provision is not explicitly stated in the franchise agreement, it is still applicable under art. 306 of Bulgarian Commercial Act. [16] The performance of an obligation could be postponed for the duration of force majeure if the party cannot perform its obligations because of unforeseen and unavoidable event of extraordinary nature which has occurred after the conclusion of the agreement. Upon occurrence of such an event, an immediate notice to the other party must be given, stating its possible and expected duration and consequences. If at least one of the parties has no interest of the performance after the force majeure is over, the party is entitled to terminate the contract. However, no damages or compensation can be claimed under these conditions.

Regarding the franchise agreement force majeure would usually lead to temporary suspension of one or both parties’ performance without leading to their liability for non-performance.

Another such change of conditions could lead to termination of franchise agreement. This is the case of frustration. According to art. 307 of Commercial Code a court may, upon request by one of the parties, modify or terminate the contract entirely or partly, in the event of the occurrence of such circumstances which the parties could not and were not obliged to foresee, and should the preservation of the contract be contrary to fairness and good faith.

In contrast to the other cases, the right of frustration cannot be exercised without court proceedings. The court, upon a party’s claim, could review the current economic conditions and how they have changed since the conclusion of the agreement. Only in case of severe losses that would be incurred by the party or in there is a huge difference in the value of the performances of the parties, could the court decide in favour of change or termination of the agreement.

5. Remedies

When one of the parties of a franchise agreement fails to perform, the other has a number of remedies available.

For starters, we have already examined in detail the rescission of a franchise agreement. What was not mentioned so far was that the party not in breach has the right to claim compensation for the damages incurred because of the non-performance. The com-
pensation could also include lost profits as long as the claimant can prove them.

If the party not in breach prefers, it could still claim delayed or partial performance and compensation for damages. However, in accordance with art. 66 OCA, [17] the party not in breach cannot be forced to accept only partial performance. If the party not in default refuses to accept partial performance, the agreement will be terminated.

Art. 89 of OCA states that if a performance becomes impossible, the contract shall be terminated. However, if the impossibility is only partial, the party not in breach is given the right to claim either reduction of its own consideration or obligation, or termination of the agreement through court proceedings.

As we know, before the expiry of the notice period in case of termination, the party not at fault still has to perform because the agreement is in effect. However, under these circumstances or even if no notice of termination has been given, the party not in default has the right to refuse to perform until the breaching party performs its obligation. Even in case of a lawsuit, the party not in breach shall have to perform simultaneously with the other party of the agreement. This remedy is granted in compliance with art. 90 OCA. What is more, paragraph 2 of art. 90 provides that where it is evident from the circumstances that there is a threat that one of the parties may not perform, the other party may refuse to perform, unless it is given adequate security.

6. Conclusion

The purpose of this paper is to examine and explain the basic rights and obligations both parties of a franchise agreement have under Bulgarian legislation in case of non-performance.

We hope the brief insight will be useful for people who operate franchise systems, franchised units or take particular interest in Bulgarian franchise market. Those of the readers who investigate franchise agreements may also find something new or interesting with regard to regulation of contract termination and possible remedies under Bulgarian law system.

References


[3] Art. 20a of Obligations and Contracts Act: (1) Contracts shall have the force of a law for the parties which have concluded them. (2) Contracts may be amended, terminated, avoided or revoked only by mutual consent of the parties or on grounds provided for in the law.


[5] In some EU countries due to similar characteristics of the two agreements statutory provisions applicable to commercial agents are applied so as to ensure better protection of the franchisee. See Abell. P., “The Regulation of Franchising in the European Union”, Queen Mary, University of London, 2011, p.183.

[6] The only clear and exact statutory provision prohibiting rescission is in case of non-performance of installment sale when the buyer fails to pay installments which do not exceed 1/5 of the chattel's price. Hence, we could conclude that delay in payment of one royalty or advertising fee most probably will not constitute fundamental non-performance. However, if more delayed payments accrue, the franchisor’s interest will definitely be concerned.


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№ 28263/2011 of Sofia Regional Court provides the same reasoning on a similar case.

[12] According to art. 87 OCA, rescission of contracts has to be done through court only if there has been transfer, creation, recognition or termination of real rights on immovable property. As franchise agreements rarely deal with immovable property rights, usually no court proceedings are necessary for their rescission.

[13] For more examples of so called historical incurable breaches, applicable in Bulgarian statutory environment see Frederick Simmons, David Gurnick, C. Criffit Towle, Incurable defaults and “good cause” requirements - Can sound drafting reconcile the two?, International Franchise Association, 43th Annual Legal Symposium, 2010, p. 14.


[16] Article 306 of Bulgarian Commercial Act:
(1) A debtor in a commercial transaction shall not be liable for failure to perform due to force majeure. Where the debtor was already in default, he may not invoke force majeure.
(2) A force majeure shall be an unforeseen or unavoidable event of an extraordinary nature which has occurred after the conclusion of the contract.
(3) A debtor who cannot perform due to force majeure shall notify the other party in writing within a reasonable time about the nature of the force majeure, and its potential consequences for the contract. In case of failure to notify, compensation shall be due for the damages resulting from such failure.
(4) The performance of obligations and the related counter-obligations shall be suspended for the duration of the force majeure.
(5) Should the duration of the force majeure be such that the creditor loses its interest in the performance, he shall be entitled to terminate the contract. The debtor shall also have the same right.

[17] Art. 66. The creditor cannot be forced into accepting payments in installments, even though the obligation may be divisible.
Is the European Referendum an institution *sine qua non* of the European Constitution?

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Abstract: This study is dedicated to the European referendum, a new species of referendum, which has integrated itself in the whole of the multiple forms of referendum. The particularity of the European referendum, analysed as a distinct entity, consists in the fact that in the current study of the community law, it can only be organized based and within the national law of the member or of the aspiring states. The doctrine has identified three types of European referendums: adherence referendums, integration referendums, and expansion ones. The fact that the referendum has played a role in the European construction and in its evolution is obvious, and in the doctrine it has been problematized if the referendum would still play a role in the speeding up or in the slowdown of the European construction. At the current time, the European Union meets an actual regression in the matter of European integration, maybe the main priority for its evolution. The negative results of the referendums developed in France and in the Netherlands for the approval of the Treaty which institutes a Constitution for Europe have had as an effect the locking of any integration effort, the matter of adherence being almost completely solved. In general, it is being militated that the European Union gives up the circumspect conception over the direct democracy, and that it does not think of it as an opponent, but rather as an ally particularly useful in the fight for regaining its super-state legitimacy.

Introduction

In theory, as in practice, the contemporary democracies are drawn to the spectre of direct people’s actions as an alternative to all the types of representative systems. The direct people’s action, in its various forms, serves to the fortification of the democratic element and provides a real support mean of the democratic constitutional systems. But if the dose is too large, the balance is broken [1]. This is also the dilemma that the European Union tries, as a living body, in continuous transformation and adjustment, which we will try to explain in the following paragraphs.

In its core, the referendum is a type of scrutiny, organized not for designing other people in the structures of the state authorities, as it happens through elections – the other form of expression of the people’s sovereignty, but one through which the citizens manifest their support or opposition towards a measure/proposal drawn by the ruling members or self-proposed.

The elections characterize the representative democracy, in fact there are its base and, starting from the saying that the people are the legitimate holder of sovereignty, two ways of the people’s manifestation were established: the referendum together with the elections. These two institutions frame the semi-direct democracy. In the doctrine, the opinion that there is the sub-species of the ”democracy through referendum” which appears as a democracy in which the demos decides in a direct manner over the controversial issues, without reuniting themselves, but in a more discrete manner, through the referendum [2].

Various national referendums have been organized, in various time periods, in most of the democratic countries. The Netherlands and the United States are the only modern democracies that don’t acknowledge any form of referendum consultation on a national scale, but most of the American states have acknowledged this form of democracy manifestation. Consolidated democracies such as Great Britain or Belgium have recourse exceptionally to the referendum, the first to remain in the European Economic Community (1975), the second so that the kink Leopold the IIIrd regains the throne (1950). Even the countries lead at a certain point by authoritative regimes have organized referendums – it is the case of Nazi Germany, when Hitler, in the first years of the 3rd Reich, has ordered
the organization of four separate referendums in order to ask the people if they approve his politics and authority as führer. To these referendums 98% of the citizens attended, and their quasi-totality – 99% - have elected the only option written on the ballot: *ja*. In August 19th 1934, after the death of Hindenburg, the German people decided also through a referendum the merging, for Adolf Hitler of the chancellor and head of state qualities.

Statistically, starting with the 16th century, in the democratic states approximately eight hundred referendums were organized, out of which more than four hundred in Switzerland, country where multiple referendums overlapped the legislative elections. Still, most of the democratic regimes only sporadically have recourse to the referendum organization, and then only to solve certain particular issues or to justify specific solutions (such as the referendums organized in most of the European countries à-propos to the adherence to the European Union). Regarding the adherence or the remaining in the European Economic Community, in the seventy’s five different countries organized referendums: France (regarding the extension of EEC), Norway, Denmark, Ireland and Great Britain. In the last three countries, these consultations represented high interest events and political involvement. The Treaty of Maastricht from 1992 was the subject of acknowledgement through referendum in three countries: France, where the proceeding transformed itself in a true pole regarding the support of the president François Mitterand, Denmark and Italy. The rejection, in the first phase, of the Treaty by the Danish people, created a shock for the local political class, but also for the European public opinion. Lately, we are assisting a considerable growth of the referendum procedure, and, maybe surprising, these cases are found in countries that not till long ago were lead by dictatorial regimes [3]. We believe this customs is meant to prove to the free people, not oppressed, his real force, the fact that it is the legitimate holder of sovereignty and the master of its own destiny, and the implementation of the procedure increases the public trust in the values of the democracy. anyhow, the theory and practice show that the direct democracy, through its pylon – the referendum, is a decisional procedure which shows an uneven and unequalled legitimacy.

The legal institution of the referendum embraces a plurality of forms which are different amongst them, but which grouped merge towards the common root – the definition and the fundamental features of the institution. A classification of the referendums start from certain criteria established by the Venice Commission, content and effects, even if the same type of referendum may be framed in in more classes, their variety being obvious. According to the *content*, the referendum is constitutional, legislative and conventional. According to the *effects* of the referendum, it may be decisional or consultative [4]. On a worldwide level several forms of referendums are regulated, with different nature and typology, classifications that exceed the object of this study, and in this panoply a new species of referendum was inserted and manifested, the European one. This last one obviously presents a particular specificity and, in time has very much influenced the route of the European Union.

The question that we ask ourselves if the European referendum must be mandatorily inserted in the body of the European Constitution and if, in its absence, the European people has any way of manifesting its political options regarding the European construction of which is part, either collectively (all the peoples of the member states together), either grouped (only some of them) or individually. Nowadays, in the adopted form, the referendum is not included in the Treaty which institutes the European Constitution (TCE), normally named the European Constitution. This is an international treaty that has as a purpose the creation of a Constitution for the European Union. This Treaty was signed in 2004 by representatives of the Member States, but only two of them subsequently rejected it through the referendum. Its main purposes were to replace the overlaps existing in the current treaties (see the Treaties of the European Union) which compose the current "constitution" of the Union, to give a comprehensive formula of the human rights on UE territory, and to render fluent the decision making process in the current organization of 28 Member States. TCE was signed by representatives of Member States on October 29th, 2004, and was submitted to the ratification process by the member states until the moment that, in 2005, the French voters (May 29) and the Dutch ones (June 1) rejected it during the referendums. The failure registered by the constitution in gaining the people’s support in these two countries has lead other countries to postpone or to stop the ratification procedure, and currently the future of the Constitution of very uncertain. If it would have been ratified, the Treaty would have been in force on November 1st, 2006. Starting from May 2006, the Treaty of the European Constitution is ratified in the following countries: Austria, Belgium, Cyprus, Estonia, Germany, Greece, Hungary, Italy,
Latvia, Lithuania, Luxemburg, Malta, Slovakia, Slovenia and Spain.

1. European Referendum

The principle of the necessity if a democratic legitimacy is acknowledged and accepted at the level of the European Union, and this due to the fact that once an authority may exercise its competences and take measures that have a mandatory effect for the aimed law subjects, the exercise of the said power must be legitimate. The European Union has a sui generis legal matter and isn’t comparable to any other state, nor with a classical international organization; the member states continue to exist as sovereign states, but this particular sovereignty is limited by the competences attributed to the Union [5].

To gain such a legitimacy of the decisions taken at Union level only through national proceedings not only that is theoretically insufficient, but it also is illusory, given the detachment of the community proceedings from the national structures [6]. Such, the European Community is put in the situation to compensate a democracy deficit, hard to accomplish. Or, democracy as a governing form is the sine qua non condition of the entire European construction.

Each member state has as governing form the democracy, but given the sui-generis construction of the Union, there is a democracy shortcoming in the relationships between the Union and the member states. In this context, the democratization of the European Union is hit by an institutional and conceptual obstacle, due to the organization of power within the Union is not overlapped on the pyramidal scheme existent in the member states. The Euro-deputies are democratically elected, but they share the legislative power with the Council, based on a mutual influence relationship. Together with the Commission, this decisional triptych reveals a horizontal political system, marked by a continuous and permanent negotiation, without subordination reports [7].

Currently, the European Union knows a real regress in the matter of the European integration matter, maybe the main priority for its evolution. The negative results of the referendums developed in France and in the Netherlands for the approval of the Treaty which institutes a Constitution for Europe (forwardly the constitutional Treaty) have had as effect the blocking of any integration effort. Thus, the in force of the constitutional Treaty is put under question, or may be finally cancelled [8].

The gap between the study of the European integration project and its fragile legitimacy brings out upfront the reconsideration of the position that the citizen has within the Union. On one hand, he must become a co-participant to the important political decisions, and on the other hand his political representation must be improved, and implicitly the role of the political parties, both nationally and on a European level. The referendum solution is approached by some member states starting with the 90’s, completed with the voting, regarding the extension of the European Constitution, seems to confirm the desire to strengthen the connection between citizens and the political power. The same solution marks a return to the source of sovereignty, in the sense that the necessity to place legitimacy on a people’s pedestal comes back as a first issue.

In the foreign doctrine it was problematized if the referendum would play an acceleration or deceleration role of the European construction. In a stage where it seems that a two gear Europe is being framed, which hesitates to take a leap that they find too brave for their citizens, could take the decision ad referendum, rather than giving up a priori through a censorship based on a wrong evaluation of the European dynamism by the fellow citizens. Thus, the referendum would play an accelerating role, releasing a construction found in a deadlock due to wrong appreciation of the maturity of the public opinion [9]. In another vision, the referendum may play a blocking role that would allow the governments to cover themselves behind a „no” of a referendum origin. A proof may be the fact that in Great Britain, where the referendum was long perceived as fiction, it is invoked especially by the Euro-sceptics: the maintenance of Great Britain in the European Economic Community was decided through a consultative referendum organized in June 5th 1975, the presence to voting being of 64,5%, out of which 67,2% chose to keep the quality of their country as a member of the Community; in exchange, the following stages in the European reports were decided by the British Parliament, maybe due to the fact that there would be the risk of a negative result that could have caused inconveniences with extended effects at a Union level.

The fact that the referendum played a role in European construction and in its evolution is obvious. Its role may be resumed to that that it served to the
approval of a construction led on an institutional way. Therefore, a support, and not a motor role.

Trying to increase its applicability, we are questioning the capability of this institution, disputed, to assume such a role; main difficulties (object of the referendum, aimed field, the initiative – people’s or institutional, moment of the development, way, control) result from the multitude of the referendum forms, and out of the variety of the procedures. The capability of the referendum to animate the European construction depends on the legal form that would embrace in all the stages of its development. But before assigning it a deciding role in the regulation of the European construction, we can’t rule out the legal and political consequences of the referendum, nor the desire to canalize them in a positive direction.

The particularity of the European referendums consists in the fact that, in the current stage of community law, they can only be organized based and within the national and the member or aspiring states law. Nor the initial neither the constitutional treaty doesn’t assign the referendum as an instrument of the community decisional process. Thus, it may be found a dissociation between the object of these referendums, which aim matters of European interest, and their origin and nature, which are exclusively national. This dissociation renders a people to be questioned on a certain issue, and the result of the referendum to produce legal effects not only on itself and on its statute, but also on the Union or on the states and on the people that form it [10].

In fact, the national referendums having as object European issues has acquired a custom and a periodicity which grants it a certain spread. From the creation of the European Economic Community, in 1957, no less than 45 european referendums have been organized in 25 in Europe. For example, Switzerland, even thou it is not a member state, it has met 9 times the expression of the people’s vote regarding the relationships with the Union. In Ireland or Denmark there have been 6 consultations, in France 3, and in Norway, Liechtenstein and Sweden, two. In other 16 states (Italy, Austria, Hungary, Poland, Netherlands etc.), the people have been questioned with a European referendum only once. Out of them, 34 referendums ended with a positive result, and 11 with a negative one.

The doctrine has identified three categories of European referendums: adherence referendums, integration referendums, and the extension ones [11]. In another vision, it was said that we can distinguish between three types of issues decided in E.U. referendums: membership, treaty ratification, single policy issues[12].

The adherence referendum is the most frequent ad the oldest form of the national referendums aiming European issues. In its specific frame, the people is called to decide whether his own state directly participates to the integration process, becoming member of the European Union, and simultaneously adhering to the European Economic Area, by adopting the unique currency.

In membership referendums, voters are asked to decide whether or not to join the E.U. Some national constitutions contain provisions that render it mandatory to hold a referendum in order to have access to an international organization, but even without such provisions, governments may decide to consult the people before acceding to the Union [13].

Over time, the adherence referendums imposed themselves in the national practice as a central item of the European constitutional law. This fact proves the remarkable ideological power of direct democracy every time when an act or a decision requires a high degree of legitimacy. Adherence represents such an act because it involves a substantial sovereignty transfer and taking over the community acquis, which continues to grow.

The European role of the referendum, with impact over the construction of the Union, was highlighted especially in 2003, when adherence referendums were organized in eight central and eastern European states. All these referendums had, amongst others, a role in guaranteeing to the political decision a popular legitimacy, all ended with a positive answer. Anyhow, the intention of each state in organizing those referendums was a brave one, due to the fact that certain negative domino effects existed, to upset the superior interest decision taken at Brussels. It is interesting to find out why all these eight states decided to organize referendums, almost simultaneously, on this matter, assuming the risk of a negative result. Observing the history of the adherence stages of the member states, a part of the member states did not ground their decision on a people’s vote expressed within a referendum: Cyprus, or the southern states, Greece, Spain, Portugal [14].

For example, in Austria, the mandatory referendum from June 12th, 1994 having the object a federal
constitutional law related to the adherence of Austria to the Union, organized based on the article 44 paragraph 3 of the Constitution, has finalized the negotiation process started in 1963 (66.58% of the citizens participating to the vote answered „yes”). In Denmark, the sovereignty assignment for the purpose of the promotion of cooperation and rallying to the international legal order constitutes a subject that is part of the legislative referendum (article 20 of the Constitution). This referendum claims a 30% quorum of the citizens registered on the lists, and it was organized three times: first on October 2nd 1972 for the adherence to the European Economic Community (56.7% yes, 32.9% no); the second referendum took place on February 27th 1986 for the ratification of the Unique Act (42% yes, 32.7% no), and the one from June 2nd 1992, which aimed the ratification of the Treaty of the European Union, and which was first rejected by the people (49.3% yes, 50.7% no), in order to restore the situation and even the image of the country, which was affected by the result, a new referendum was organized on May 18th 1993, for the ratification of Edinburgh, meaning that the Maastricht agreement, resulted in a positive (56.8% “yes” out of 85.5% participants). This referendum was based on an artifice, because it was based on the article 42 of the Constitution, and not on the article 20, as in the previous case, the political will of the political deciders being that to ratify the Treaty.

The adherence of Finland to the Union was also grounded on a referendum, consultative, organized on October 16th 1994, and the positive result was exploited by the national Parliament, which ratified, with a majority of two thirds, the Treaty from Maastricht. The same thing also happened in Sweden, when the consultative referendum from November 13th 1994 allowed the adherence to the Union. Ireland is the country that applied most of the times the referendum in order to decide European issues. The referendum on May 10th 1972 allowed the adherence to the European Economic Community and the alteration of the article 15 of the Constitution, in order to allow the application of the community legislation in the domestic law (83% yes out of 70.9%, presence to vote); the referendum from May 26th 1987 for the ratification of the European Unique Act European (69.9% yes out of 43.9%, presence to vote); the referendum from June 18th 1992 for the ratification of the Maastricht Treaty (68.7% yes, out of 57.3% presence to vote).

In other states, Germany, Greece, Belgium, Portugal, Italy, Luxemburg, the referendum was not used to obtain the legitimation of the decision of adherence to the Union. The integration referendum has as object the enhancement of the integration process, by formal revision of the founding treaties through: European Unique Act (1986), Maastricht Treaty (1992), Amsterdam Treaty (1998), Nice Treaty (2001), Constitutional Treaty (2004), Lisbon Treaty (2007). The issue for this referendum is not the adherence, but the thoroughgoing study of the integration of a state which previously adhered to the Union, or a preservation of the status quo, in case of failure. Out of the 15 integration referendums which were developed in the last two decades, 10 have registered positive results and 5 lead to the hold back of the integration process. The last example is that of Ireland from 2008, when the Irish people voted following a national referendum organized on June 12 2008, against the Lisbon Treaty. Subsequently, a pole was realized in order to better understand the reasons that were the ground for the votes expressed in favour or against the Treaty and which was the cause of the absence to the vote.

The integration referendum is different firmly from the adherence one, whose negative result only concerns the state (for instance, Switzerland), while the failure of the first not only concerns the state and the said people, but also the entire Union, as a distinct entity. For example, the rejection of adherence of the Norwegian people in 1994 produced limited state effects, but the rejection by the French and Dutch of the constitutional Treaty may lead to the final institutional elimination of this important act for the future of the Union.

This means that the integration referendum is susceptible to produce a bizarre effect: the people of a state of the community, which pronounces himself in the virtue of the national law, may block an important community project. In this context, we believe that the democratic value of the integration referendum is vitiated for the reason that, pronouncing in respect of the revision of the treaties, the citizens of a state take a decision whose effect is not national, but of the community. A possible failure, lately widely encountered, created an upheaval of the community system, both at the level of the Union and on the other member states.

It was mentioned that the integration referendum is not only European through its result, which decisively affects the integration process: if positive, the process may continue and may eventually end with a revision of the treaties, and if negative, the
The extension referendum, rarely met in practice, supposes that the people of a member state pronounced regarding the adherence of a new state in the Union, the state of this type of referendum being that to allow or forbid the adherence of a new state. It is different to the adherence referendum because the people expresses itself not concerning the adherence of the own state, but of another, and to the integration one, by the fact that the vote does not have as an object a revision of the treaties, but a particular adherence agreement. It was said that there is nothing democratic in asking the citizens of a member state to decide related to the adherence of a third state, simply because the result will affect the applicant state and people in such a way that the latter expresses its sovereign will. Under these circumstances, this type of referendum is lacking an intrinsic quality: the legitimacy. For example, the put into practice of a referendum regarding the inclusion of Turkey in the Union may be imagined (state which is not found, with its territory on the European continent, and which does not the Christianity as national religion), which would automatically lead to the extension of the Union, with a major impact over the values on which the European construction was based. I would qualify a referendum regarding the co-optation of Turkey in the Union, developed in each member state, as being very predictable, namely that this project would be rejected with a significant majority, fact that would block the adherence of this state.

While the adherence referendum fully proved its utility and its role as an indispensible instrument of direct European democracy, the integration one appears as a real obstacle in the way of the study of the community system, and the extension one promises to block any extension perspective.

Therefore, membership referendums are the most common type of European integration referendums: twenty-one referendums of this kind have taken place. Most countries that have joined the E.U. since the "founding six" have subjected the decision to popular will.

2. Referendum’s place in the future of the European constitutional order

Formally, the European Union is not a state, does not have a constitution, and the European nation does not exist in law. Still, the current prevalent dynamic nature of the European integration, certain dispositions of the constitutive treaties, the hierarchy of the community norms, several general principles devolved and developed by the law of the Justice Court of the European Communities, the guarantee of the fundamental rights, the appearance of the European citizenship, draw the attention on the fact that we may speak about a European Constitution. In the Court’s vision, the Treaty of the European Economic Community, signed in Rome, on March 25th 1957, constitutes « The constitutional Bill of a law community » [15]. In other terms, the European Union behaves as a state, acts like a federal state, and presents itself as a state of law.

In this context, on a doctrine level it is being problematized if the referendum would be a remedy for an indisputable democratic deficit that exists at Union level, is it can be a good guarantor of national sovereignties and a speed adaptor [17]. Currently, the measures framed to cover the democratic deficit do not foresee the referendum as a pertinent mean, due to the fact that in the device put into practice after adopting the Maastricht Treaty, the emphasis is put on the increase of the role of the European Parliament and on other directions, which not assume direct people consultations. The direct and priority applicability of the community law in the internal law of the member states constitute the basis of an irreversible technocratic engine, which compresses national sovereignties, thus his enhancing role for the expression of the said sovereignties is currently very low.

As for the capacity of the referendum to play a more consistent and efficient role in the European construction, it depends on the positive law which regulates it nationally in all the stages of its development, starting with its release. In the current stage of Union development, the great disparity that exists between the national systems which frame the referendum in the 28 states, renders the idea of a uniform European referendum highly improbable. The great disparity of the referendum forms within the European constitutional area further complicates things: there is a high difference
between the abundance of the Italian referendum and the inexistence of the Greek one. Besides, it is hard to conceive a procedure which simultaneously develops in all the states at the initiative of a central authority of the Union [18].

3. Conclusions

Without being negligible, the past role of the European referendum remains modest and ambiguous. As a perspective, in order to get out of the current drift and deadlock, the specialty literature has proposed a solution that consists in organizing a general European referendum, experimental and without a decisional effect, related to the Constitutional Treaty.

This way a pole could be made, to measure the actual desire of all the European citizens regarding the fundamental Treaty. If this optional referendum would have a positive answer, the general will would be interpreted in the sense of consolidation of the European construction, which has the large support of the European people; a negative answer would upset the whole community order, the consequences being unforeseeable. In other words, the result of this referendum would have an overwhelming stake.

Usually it is militated that the European Union gives up the circumspect conception towards the direct democracy, and not to perceive it as an opponent, but as a very useful ally in the fight to regain its super state legitimacy. Another recommendation refers to the increase of the referendum consultancies, to its mechanisms, especially of the constitutional one, being in the benefit to restrain the centrifuge and nationalist trends which upset the European continent again. The beneficial reasoning of a referendum conceived at a European standard would allow the avoidance a distance between the union of the European states and the one of the European nations.

Still, not to be idealists, a referendum on a European level rises certain technical issues: what is the object? At whose initiative? When should it be organized? What type of referendum question should be asked?

Regarding the area, the following general themes may be subject to debates: only the treaties, the citizenship, or other areas as well, such as taxation, or the military area: a military intervention in the risk areas, such as Ukraine, a military over-protection of the Baltic countries, beneficial in the current political-military context? Concerning the object: a legislative or even a constitutional text – to be approved or abrogated?; a matter of European importance: a political-economic action (for example, an embargo instituted in the detriment of Russia; or the adherence of Turkey to the U.E.), creating a common army body etc. Regarding the initiator: a people’s initiative referendum, but who is the people? Would one or a few of the European nations suffice? Or a fraction of the entire European nation? Or a referendum of institutional initiative? Starting given to the European Parliament or to the Commission? About the moment of its organization, all the same aspects that must be solved may be imagined: before a great construction stage (as has happened in 2003) to establish the options or to frame the matter? Or would its organization be more appropriate after the decision was taken, thus the democratic participation expectations of the people being satisfied as well? Regarding the question, it should respect the general conditions that grants it clarity and concision: it should be explicit, trenchant, to aim a real and not a personal matter etc. The European code of the referendum [19] foresees three conditions in order to realize the formal validity of the referendum, by this we mean an accuracy and a concision as high as possible of the matters that are the object of the referendum: unity of form, unity of content, hierarchic unity [20].

All these interrogations prove the complexity of the referendum institution risen and exercised on a European level, as well as the multiple delicate matters which its put into practice imply at this level. Nevertheless, in order to fortify the European democracy, we state in favour of the inclusion of a consultative referendum in the body of the European Constitution, even if, in a first adjusting time, a time of its sedimentation in the political and constitutional conscience of the European nation, this institution would benefit from a constitutional posture more on an honorific level, and more less usable. Its possible lucrativeness is directly affected by the issues that it embodies, more precisely the technical difficulty derived from the referendum process engine; still, its postulation at this level would strengthen the feeling of democracy on a European level.

And prior to giving it a decisional role (currently hard to imagine) in the architecture of the European construction an extremely thorough analysis is imposed, of the political, and mostly legal consequences that it would produce. Besides, it is important to see how it can be canalized in a posi-
tive direction, also considering the human – emo-
tional part attached to the referendum process.
As an extremely synthetic balance we may say that on an inter-state level no other issue has generated as many
referendums as the process of the Euro-pean extension and integration. In our opinion, it would have not been
possible in other way, due to the fact that these referendums have given legitimacy to the decision took at a
government level, but especially they have created the feeling of existence of a super-state union and of
belonging to it (only certain states have taken the decision of adherence to the Union without consulting the
people: Portugal, Greece, etc.).

Finally, the chances to further follow the European dynamics, as it manifested itself until now, based on
institutional reform and on extension, would be more palpable if the European Union would cast its too
circumspect attitude regarding the instruments of direct democracy. only the instate of a rigorous control over
the entire referendum process is im-po-sed, from regulation to the materialization of its effects.

Table 1: Listing of European membership referendums - ordered by country [21]

<table>
<thead>
<tr>
<th>Country</th>
<th>Date</th>
<th>Subject</th>
<th>Modus</th>
<th>Turnout</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>12.06.1994</td>
<td>Joining the EU</td>
<td>Mandatory referendum</td>
<td>82,35%</td>
<td>Accepted</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>66,58%</td>
</tr>
<tr>
<td></td>
<td>2.06.1992</td>
<td>Treaty of Maastricht</td>
<td>Mandatory referendum</td>
<td>82,90%</td>
<td>Not Accepted</td>
</tr>
<tr>
<td></td>
<td>18.05.1993</td>
<td>Treaty with the European Community</td>
<td>Parliamentary plebiscite</td>
<td>85,50%</td>
<td>Accepted</td>
</tr>
<tr>
<td></td>
<td>28.05.1998</td>
<td>EU-Treaty of Amsterdam</td>
<td>Mandatory referendum</td>
<td>76,24%</td>
<td>Accepted</td>
</tr>
<tr>
<td></td>
<td>28.09.2000</td>
<td>Access to the single European currency</td>
<td>Mandatory referendum</td>
<td>87, 80 %</td>
<td>Not Accepted</td>
</tr>
<tr>
<td>Denmark</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>46,87 %</td>
</tr>
<tr>
<td>Estonia</td>
<td>20.09.2003</td>
<td>EU accession</td>
<td>Parliamentary plebiscite, binding</td>
<td>64 %</td>
<td>Accepted</td>
</tr>
<tr>
<td>Finland</td>
<td>16.10.1994</td>
<td>Joining the European Union</td>
<td>Consultative referendum</td>
<td>70,40 %</td>
<td>Accepted</td>
</tr>
<tr>
<td></td>
<td>20.11.1994</td>
<td>Joining the UE</td>
<td>Consultative referendum</td>
<td>49,1%</td>
<td>Accepted</td>
</tr>
<tr>
<td></td>
<td>Aland-Islands</td>
<td></td>
<td></td>
<td></td>
<td>73,64 %</td>
</tr>
<tr>
<td>France</td>
<td>20.09.1992</td>
<td>EU Treaty Maastricht</td>
<td>Presidential plebiscite, binding</td>
<td>69,69 %</td>
<td>Accepted</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>51,05 %</td>
</tr>
<tr>
<td>Hungary</td>
<td>12.04.2003</td>
<td>EU membership</td>
<td>Parliamentary plebiscite, binding</td>
<td>45,65 %</td>
<td>Accepted</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>83,72 %</td>
</tr>
<tr>
<td>Ireland</td>
<td>18.06.1992</td>
<td>Maastricht Treaty</td>
<td>Mandatory referendum</td>
<td>57, 31 %</td>
<td>Accepted</td>
</tr>
<tr>
<td></td>
<td>22.05.1998</td>
<td>EU Treaty of Amsterdam</td>
<td>Mandatory referendum</td>
<td>56,26 %</td>
<td>Accepted</td>
</tr>
<tr>
<td></td>
<td>19.10.2002</td>
<td>Ratification of the Nice Treaty</td>
<td>Mandatory referendum</td>
<td>49, 47 %</td>
<td>Accepted</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>62,89 %</td>
</tr>
<tr>
<td>Country</td>
<td>Date</td>
<td>Subject</td>
<td>Type</td>
<td>Turnout (%)</td>
<td>Result</td>
</tr>
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<td>---------</td>
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<td>-------------</td>
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</tr>
<tr>
<td>Latvia</td>
<td>20.09.2003</td>
<td>EU membership</td>
<td>Parliamentary plebiscite, binding</td>
<td>72,53 %</td>
<td>Accepted 67,02 %</td>
</tr>
<tr>
<td>Lithuania</td>
<td>11.05.2003</td>
<td>EU membership</td>
<td>Parliamentary plebiscite, binding</td>
<td>63,3 %</td>
<td>Accepted 89,93 %</td>
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<tr>
<td>Norway</td>
<td>28.11.1994</td>
<td>Joining the European Union</td>
<td>Parliamentary plebiscite, consultative</td>
<td>89,00 %</td>
<td>Not Accepted 47,80 %</td>
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<tr>
<td>Poland</td>
<td>06.08.2003</td>
<td>EU membership</td>
<td>Parliamentary plebiscite, binding</td>
<td>58,84%</td>
<td>Accepted 77,51 %</td>
</tr>
<tr>
<td>Romania</td>
<td>19.10.2003</td>
<td>Constitution/EU</td>
<td>Mandatory referendum</td>
<td>55,7 %</td>
<td>Accepted 89,7 %</td>
</tr>
<tr>
<td>Slovakia</td>
<td>17.05.2003</td>
<td>EU membership</td>
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<tr>
<td>Slovenia</td>
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<td>EU membership</td>
<td>Parliamentary plebiscite</td>
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<td>Sweden</td>
<td>13.10.1994</td>
<td>Joining the European Union</td>
<td>Parliamentary plebiscite consultative</td>
<td>83,32 %</td>
<td>Accepted 52,74%</td>
</tr>
<tr>
<td></td>
<td>14.09.2003</td>
<td>Joining the Euro</td>
<td>Parliamentary plebiscite consultative</td>
<td>82,65 %</td>
<td>Not Accepted 55,92 %</td>
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Table 2: Listing of European referendums - ordered by year [22]
<table>
<thead>
<tr>
<th>Year</th>
<th>Country</th>
<th>Event</th>
<th>Type</th>
<th>Result</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>France</td>
<td>Maastricht Treaty (T)</td>
<td>NR and NB</td>
<td>70</td>
<td>51.1</td>
</tr>
<tr>
<td>1992</td>
<td>Switzerland</td>
<td>EEA accession (M)</td>
<td>R and B</td>
<td>78</td>
<td>49.7</td>
</tr>
<tr>
<td>1993</td>
<td>Denmark</td>
<td>Maastricht Treaty (T)</td>
<td>NR and NB</td>
<td>87</td>
<td>56.8</td>
</tr>
<tr>
<td>1994</td>
<td>Austria</td>
<td>EU membership (M)</td>
<td>R and B</td>
<td>82</td>
<td>66.6</td>
</tr>
<tr>
<td>1994</td>
<td>Finland</td>
<td>EU membership (M)</td>
<td>NR and NB</td>
<td>70</td>
<td>56.9</td>
</tr>
<tr>
<td>1994</td>
<td>Sweden</td>
<td>EU membership (M)</td>
<td>NR and NB</td>
<td>83</td>
<td>52.3</td>
</tr>
<tr>
<td>1994</td>
<td>Norway</td>
<td>EU membership (M)</td>
<td>NR and NB</td>
<td>89</td>
<td>47.8</td>
</tr>
<tr>
<td>1997</td>
<td>Switzerland</td>
<td>EU candidature (M)</td>
<td>NR and B</td>
<td>35</td>
<td>25.9</td>
</tr>
<tr>
<td>1998</td>
<td>Ireland</td>
<td>Amsterdam Treaty (T)</td>
<td>R and B</td>
<td>56</td>
<td>61.7</td>
</tr>
<tr>
<td>1998</td>
<td>Denmark</td>
<td>Amsterdam Treaty (T)</td>
<td>R and B</td>
<td>76</td>
<td>55.1</td>
</tr>
<tr>
<td>2000</td>
<td>Switzerland</td>
<td>Bilateral agreements (T)</td>
<td>NR and B</td>
<td>48</td>
<td>67.2</td>
</tr>
<tr>
<td>2000</td>
<td>Denmark</td>
<td>Single currency (I)</td>
<td>NR and B</td>
<td>88</td>
<td>46.9</td>
</tr>
<tr>
<td>2001</td>
<td>Switzerland</td>
<td>EU candidature (M)</td>
<td>NR and B</td>
<td>55</td>
<td>23.2</td>
</tr>
<tr>
<td>2001</td>
<td>Ireland</td>
<td>Nice Treaty (T)</td>
<td>R and B</td>
<td>35</td>
<td>46.1</td>
</tr>
<tr>
<td>2002</td>
<td>Ireland</td>
<td>Nice Treaty (T)</td>
<td>R and B</td>
<td>49</td>
<td>62.9</td>
</tr>
<tr>
<td>2003</td>
<td>Malta</td>
<td>EU membership (M)</td>
<td>NR and NB</td>
<td>91</td>
<td>53.6</td>
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<tr>
<td>2003</td>
<td>Slovenia</td>
<td>EU membership (M)</td>
<td>R and B</td>
<td>60</td>
<td>89.6</td>
</tr>
<tr>
<td>2003</td>
<td>Hungary</td>
<td>EU membership (M)</td>
<td>R and B</td>
<td>46</td>
<td>83.7</td>
</tr>
<tr>
<td>2003</td>
<td>Lithuania</td>
<td>EU membership (M)</td>
<td>R and B</td>
<td>63</td>
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<tr>
<td>2003</td>
<td>Slovakia</td>
<td>EU membership (M)</td>
<td>R and B</td>
<td>52</td>
<td>92.5</td>
</tr>
<tr>
<td>2003</td>
<td>Poland</td>
<td>EU membership (M)</td>
<td>R and B</td>
<td>59</td>
<td>77.5</td>
</tr>
<tr>
<td>2003</td>
<td>Czech Republic</td>
<td>EU membership (M)</td>
<td>R and B</td>
<td>55</td>
<td>77.3</td>
</tr>
<tr>
<td>2003</td>
<td>Estonia</td>
<td>EU membership (M)</td>
<td>R and B</td>
<td>64</td>
<td>66.8</td>
</tr>
<tr>
<td>2003</td>
<td>Sweden</td>
<td>Single currency (I)</td>
<td>NR and NB</td>
<td>83</td>
<td>42.0</td>
</tr>
<tr>
<td>2003</td>
<td>Latvia</td>
<td>EU membership (M)</td>
<td>R and B</td>
<td>73</td>
<td>67.0</td>
</tr>
<tr>
<td>2003</td>
<td>Romania</td>
<td>EU membership (M)</td>
<td>R and B</td>
<td>56</td>
<td>89.7</td>
</tr>
<tr>
<td>2005</td>
<td>Spain</td>
<td>Constitutional Treaty (T)</td>
<td>NR and NB</td>
<td>42</td>
<td>76.7</td>
</tr>
<tr>
<td>2005</td>
<td>France</td>
<td>Constitutional Treaty (T)</td>
<td>NR and NB</td>
<td>69</td>
<td>45.3</td>
</tr>
<tr>
<td>2005</td>
<td>The Netherlands</td>
<td>Constitutional Treaty (T)</td>
<td>NR and NB</td>
<td>63</td>
<td>38.2</td>
</tr>
<tr>
<td>2005</td>
<td>Switzerland</td>
<td>Schengen agreement (I)</td>
<td>NR and B</td>
<td>56</td>
<td>54.6</td>
</tr>
<tr>
<td>2005</td>
<td>Luxembourg</td>
<td>Constitutional Treaty (T)</td>
<td>NR and NB</td>
<td>89</td>
<td>56.5</td>
</tr>
<tr>
<td>2008</td>
<td>Ireland</td>
<td>Lisabon Treaty (T)</td>
<td>R and B</td>
<td>53</td>
<td>46.6</td>
</tr>
</tbody>
</table>

Notes
M = membership referendum,
T = treaty ratification referendum,
I = single issue referendum,
NR = non-required
NB = non-binding
B = binding

References:


[13] Idem


[19] Referendum in Europe – Analysis of the legal rules of the European States, cited work, chapter D. Certain states do not foresee any rule regarding the form of the texts submitted to the referendum: Belgium, Cyprus, Finland, Norway, Luxemburg, Poland, Russia, in the context in which Belgium, Luxemburg, Finland, Norway, do not have general rules in the matter of the referendum. Instead, in Georgia or Sweden only the principle matters may be the object of the referendum, Portugal excludes the texts drawn, except for the treaties related to the construction or integration in the European Union. Other states expressly foresee the principle matters and the drawn texts: Greece, Spain, Albania. Finally, all the manners may coexist in Switzerland, Malta, Hungary.

[20] Unity of form implies that the same question does not combine an amendment proposal drawn in specific terms, with a generically drawn proposal or with a principle matter; in other words, a general issue may not be mixed with a special one. Unity of content implies, except for total revision (the simultaneous revision of several chapters in a text is equivalent to a total revision) of a text (Constitution, law), the existence of an intrinsic ratio between the various parts of each matter subject to vote, so that it guarantees the freedom to vote of the voter, which must not be called to accept or reject unrelated dispositions by the lump. Hierarchical unity asks that the same question does not simultaneously refer to legal norms of different degree in the normative hierarchy.


**General references:**


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The Formation of Family Courts in Egypt According to Law No. 10 of 2004

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Abstract: Being the initial building block in the edifice of society, it is a must to study the family and the rules related to its safety and stability. It is a study of the principles on which we can strengthen the structure of this human edifice and setting its foundations on deep-rooted bases of good values to let its members go around constructing the world, sowing the seeds of goodness and spreading mercy and justice on the basis of coherence and not hatred and abhorrence. So, the Egyptian legislator has set up Family Courts aiming at caring for the family and protecting its members from the causes of cracking or chaos which may befall the family and settling the disputes that may arise among its members. This cannot be attained except via setting up such courts, with the same formation and specialization we are going to tackle, whose job is to end family disputes through conciliation among the disputed parties.

Introduction:

In the last decade a series of reforms have been introduced in Egyptian family laws. On January 26, 2000 the Egyptian Parliament passed the personal status Law No. 1 of 2000 [1].

The goal of this law was to address the problems of backlog of cases and inefficient legal procedures [2]. But this procedures are not enough to deal with family disputes. So The legislator decided to set up Family Courts in article No. 2 of law No. 10 of 2004 which consist of three judges provided that one of them, at least, must be a chief of first instance court and the membership of two experts: one of them is a social worker and the other is a psychologist provided that one of them must be a female, to help the court in the cases stated in article No. 11 of this law.

The appeal court consists of three counselors in the appeal court: one of them must be a chief of an appeal court and the circuit has the right to seek the help of any of the specialists. The two experts are employed from among those enlisted in the schedules issued by a decree from the minister of justice along with that of social affairs and that of health.

This text states that the Family Court consists of a judicial element and non-judicial one. So, the topic will be dealt with in details as follows:

1. First branch: the Judicial Element

A. First Instance Circuits:

The legislator decided, according to the first item of article 2 of law No. 10 of 2004, to form first instance circuits of Family Courts of three judges: one of them, at least, must be a chief of a court of first instance. Consequently, the chief of first instance court and the judges play a pivotal role through settling the disputes heard before the court for the good of the disputed parties specially after being qualified to hear the cases of personal affairs previously heard before the partial and courts of first instance [3]. It should be noted that the functional rank should be considered except concerning the chief of
the court who the legislator has asserted that he must be a chief of a court whether a chief of rank B or A according to what is stated in articles 38 and the following ones of the law of judiciary authority No. 46 of 1972. Consequently, it is right to form the Family Court of three judges; all of them are of a functional rank: Chief A or B [4].

The legislator meant to make the court headed by the oldest member with a functional rank of a chief of a court of first instance, being the most efficient of them and having the needed technical experience in the field of work. Further, his practice in work qualifies him to be the head of the Family Court [5]. The explanatory note of the law of the setting up Family Courts has asserted that "The Family Court consists of three judges, one of them, at least, must be a chief in a court of first instance. The number of judges in the formation of the court along with the condition of having this degree is a guarantee for its proportional jurisdiction for hearing what the other partial and courts of first instance used to hear concerning the cases of personal affairs for one's self and money.

B. Appeal Courts:

Every circuit of the appeal circuits for Family Courts, according to the text of item 2of article 2 of the law of Family Courts No. 10 of 2004, is formed as follows: " Three counselors from the appeal court, one of them at least must be a chief of an appeal court" So, the circuit is headed by a chief of an appeal court, being the oldest of the three and having more experience [6].

2. Second Branch: The Non-Judicial Element:

The legislator decided to seek the help of non-judicial elements, according to article 2 of law No. 10 of 2004, in response to the practical need of Family Courts for a social worker and a psychologist to present their report to the court to be able to recognize the reality of the conflict and the psychological and social status of its parties to give a just judgment to terminate the dispute and that everyone should take his due right [7]. So, we are going to discuss the topic as follows:

A. The Presence of Experts Before Family Courts:

The legislator decided to seek the help of experts in article No. 2 of law No. 10 of 2004. The presence of the two experts before the courts of first instance is different from that of appeal courts.

1. Circuits of First Instance:

The legislator decided to seek the help of two experts: one is a social worker and the other is a psychologist according to the first item of article No. 2 of law No. 10 of 2004 by saying " Two experts: a social worker and a psychologist, one of them is a woman, help the court in the cases stated in article 11 of this law. From this course, seeking the help of two experts may be compulsory or permissible.

It is meant by the compulsory presence of the two experts that the formation of the court must include two experts: a social worker and a psychologist in the cases stated in article No. 11 of law No. 10 of 2004 [8]. If both or one of the two experts did not appear, the court, accordingly, decide its nullity. It is permissible to stick to their presence before the appeal circuits. That is because the formation of the court is related to the general system and their presence is compulsory in certain cases exclusively [9], but they are not included in the formation of the court literally as their presence is restricted to certain cases.

On the other hand, obliging them to present a report containing their opinion means that they disclose their opinion in the dispute and, accordingly, this prevents them from the deliberation in the judgment. So, the phrase of the legislator was completely minute when he said " help the court " [10].

The legislator stated this by saying” the presence of the two experts, stated in article No. 2 of this law, in the sessions of the Family Court is obligatory in the cases of divorce, separation, annulment, nullity of marriage, nursery and place of nursery, keeping him, seeing him and taking him around and also, in cases of lineage and obedience'.

On cases other than those mentioned above, the presence of the two experts is permissible [11]. The legislator stated this in article No. 11of law No. 10 of 2004 by saying:" The court has the right to seek the help of the experts in other cases of personal affairs in case the court considers this necessary."

The explanatory note of the law of Family Courts has asserted this by saying "Two experts: one is a social worker and the other is a psychologist and one of them is a female, can help the Family Court in hearing the cases of divorce, separation, nullity of marriage, nursery and the place of nursery, keeping him, seeing him and cases of lineage and obedience. In these cases, the presence of the two experts in the sessions of hearing such cases is obligatory."
The court, still, has the right to seek the help of the two experts in cases other than those mentioned above in personal affairs whenever it "the court" sees necessary.

2. Appeal Circuits:

The legislator, in the second item of article 2 of the law of Family Courts No. 10 of 2004, permitted the appeal circuits, formed of three counselors from the appeal court: one of them must be a chief in the appeal courts, to seek the help f an expert by saying "The circuit has the right to seek the help of whoever it sees among the social workers'.

Hence, the appeal circuit has the right to seek the help of whoever it sees from among the social workers and the psychologists during hearing permissibly, the members of the appeal circuit are to estimate it. So, it is permissible to seek the help of one of the experts unlike the formation of Family Court [12].

The explanatory note for the Family Courts No. 10 of 2004 asserted this by saying "As for the appeal circuits, they are formed of three counselors from the appeal court: one of them is a chief in an appeal court. The legislator does not oblige the court to be helped by the two experts as is the case in court of first instance but the legislator stated that it is permissible for the court to seek the help of whoever it sees from among the social workers.' article No. 2-7".

B. How the Experts are Employed in Family Courts.

In item 1-2 of article No. 2 of the law of Family Courts No. 10 of 2004, the legislator stated that the minister of justice, along with the minister of social affairs and that of health, issued a decree of employing two experts, who help the Family Court, from among the experts enlisted in the intended schedules [13]. The experts must have some conditions as follows:

1. Two experts, one is a social worker and the other is a psychologist, must be employed according to item 1 of article No. 2.
2. One of the two experts must be a woman: item 1 of article No. 2 [14].
3. A decree from the minister of justice, along with the minister of social affairs or the minister of health as it may be, must be issued: item 3 of article No. 2.

This judgment, according to article 2 of law No. 10 of 2004, is the same one as in article 4 of law No. 1 of 2000 which issued the law of regulating some of states and the procedures of litigation in matters of personal affairs which states that the court has the right to mandate a social worker or more to present a report in no more than 2 weeks. They are from those in the lists of social workers who the minister of justice issued a decree according to the recommendations of the minister of insurance and social affairs.

This is exactly what the explanatory note of law No. 1 of 2000 asserted by saying "The legislator originated a new system in the disputes of personal affairs by which the court can seek the help of a social worker to present a report about the dispute in no more than 2 weeks through which the court can discriminate the nature of dispute and the condition of the two parties of the dispute. As a result, its judgment arises from the actual reality not as the disputed parties seek to show to the court. Accordingly, the judgment can be a title of the actual and legal fact [15].

C. The Conditions of Employing the Experts in the Family Courts:

"The two experts are employed from among those enlisted in the schedules which the minister of justice, along with the minister of health and that of social affairs, issue a decree there of." This is according to item 3 of article 2 of the law of setting up Family Courts No. 10 of 2004.

Hence, the minister of justice, according to the decree No. 2725 of 2004, issued a decree to organize the rules and procedures and the conditions of enrolling in the schedules concerning the chiefs the offices of conciliation of family disputes. Article 1 of the decree of the minister of justice No. 2724 of 2004 set some conditions for those who are chosen to the membership of the offices of family dispute conciliation from among the legal experts, social workers and the psychologists according to the law of setting up Family Courts. These conditions are:

1. He must be married.
2. He must have a high degree from one of the universities or high institutes in the field of law, Islamic law, psychology or sociology.
3. He must have a five year experience at least.
4. He must not be previously charged of a felony or imprisoned for a crime involving moral turpitude and the secretariat.

5. He must, literary, show his desire or agreement to be chosen in the formation of conciliation offices. The minister of justice has the right to overlook the two conditions in item 1-3.

D. The rules of choosing experts in Family Courts:

The candidates for the membership of the settlement offices according to article 2 of the decree of the minister of justice No. 2724 of 2004 have to present the following documents to the general directorate of the offices of family dispute settlement:

1. A certificate of date of birth or an official extract of it.
2. A marriage certificate or an official extract of it.
3. The certificate that shows the needed qualification.
4. The document that shows the needed experience.
5. The criminal status.

After the general directorate receives the needed documents, it must prepare a file for the social workers and psychologists and write down the name of the candidate and his record number in a special record and all the papers and documents are put inside the file.

Article 4 of the decree of the minister stated that "The file of the candidates are reviewed by the technical office of the general directorate to give their opinion concerning their reliability, of course, after interviewing them. After that, the technical office of the directorate prepares lists containing names of the candidates who have the required conditions stated in this decree and then are shown to the minister's assistant to review the files and to take the procedures of forming the settlement offices as in article 5 of the decree of the minister of justice.

Finally, the general directorate prepares schedules in which the formation of settlement offices are listed according to the issued decrees of the minister of justice and he necessary training and qualifying courses are set for the chosen candidates according to article 6 of the decree of the minister of justice.

D. The Rules of the Work of Experts in Family Courts:

The work of the expert in a Family Court is subjected to a number of rules. The most important of them are:

1. The two experts must attend the court session without participating in the deliberation which occurs before giving the judgment which is restricted to the panel of the Family Court consisting of judges to decide the case.
2. Article 11 of the law of Family Courts No. 10 of 2004 force the two experts to present a report to the court each in his specialization. The report can be written or oral and is included in the minutes of the session [16].
3. The expert must write the reasons of his opinion briefly if his report is oral so that the court can evaluate the report when issuing its judgment in the case.
4. The appeal circuit is allowed to seek the help of any of the experts whether in the cases stated in article 11 of the law or in any other cases. If the court wanted to seek the help of experts not enlisted in the schedules, the court must issue a preliminary judgment to mandate the needed expert.
5. The evaluation of the work of the expert goes back to the judge of the matter, that is, the judge has the right to seek the help of the experts in the technical matters and materialistic events and not in the legal ones [17]. So, the judge can consider the opinion of the expert, part of it or neglect it altogether [18]. That is because the court is not obliged to consider the opinion of the expert or leave it aside as long as it has justifiable reasons for its judgment [19].

Conclusion:

It is clear from the study of the subject:” The Formation of Family Courts in Egypt According to Law No. 10 of 2004” That: Egyptian legislator adopted one system in formation of judicial courts which consists of judicial member only, but when legislator establishment family court in 2004 he adopted another formation, So family courts consists of judicial member and non judicial element at the same time like; experts, psychologist

Reference

[1]Law No. 1 of 2000, for Reorganization of Certain Terms and Procedures of Litigation in Personal Status Matters, cut down the 318 clauses of previous
procedural laws to mere 79. The law replaced Law 78 of 1931; Part 4 of Civil and Commercial Code; Articles 868-1032 of Law No. 77 of 1949, and some of the procedural articles included in the substantive personal status laws.


[14] This text allows the two experts to be females and not the other way round. There is an opinion, which we approve, that the condition of the legislator that there must be a female element is not an end in itself. Further, it means that the participation of those having psychological and social experience in hearing the case. That is, if there not a female element the case cannot be nullified.


Searching for Legal Preconditions of Social Business

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Abstract: In recent years it can be heard quite often about social business (or social entrepreneurship) initiatives. Different definitions of this phenomenon are being provided. The lack of legal certainty requires for a thorough examination of social business as a legal category. The paper aims to identify the basic legal preconditions of social business in the European Union and to show the complexity of the concept of social business phenomenon. The authors look for basic categories in legislation of the EU in the area of social business and examine main views of the academic researchers regarding this topic. Authors come to main conclusion that existing legal forms in the EU are too narrow and vary from state to state. In such situation there must be found and defined legal preconditions (common approach) – what could be considered specifically as social business or social entrepreneurship.

Introduction

In the European Union (hereinafter – EU) as well as in the EU Member States legal regulation of different areas of social life, including business relationships, constantly changes in accordance with social, economic and political changes in the society. Legal science aims to consider at the relevant time the trends and features of such changes, to study the primary reasons why the particular legal rule develops itself in one or other way, to define the current stage of development and to predict possible direction of future development, to identify the advantages and possible gaps in the regulation, and to suggest ways to remedy these gaps.

One such relatively new phenomenon in nowadays society is a concept of social business. In recent years, more and more one can hear about the social business initiatives. But from a legal point of view neither the definition of social business nor its special legal regulation is yet finally identified. The legal institutes of this quite new legal category also are not defined. In the EU and in the EU Member States the legal environment for the social business is defined differently. With respect to the novelty of the social business as the legal category and the lack of legal certainty, this paper aims to identify the basic legal preconditions of social business in the EU and to show the complexity of the concept of social business phenomenon in legal terms.

1. The importance of legal definition

The EU company law is quite widely researched and is still constantly harmonized with help of the EU directives and regulations. This trend is happening in the context of the fundamental freedoms of the EU. Harmonization of the company law in the EU takes place in accordance with the implementation of the provision of Article 26 of the Treaty on the Functioning of the EU, which foresees that the EU shall adopt measures with the aim of establishing and ensuring the functioning of the internal market with the free movement of goods, persons, services and capital [17].

In this context it is important to define what legal categories are applicable in the EU to the phenomenon of social business. It also should be defined how social business contributes to the implementation of the above mentioned EU fundamental freedoms, and what legal mechanisms are or should be provided to enforce the better implementation of these freedoms with the help of social business initiatives.

1.1. Legal preconditions in the EU legislation

It is quite hard to start the research by defining one or several fundamental legal acts regulating this specific area, whereas there is a lack of such legislation in the EU. European Commission (hereinafter – EC) published in 2011 its Communication on Social Business Initiative [4]. Although any communication of the EC is not a legal act but this particular Communication could be considered as a starting point for drawing the boundaries of the preliminary legal concept. The Communication defines a social enterprise as an operator in the social economy whose main objective is to have a social impact rather than make a profit for its owners or shareholders. It operates by providing goods and services for the market in an entrepreneurial and
innovative fashion and uses its profits primarily to achieve social objectives. It is managed in an open and responsible manner and, in particular, involves employees, consumers and stakeholders affected by its commercial activities. It should be noted that the Communication doesn’t emphasize any specific form of legal entity as a social enterprise.

Other institutes, such as corporate social responsibility, should not be confused with social entrepreneurship as well. The EC defines that corporate social responsibility refers to companies voluntarily going beyond what the law requires to achieve social and environmental objectives during the course of their daily business activities [5]. It is a concise definition but it shows that the subject of this research is wider and does meet much more aspects than only the corporate social responsibility concept. In 2011 the EC has included social business in the Single Market Act, as one of the twelve ways to promote confidence in European economies and growth [6].

In November 2011 the EC initiated and developed the above mentioned Social Business Initiative, which included three priorities and objectives: improve the access to finance, give more visibility to social enterprises and optimize the legal environment.

It is proposed at the EU level to continue the development of these legislative initiatives:

1. To simplify the regulation on the Statute for a European Cooperative Society in order to reinforce its independence in relation to national laws and to make it easier to create social cooperatives;

2. To propose a regulation for a European foundation statute, in order to facilitate foundations' cross-border activities. This would exist alongside national legal forms and would be optional;

3. To implement the study on the situation of mutual societies in all Member States, as one of the possible forms of social business [4].

Beside the mentioned initiatives it is proposed to amend the legal framework on public procurement and state aid in the EU. These changes are aimed to eliminate the disproportionate difficulties arising from the current legal regulation for social businesses to participate in public procurement. It also aims to simplify the state aid rules to the social enterprises, as they provide social services or services that do not have an effect on trade between Member States.

Another important aspect is the offer of legal forms that can serve for the specific needs of social enterprises. This is why the EC adopted a proposal for a European Foundation to facilitate cross-border activities of public benefit foundations. This project is currently being negotiated between Member States. Another legal form is European Cooperative Society which is already available [13]. The EC carried out a public consultation in order to simplify the existing statute and make it more user-friendly. A third legal form often used by social enterprises is the mutual. The EC currently looks at legislative and non-legislative options to see how the current situation of mutuals in Europe can be improved.

Summarizing the various initiatives of the EC, it can be again emphasized the lack of unambiguous legal characterization of social entrepreneurship in the EU. The scholars emphasize that the social business organization can adopt either a non-profit or a for-profit organizational form and should not be limited to any specific legal form. Scholars agree that legal regulation of social entrepreneurship in the United States and Europe deals with the lack of clearly defined legal frameworks for social enterprise. Although some European countries are already beginning to change legislation to reflect this need [8]. This perspective results in the emergence of various hybrid organizational forms: independent, they can generate profit, employ people and hire volunteers. This new legal form represents a hybrid organizational type, partly non-profit and partly limited company. Several European countries have introduced such special legal entities. Belgium introduced the status of “social purpose company“; Portugal – “social solidarity cooperatives“, France – “collective interest co-operative societies“, etc. [2]. However, some scholars state that a model of a certification scheme, which allows to carry on a social enterprise with a special branding, without having to convert into some other corporate form, seems to be the best solution [16].

Despite all these newly created legal forms, from scientific perspective, there has to be found a common approach, which could define general preconditions whether the particular businesses in particular countries could be considered as social businesses or not. This would be a relevant challenge in the nearest future.
1.2. Social business in Lithuanian legal environment

In the EU Member States the legal environment for the social business is defined differently. The problem can be reflected with the example from Lithuanian legislation. Due to the small social entrepreneurship awareness, in Lithuania social business is often identified only with the social enterprise (i.e. the legal entity that is defined in the Law on Social Enterprises of the Republic of Lithuania [11] and, which is perceived narrower than the above mentioned EC Communication describes social entrepreneurship). Social enterprise, as it is defined in Lithuanian legislation, is only one of possible social business models. Therefore, it is particularly important to establish a common legal concept of social business.

For example, the mentioned Law links social enterprises only with the employment of people from specific social groups who have lost their professional and general capacity for work, are economically inactive and are unable to compete in the labor market under equal conditions, to promote the return of these persons to the labor market, their social integration as well as to reduce social exclusion. Accordingly to this Law a social enterprise shall be a legal person who has acquired this status in accordance with the procedure laid down by this Law and fulfills all the conditions related to recruiting of certain social groups [11].

It has to be mentioned that the Communication of the EC links the concept of social entrepreneurship more with the content of activity of social enterprise than with the particular form of legal entity. However, in some countries exists special legislation defining special forms of legal entities. For example, the Companies (Audit, Investigations and Community Enterprise) Act (2004) of the United Kingdom introduced a new form of legal entity – a community interest company [3]. According to this Law, a company limited by shares or a company limited by guarantee may become a community interest company. The overall legal regulation of companies under the Companies Act is applied to the community interest companies as well as to the traditional companies, however, there is the specific regulation: community interest companies must not distribute assets to their members. If regulations authorize community interest companies to distribute assets to their members, the regulations may impose limits on the extent to which they may do so. In order to obtain the status of the community interest company, such company must comply with the so-called "social enterprise test" requirements and its business results (profits) must target certain public social needs (e.g., social housing, public transport). We see a distinct social character in the content of the company's activities, but the legal regulation emphasizes that such a company is a profit-making private entity, not a charity, a public institution, and so on.

Also the activities of public legal entities (public establishments, associations and others) cannot be confused with social entrepreneurship, because these legal entities operate under specific legal regulation. For example, the Law on Public Establishments of the Republic of Lithuania defines a public establishment as a non-profit public legal person of limited civil liability founded according to this Law and other laws, the aim of which is to satisfy public interests by carrying out the educational, training and scientific, cultural, health care, environmental protection, sports development, social or legal aid provision as well as other activities useful to the public [10]. According to the content of its activity, the legal entity form of public establishment seems to be similar to that of a social business, but the key difference here - a public establishment is a public legal entity, which operates under specific legal regulation and has a different legal regulation for capital formation, management and profit distribution arrangements than private entities.

However, some important steps were made recently. In April 2015 Minister of Economy of the Republic of Lithuania approved the Social Business Concept [15]. There are three main tasks defined in the concept, the implementation of which would encourage the development of social business: to create a social business-friendly regulatory environment; create a social business-friendly tax and financial support system; increase awareness of the social business.

The Concept identifies social business as a business model in which, making use of the market mechanism, the pursuit of profit is linked with social objectives. Social business covers three main aspects: entrepreneurial (regular commercial activity), social (social objectives) and control (limited profit distribution, transparent management).

The definition of social business in the Concept is an important step on the national level towards better legal environment for social business development.
2. Social business between legal and economic categories

We see that there is still a lot of work in the field of legislation, defining social business in legal terms and creating better, steady and predictable legal environment. Scholars also put a lot of effort dealing with the above mentioned challenges. However, researchers usually deal with the problems of social entrepreneurship through the prism of economics and there is a lack of legal literature exploring the legal aspects of social entrepreneurship.

Some researchers think that social business should not be defined by legal form, as it can be pursued through various vehicles and examples of social business can be found within non-profit, business or even governmental sector. The authors define social business as innovative, social value creating activity that can occur within or across the non-profit, business or government sectors. The authors emphasize that although social entrepreneurship is distinguished by its social purpose and occurs through multiple organizational forms, there is still significant heterogeneity in its definition. Also it is to be mentioned that legal environment affects the ability of social business to function: taxation, access to finance and other regulations affect how intensive is development of social businesses in particular countries [1].

Some scholars refer to social enterprises as “emerging fourth sector”[7]. In any case, today’s social changes influence development of the legal environment. It leads to development of new legal entities like “for-profit charitable enterprises”[12]. Such legal entities are created and governed under the state law, have organizational structure, governing rules and capital formed by shareholders. However, social enterprises can and often earn a profit, but they are not permitted to distribute those earnings to their shareholders. This restriction supposed to be included in the articles of incorporation of such social enterprise [9].

The economic aspect of social enterprises can be emphasized also by the re-distributive functions of governments. Usually through the legal system and special agencies governments try to redistribute goods in order to tackle social challenges. Yet, governments often do not have the capabilities to perform this re-distribution function, particularly when action is needed at a local level. Here enter social enterprises, which create new forms of organizational entities and thereby need a new legal framework to function more effectively creating the social value for the society [14].

We see that most of researchers look for legitimacy of social entrepreneurship on both, economic and legal level. However, the patterns in legitimation and institutionalization process of social entrepreneurship yet are not finally explored.

Generally one can agree with the idea of definition of social business as a certain content (and not a form) of economic activity. In our opinion, the legal certainty, however, is also needed to tackle the obstacles for social business to operate in best possible way.

3. Conclusions

1. Most scholars agree that social entrepreneurship plays an important role in nowadays society and in the future it will definitely become an important tool to tackle the social problems. But existing legal forms of social business in the EU are too narrow and vary from state to state. In such situation there must be found and defined legal preconditions or common approach – what could be considered specifically as social business or social entrepreneurship.

2. The definition of social business in the Social Business Concept approved by the Ministry of Economy of the Republic of Lithuania is one of the first, yet very important step on the national level towards better legal environment for social business development in Lithuania.

3. Generally one can agree with the idea of definition of social business as certain content (not a form) of activity. The legal certainty, however, is also needed to tackle the obstacles for social business to operate in best possible way.

4. Despite all newly created legal forms, from scientific perspective, there has to be found a common approach, which could define general preconditions whether the particular businesses in particular countries could be considered as social businesses or not. This would be a relevant challenge in the nearest future.

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Consistency, coherence and external action of the European Union in terms of international dispute settlement

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Abstract: This study aims to analyze the concept of consistency and coherence in function of the European Union external action and international dispute resolution. Consistency and coherence are effective elements applied by the European Union with the aim of establishing efficient structures, such as the Common Foreign and Security Policy in the Lisbon Treaty. The article discusses the concept of consistency and coherence, different approaches that address these two concepts, importance of effective foreign policy, and the inclusion of consistency and coherence in a number of provisions of the Treaty of the European Union and Treaty on the Functioning of the European Union. The study addresses the various dimensions of coherence and consistency, such as, vertical dimension, horizontal dimension and multilateral dimension. Consistency and coherence, play an important role in the European Union's efforts, to affirm its presence on the world stage as an important actor, in resolving and preventing international dispute. The paper focuses on analyzing the role of the European Union to international disputes settlement, weaknesses institutional complexity and a lack of consensus among member countries, to pursue effective Common Foreign and Security Policy.

Introduction

The purpose of creation and the main focus of the action of the European Union is economic activity, this study leaves the importance of the EU in economic enterprise and seeks to capture another aspect, that of EU external action. The study deals with the influence of the EU in resolving international conflicts and, using her as an instrument of the EU's Common Foreign and Security Policy. One of the goals of creating this policy is precisely the security and protection of the member states of the EU, argued in Article 24,¹ of the Treaty on European Union. The study will develop a constructive analysis about the role of the EU capacity to influence international dispute settlement, based on the consistency and coherence of the EU. Disputes that arise among member states with third countries, disputes between organizations and disagreements or conflicts between third countries.

In disputes and conflicts that develop between third countries in the region or distant, the EU has not an institutional obligation. When the EU is not a party to the dispute, security and integrity of its internal, not threatened, the EU is a sui generis entity neutral, which tries to offer help and safety. Despite its indirect involvement as a party to the dispute, its involvement in the dispute is conditioned by the role that it claims to own. Lack of institutional liability is replaced by its moral obligation to protect the countries in need and difficulty, its primary purpose specified in a number of provisions, specifically in Article 3, and Article 6, of the Treaty on European Union.

The Common Foreign and Security Policy of the EU was strengthened with the approval of the Lisbon Treaty, which would modify the existing treaties and would bring a number of innovations in view of this policy. The Lisbon Treaty was initiated in Laeken Declaration of 2001, than the text of Treaty Establishing a Constitution for Europe which it fail, was the base text for Lisbon Treaty adopted in 2007 and entered into force in 2009. Laeken Declaration puts the emphasis on the "consistency" of the external action of the Union and the creation of Common Foreign Policy and Security more "coherent".

The Treaty intended to create a strong institutional basis CFSP and strengthen the EU's role in conflict management, prevention and resolution. The Common Foreign and Security Policy intends taking concrete steps on the goals that should be achieved, in a legal and institutional framework effective. According to EC Commission, Communication to the European Council, ‘Europe in the World – Some Practical Proposals for Greater Coherence,

¹ The Union’s competence in matters of Common Foreign and Security Policy shall cover all areas of foreign policy and all questions relating to the Union’s security, including the progressive framing of a common defense policy that might lead to a common defense.
Effectiveness and Visibility’, 8 June 2006, the legal and institutional framework is important to be strengthened, because supports only to “the will of the state” is insufficient to run a Common Foreign and Security Policy consistent and successful. To produce measurable results not only in the economic enterprise but also as an important actor in the international order.

Despite institutional and legal efforts. EU labeled as an international actor with "soft power",[2] given the lack of significant military capacity.[3]

The Common Foreign and Security Policy as an intergovernmental method[4], under Article 24, is subject to "certain rules and procedures"[5], The Lisbon Treaty establishes new institutional arrangements and mechanisms aimed at enhancing the coherence and efficiency of external action of the EU. Increasing the coherence of this policy is provided through the creation of a series of institutional structures. These structures are created for the first time by the Treaty of Lisbon, in order to strengthen the coherence and consistency of the Common Foreign and Security Policy. These innovations are:

a. The creation of the post of High Representative of the Union for Foreign Affairs and Security Policy,

b. The creation of the post of the President of the European Council,

c. The creation of the European External Action Service.

d. The ability for the European Council to make determinations of “strategic interests and objectives” for all EU external action.[6]

The creation of these institutions helps develop sustainable policies in EU external action and increases the importance of the EU as a global actor with major influence especially in resolving international disputes. In this framework will address the consistency as an important concept of strengthening the common foreign policy and safe.

1. The concept of coherence and its legal framework

The concept of consistency of the Common Foreign and Security Policy has been the subject of extensive debate among academics, by both political science and legal science. Consistency in itself has a vague nature, an ambiguous character, at first overview consistency is perceived as a concept in political character. But its political character is opposed by a number of authors and legal sciences researcher, who consider the consistency as an important part of European Union law. Special emphasis is placed on distinguishing the two terms "coherence" and "consistency", notions which are perceived differently by various authors, like Marise Cremona [7] in ‘Coherence through Law’, (2008:13) and Panos Koutrakos [8], in ‘European Foreign Policy’ (2011: 17) the ECJ and the different language versions 2.

Stability or consistency as directed most of doctrine offers us an analysis on two approaches, legal approach and political approach. According to Gauttier [9] and Cremona [10] a legal approach often shows the need for some form of mandatory requirements of consistency, while in the political approach this concept addresses to the institutions, decision-making processes and procedures to address incoherence.

But a combination of the two sciences, consistency appears as a principle, the principle by which the obligations are understood legal proceeding prosecuted by political action. [11]. Gauttier in 2004 before the adoption of the Lisbon Treaty has defined consistency as "lack of contradiction between the European Community, now the European Union and the Common Foreign and Security Policy". Consistency of the Common Foreign and Security Policy on the one hand and reaching a “synergy” between these policies (coherence) on the other. [12]

Gauttier also notes that in terms of foreign policy concept of coherence is not legal, but political character. While Tietje in turn promotes further legal character consistency saying that it is "one of the main constitutional values of the EU”[13]. Hillion treats positive concept of consistency noting that, besides the lack of legal controversy, coherence is about "synergy" and "added value"[14].

2 Cremona argues that this concept given the different language versions of the Treaties do not use the same term; more specifically, where the French, Italian, German and other language version use “coherence”, "coerenza", “Kohärenz” – that is, “coherence”, the English versions use "consistency". 
The importance of consistency displayed in all treaties and treated in terms of legal and political sciences. A series of provisions addressing the principle of consistency directly and indirectly in the two treaties, the European Union Treaty (ECT) and the Treaty on the Functioning of the European Union (TFBE). The principle of consistency mentioned in general terms in the provisions of Title II, Provisions Having general Application, in Article 7, of TFBE:

‘The Union shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers of general application’

Article 13, of the TEU in the part of Institutions provisions, principle of consistency is a main element for effective implementation of EU policies.

“The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions.”

More specifically, the principle of coherence prominence at External Action provisions, Article 21, paragraph 3, of the TEU refers directly. In this section, note that:

“The Union shall ensure consistency between the different areas of its external action and between these and its other policies.”

The reason cited this article is to show the affirmation of the EU towards such policies. Union must act as one body in international relations and Common Foreign and Security Policy. Collision of various internal policies of European Union and absence of consistency, demonstrated in special moments in the past (the case of the Western Balkans) decreases expectations of the EU as an important actor in international dispute settlement and conflict resolution. Union stipulates that:

"The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect".[15]

As previously mentioned distinction between the two notions of "consistency" and "coherence" are also interpreted from the European Court of Justice. Although the ECJ has no jurisdiction over Common Foreign and Security Policy of the EU because the definition and implementation of the CFSP be realized by European Council and the Council acting unanimously, except where the Treaties provide otherwise.[16] European Court of Justice has made its interpretation of consistency and coherence, when seen as necessary for its interpretation in relation to specific issues. To understand the role of the ECJ in this policy cite Article 24 of the ECT, according to which:

“The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions, with the exception of its jurisdiction to monitor compliance with Article 40 of this Treaty and to review the legality of certain decisions as provided for by the second paragraph of Article 275 of the Treaty on the Functioning of the European Union.”

ECJ is excluded from the scope of the Common Foreign and Security Policy, expressed in Article 24, paragraph 1, of the ECT and Article 275, the TFBE. There are no clear rules of the ECJ due to its lack of impact on EU foreign policy. [17] But although ECJ jurisdiction excluded from the realm of foreign policy with the exception of some features that contains Section 275, the TFBE, ECJ in terms of consistency and coherence treatment, in some cases to the European Commission with Member States, suggests that the two notions of consistency and coherence they cannot be confused with each other, these two concepts share each other, these should be understood as distinct concepts.[18]

2. The dimensions of coherence

Coherence function of European foreign policy, has been identified in the literature by various authors, in four main dimensions. It is divided into vertical coherence, horizontal coherence, institutional coherence, and multilateral (multilateral) or interstate consistency, depending on the interpretation of different authors, like Gaußt ier (2004) [19], Nuttal (2000) [20], Nuttall (2005) [21], Keukeleire (2008) [22], Cremona (2008)[23]. Duke author, argues that coherence lies between different areas of external action, such as: development, trade, Common Fo-
reign Policy and Security, humanitarian assistance, conflict prevention, peace building, crisis management, protection provisions and aspects of external relations.[24] Consistency also perceived in relation to the external action policies and other policies.[25] This is a particularly important aspect because in many areas the distinction between internal policies and external has become increasingly difficult, especially in the area of freedom, security and justice. Finally, referring to the treaty on the overall consistency between policies and activities, an important aspect of EU competence in foreign relations.[26] Carmona defines consistency in three levels, the first level are the rules of hierarchy, on the second level the rules of delimitation, and the third level, the principles of cooperation and complementarities.[27]

2.1. Vertical coherence

Vertical coherence is the coherence between two types of policies, on the one hand are the foreign policy of the European Union and on the other external policies of the Member States, national foreign policies of states. This consistency refers to the relationship between Member State and EU external action, in particular contexts where Member States and the EU can act at the same time in relation to the same policy or subjects.[28] Member States cannot pursue foreign policies that run contrary to the spirit and the policies adopted by the EU. As mentioned above coherence handled directly by Article 24 of the TEU, paragraph 3 of this Article in order to discuss the vertical coherence, said:

"Member States of actively and unreservedly support the foreign policy and security of the Union, with the spirit of loyalty and mutual solidarity, and respect Union action in this field".

States would seek to strengthen the unity of the common and presented in the international arena as a single force, not divided. Member States have an obligation to promote and support the Common Foreign Policy and Security of the EU. States should affirm cooperation for resolving conflicts or disputes in the region, the stability of surrounding areas and regions in need. Activities of states in conflict resolution are extended beyond Eastern Europe, including neighboring regions such as the Balkans, Caucasus and Middle East, as well as its far more areas, Africa and Central Asia. The Lisbon Treaty identifies a clear link between the internal nature of the EU and its external projection, [29] identifies its purpose to provide protection, peace and security in the international arena.

In the vertical dimension when the "coherence treated as consistency", [30] coherence perceived as rules which serve to resolve the conflict between the norms of the Union and national states. In case the rates of member states in conflict with the norms of the Union, the Union norms prevails over national norms states. To overview of coherence as distinguished consistency of Union law norms as primary rules, character superior of Union norms versus those of member states in foreign policies.

2.2. Horizontal coherence

Horizontal consistency regarding the Common Foreign and Security Policy is one of the main goals of the Lisbon Treaty. More specifically this kind of consistency can paraphrase in Article 3 of the Treaty on European Union and Article 7 of the Treaty on the Functioning of the European Union, about the compatibility between its policies and activities. This consistency refers intergovernmental aspects, the extent to which different foreign policies of the EU are coherent with each other, the implementation of foreign policy at EU level. EU foreign policy aims not only the governance of its specific objectives, but also to mind the overall policy priorities of the Union.

In the field of foreign policy a special effort was made to increase the coherence by creating a set of common principles and objectives for all of the EU's Common Foreign and Security Policy of the Union. Coherence does not consider removing the differences between policies and institutional structures, it acknowledges the existence of differences provided that these differences do not prevent the harmony between the two aspects, aspects of inter-institutional and inter-political aspects. [31] The first aspect will be developed as institutional consistency is part of the horizontal consistency. Horizontal Consistency is probably the right approach addressed by academics because of "the capacity of the EU to influence other states and its capacity to act as a single entity". [32] Institutional Consistency is part of horizontal consistency its one aspects.

2.3. Multilateral coherence

Multilateral coherence determines durability between EU actions in a certain area of external action
and activities of other international actors in the same field. This consistency refers to the EU’s relations with other international actors, with other regional or global states, and with international organizations. Multilateral coherence focus on the EU external action and cooperation on issues of general international interest. EU relations with other actors on common issues to resolve international disputes, crisis management and conflict prevention.

According to Article 11, of the Treaty on European Union "promote international cooperation" is an important aim of the external action of the EU. EU legal framework in this regard states in Article 208, once Articles 177 and 181 of ECT, in the title of Development Cooperation. According to this article, the EU shows willingness to cooperate with other international organizations, the UN (the organization which has in its aim the resolution of international disputes), the GATT (economic organization, which among others, aims to resolve numerous international economic disputes), and a large number of international organizations established in areas and for different purposes. More specifically Article 208, said:

"The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organizations".

This article does not use the term solution or settlement of international disputes, but refers commitment to cooperate given the title in which this provision is a part. EU meet "objectives within the UN" shall mean the EU cooperation with the UN in international dispute resolution. This is emphasized as an important part of UN objectives, set out in Article 33 of the UN Charter is the resolution of international disputes by peaceful means. Means which are divided into diplomatic means and judicial means, diplomatic means are: mediation, boni offici, negotiation, mediation, enquiry, conciliation, and judicial means are: arbitration, the International Court of Justice.

"The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice".[33]

The EU has cooperated with the UN for many international issues, and has applied methods listed in Article 33 of the UN Charter. EU cooperation with other international organizations, not intended to be only humanitarian aid and cooperation with third countries. But also cooperation to resolve disputes or conflicts of various kinds, religious conflicts, political, economic, ethnic conflict. Cooperation to resolve religious conflicts (Kurds in Turkey), territorial conflicts (Kosovo 1999, Ukraine 2015), civil wars within the country (Albania 1997), the conflicts in Bosnia-Herzegovina, Serbia, Cyprus etc.

3. The role of the EU in resolving international disputes

Although EU Common Foreign Security Policy has been criticized since its inception for the lack of coherence [34] and ineffectiveness [35] member States made continuous efforts to create effective institutional structures and form common policies. EU external action in the context of dispute resolution within the foreign policy and security, carries an institutional complexity. Complexity in the application of policies with non-member countries when they are involved in a conflict, the Western Balkan conflicts, Albania in 1997, Kosovo in 1999, etc.

EU was unable to play a significant role during the wars in the Balkans and especially in the Kosovo war. To eliminate this weaknesses, EU tried to intensify its relations with the Western Balkan countries in the XXI century. The Treaty of Lisbon, brought concrete changes to improve the coherence and effectiveness of foreign policy of the EU. This treaty corrects the main weaknesses of the Common Foreign and Security Policy that were identified by analysts and researchers in this process. These weaknesses and problems referred to the lack of consensus among the 28 member countries of involvement in the conflict (in disputes where the EU is not a party).

While there is consensus on many issues, reaching political agreement in this regard may be substantially difficult. Lack of consensus could hinder the development of long-term strategic approaches to an issue, a conflict or an entire region. The main problem that threatens the role of the EU as an
important actor in resolving conflicts is the lack of a common, unified. Lack of consensus may arouse confusion if the EU “speaks with many voices” [36] expression of views and individual preferences of national leaders. Another problem that has been identified is the institutional and coordination insufficient.

Absence of institutional coherence and coordination of the EU is reflected in a series of disputes that have escalated the conflict. For example, Georgia-Abkhazia conflict, in the 90 'EU has been reluctant to play a crucial role in the South Caucasus, the region was too far, the EU’s foreign policy was a minor, unable to influence. After 2003, the EU starts to form a part of it, to show interest in the region, appointed a special Representative for the South Caucasus and in 2006, the EU and Georgia signed a Cooperation Action Plan, which provided the conflicts solution, Georgia's with Abkhazia. The role of the EU begins and becomes more evident, but without departing from its neutral position.

Inability of EU, to play an important role has shown in other conflicts. But despite the lack of coherence, the Union has made continuous efforts in building a foreign policy and security authorities. Besides weakness that have characterized the EU in the international arena, the EU has played an important role in mediating various disputes. As example, mediation in the signing of the Ohrid in Macedonia, mediation in Serbia and Montenegro, support Union Annan Plan for Cyprus. Union has promoted respect for fundamental rights of the individual, and cultural rights of ethnic minorities, in the case of the Kurds of Turkey, building a democratic state, economic development etc.

Conclusion

In conclusion we can say that coherence is a major goal of the EU to highlight its capacity as an important actor in international dispute resolution. In the first stages of EU distinguished for lack of efficiency and coordination in foreign policy. The Lisbon Treaty will mark an important turning point in the implementation of sustainable policies constructive and effective EU. Different types of coherence analyze the position of the EU and its institutions in the Common Foreign and Security Policy.

At the center of discussion and main goal during the establishment of the Lisbon Treaty were vertical and horizontal coherence. These concepts define the EU external relations with other actors of the international arena. Vertical coherence is based on the relations between the EU and member states on foreign policy and security. While horizontal coherence means the extent to which different foreign policies of the EU are coherent with each other, the implementation of foreign policy at EU level. So the vertical consistency applied in relations between Member States and the Union and horizontal consistency applies to internal level of EU institution.

Legal, institutional and political owns a great importance in foreign relations. Action by the rules and the definition of common objectives shows that the success or failure of the EU in the international arena. The success of the EU and its serious commitment to resolving the dispute before the adoption of the Lisbon Treaty put into question its power. Has EU power, can resolve disputes by peaceful means set out in Article 33 of the UN Charter? These questions cannot be given a final response because the coherence of the EU has not only weakness, but also success.

If there is more success or weakness, this issue is very controversial then. Institutional interaction and coordination of the Common Foreign and Security Policy are the element that should not be underestimated. The EU is an important international actor, and his position in the international arena for conflict resolution comes and it is growing.

Reference


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[28] Ibid


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Agency Model and Governmental Support of Business: 
Russian Viewpoint

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Abstract: Governments of all countries try to support business. In order to provide economic efficiency 
public authorities launch grants, subsidies etc. It puts constitutional problem of adequacy of such measures 
to the equity principle. The economic model of relationship between the state and the business in regard 
to governmental funds distribution is required. The author suggests 3 assumptions and based on these 
assumptions designed the optimal baseline «contract» between state and businessmen. Some complications 
were also observed. The conclusion is that agency model in law and economics is appropriate tool for the 
analysis of such a specific procedure as state support of the business during the crisis.

Introduction

Modern economy cannot be described as an 
absolute capitalism according to Adam Smith, 
where the state’s interference is minimized. On the 
opposite governments are very active in all 
markets. It is obvious especially clear in terms of 
the crisis, which makes Governments of different 
countries find the ways of business support and 
stimulate economy in general. This circumstance 
puts many problems for lawyers, economists, 
politicians. There are also some interdisciplinary 
challenges. For example the problem of business 
support efficiency could be researched both from 
economic and legal perspectives. As far as the 
author of this paper is constitutionalist, I will try to 
show that this problem is constitutional in its very 
nature.

It is also should be mentioned that Russia (the 
home country of the author) has its own specificity. 
The matter is that Russia does not have «old 
capitalism» with its developed institutes. That is 
why for many Russian companies it is not so easy 
to get access for the private funds – banks 
investment, institutional investors. Consequently it 
is impossible to characterize Russian economy as 
«pure capitalism» and of course this fact changes 
the habitual western view to the problem of 
relations between state and business. Arguably 
Russian viewpoint is relevant for some other 
developing countries.

First of all it is necessary to clarify that all tools of 
business support could be divided into 2 types - 
monetary and non-monetary. In the ranks of 
financial, provides the support of business by 
means of the tax rules, custom and administrative 
procedures etc. The monetary forms of business 
support have some specific.

First of all as the government can use property, 
including money so far it helps to reach social 
gains, the constitutional requirements for the 
financial support of business are very strict.

Secondly business money supply could be consi-
dered as a specific form of right restriction. Once 
the law is passed it is no just a right of Government 
to produce some form of money support of 
business, but it is a duty. In this sense such law is a 
restriction of public property right. According to 
the contemporary constitutional doctrine any 
restriction must be proportional. The propor-
tionality of restriction of the rights means that such 
a restriction must cause positive result and the 
profit of such a result exceeds the losses caused by 
restrictions. [for more information about propor-
tionality principle see 1,5,6,8]. This is something 
which is called “efficiency” by economists. So 
efficiency is economic equivalent of constitutional 
principle of proportionality. Hence one can see very 
close interconnection between constitutional 
doctrine and economy.

That is why monetary type of business support is a 
subject of this paper.

How this requirement should be provided?

Experts in Law and Economics use so-called agen-
cy models. As Eric A. Posner explains: «in its sim-
plest version, agency relationship is a relationship 
in which one person, the «principal», benefits when
another person, the «agent» performs some task with care or effort» [7:1]. Taking into consideration this approach, let’s try to build up the economic model of relationship between the state and the business in regard to governmental funds distribution.

First of all we need some initial assumptions.

There is a state which is interested in a business development, because the better it works, the more taxes it pays, the more opportunities for social politics state has. **So the state is a principal.** The business fulfill governmental «task», increasing GDP. **So the businessman is an agent.**

Is it correct to say that the success of the business is depended on the efforts taken by the agent? It is obviously important issue. However the initial validity of business idea, its vitality and reliability of business plan are also very significant. Even the well-qualified manager can fail if the project is rotten.

**Hence, the first assumption is: the business can be endogenously effective or not.**

Under the condition of crisis, the enterprise can need badly finance. Simplifying, one can say that agent will use finance with low or high level of effort. The principal needs the agent to take a high level of effort. What about the agent? In general he is looking forward to a proper management not less than the principal, because it benefits him directly.

However there is a problem of «moral hazard» [3]. It is widely recognized that information asymmetry is a source of such a problem. It is quite obvious that state does not have enough information about the motives of businessman. That is why there is a risk of taking money away from business somewhere else. Unfortunately we witnessed it many times, analyzing Wall-street practices for instance, or Russian experiences of fraud in business [4].

So, let’s make second assumption:

**If the agent engages in a high level of effort, he will solve his present business problems and will make a good contribution to welfare; the agent can take a low level of effort because of the moral hazard problem.**

However the danger of opportunistic behavior in such kind of agency relationship is much less than in the standard model (contractual relations for example).

The important part of economic model is analysis of inclination to the risk. In the typical system the agent is risk-averse. Is it correct for the researching case? Business is risky in its very nature. Due to this reason it is arguably that agent is risk-neutral. At the same time, the principal in our model cannot be risk-neutral. The state manages taxpayers’ money and it is impossible to put it under the high level of risk.

**So the assumption № 3 is that the agent is risk-neutral and the principal is risk-averse.**

To sum it up:

a) Principal can financially support only the agents with effective business model;

b) Principal needs the agent to take high effort, who is also interested in it generally, however the problem of moral hazard exists;

c) Principal is risk-averse and agent is risk-neutral;

d) Getting a governmental fund, the business if it takes high effort, becomes efficient, providing input to the welfare maximization.

It is very important that all of these assumptions are consistent with constitutional rules of public property which prohibit using the state’s fund in risky activity. Based on these assumptions, let’s design the baseline contract and potential agent requirements. I will speculate about the most difficult points of issues mentioned.

**1. Business model efficiency**

How to determine if the business model is effective or no? Customary the state creates commissions which analyze applicants business plans, market condition and other factors. This way seems inefficient. First of all, it imposes serious costs. To attract the serious experts to such a commission, the state has to pay them respectively. If state officials evaluate the projects, not experts, the value of this evaluation is doubtful. The matter is that officials are not business-experts; otherwise they would not be officials, but Forbes-celebrities. Secondly, in the absence of definite criteria, the corruptive risks are grown up significantly. Thirdly, there is a danger that governmental funds distribution may turns into the paper competition, not a struggle of ideas.

Another way to determine efficiency is to analyze the previous experience of the company. If the business proved its efficiency it deserves the state support.
The traditional problem «too big to fail» seems to be different from this viewpoint. It concerns the situation, when the state has to support large corporations, because if they fail «dominoes effect» will follow [5]. Many people may become unemployed; many similar businesses may go bankrupt. Usually it is said that state supports such companies forcedly. However this problem has another side of coin. These companies proved their efficiency before the crisis; otherwise they would not become «too big». Therefore they satisfy the criterion of effectiveness.

First off all it can be predicted that this model will focus on the big business. It has more successful effectiveness. «too big». Therefore they satisfy the criterion of before the crisis; otherwise they would not become coin. These companies proved their efficiency spending.

This simplifies the monitoring of general direction character of fund productions. This simplifies the manufacturer the money can only be spent for the financing particular segments of economy; if it is impossible to eliminate risk totally. What is possible to the definite project; agent co-finances the project. At the same time, as far as the principal is risk-averse it is very important for him to minimize risks.

The baseline contract must provide the tools of securing obligations of recipients of public funds. It could be for example the deposit.

So the baseline contract is this: principal finance the company with a success history; money goes to the definite project; agent co-finances the project; agent provides the security of his obligations.

However, there are some complications with this baseline contract in the real world. The agents can fail to co-finance projects because they simply do not have enough money for this. They also can have a problem with securing of their obligations due to the high level of loan debt burden and the lack of deposits.

What are the possible solutions?

a) The temporary participation of state representative in the Board of directors of the agent

This is exactly the way which Russia goes. The disadvantages of this approach were mentioned above: the high costs and the lack of business experience of state officials.

b) We should relax a little an assumption of risk-averseness of principal.

It should be pointed that this measure is applicable only to the large corporations, so-called «national champions». In this case it is really effective: the agent does not need to provide the securing of his obligations, and the projects were financed by them before the crisis.

2. Tendency to the risk: principal is risk-averse and the agent is risk-neutral

If the agent is risk-neutral he must be prepared to play in the game «take the risk or go out». Therefore in the model, building up in this paper, the agent has to be prepared to take risks, even the risk of bankruptcy. That is why he must be minded to invest his own money to the project. At the same
history, more property for deposits and the cost of its monitoring is minimal. There are no so many large companies and the control over them is not difficult. Effective control over the small business is complicated because of the prohibitive high costs. It is hard to imagine the millions state official as a members of Boards of directors.

Hence one of the most important problems of constitutional economy arises: the correlation between the Justice and efficiency. Probably it is efficient to support the «national champions». However if it is fair to small business?

We suppose that this contradiction is not as critical as it may seem. First, the revival of the big business gives multiplicative effect for the all economy, including a side positive influence for the small business due to the additional demand for their products and services.

Secondly, the state has to support small business by other, non-monetary tools. There are many tools to do it. Thus, the government can make tax deductions for some groups of businessman, simplify administrative procedures, suggest state guarantees of small business loans etc. These methods do not guarantee direct access to the governmental funds. That is why the constitutional rules put forward different requirements for such governmental actions and different economic model is necessary.

Third, the help to big business will give an access to the finance for small business. One should take into account that the main source of funding in the market economy is private banks. Supporting them, government gains their possibilities to finance the small business. Banks have more resources: more professional expertise more sophisticated monitoring etc.

Another problem is to start business, because the beginners do not have a successful history and consequently they do not comply with one of the assumptions of the model. So they stay away from the governmental funds.

In ordinary situation their financial needs must be satisfied by the venture companies, business angel investors and other private institutions. In the crisis these institutions feel the deficit of finance themselves, that is why the access of the beginners to the finance is highly hampered.

Partially this problem can be solved by the same tools as the problem of small business – through the private banks, supported by the state. Partially they can enjoy non-monetary privileges. However, generally this problem needs intensive researches.

The baseline contract suggested above is optimal if only the all assumptions are correct. One among these assumptions is that agent is risk-neutral. We deduced this from the theoretical point that business is endogenous risky and businessmen are the people inclined to risk in their very nature. Yet there is no 100% guarantee that it is correct assumption. So it also requires additional examinations on base of Behavioral economy and law approaches.

Conclusions

In conclusion it could be said that capitalism according to Adam Smith with its invisible hand of the market, when the state is a night guard is more illusion than reality. Governments actively participate in the economy, including the direct influence on the business by the means of subsidies and grants. This puts forward very difficult problems for the constitutional science. It is necessary to work out the reliable model of interconnection between the state and business which will help to find the balance between the competing values, such as equality principle, efficiency and constitutional rules. For this aim we need appropriate methodology. We believe that agency model in law and economics can be used as a tool for the analysis of such a specific procedure as state support of the business. This report is initial attempt to do it. Therefore Eric A. Posner is right, saying «Once one has mastered the agency model, it is a fine game, especially on long car trips to apply it to everything in the universe» [7:11].

References


Maronites in North Cyprus

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Abstract: Today, the notion of minority rights, along with the issue of human rights constitutes one of the most important factors playing a role in international relations. This issue is considered outside the realm of the jurisdiction of the states and a valid international concern. At this point, this paper aims to discuss Turkish Cypriot administration’s policies towards the Maronite minority since 1974 when Cyprus was divided into two after the Turkish military operation. Although Turkish Republic of Northern Cyprus (TRNC) is not recognised by any country other than Turkey, TRNC has responsibilities as it approved human and minority rights conventions unilaterally. So, with this paper, it is aimed to discuss Turkish Cypriot administration’s legal and political responsibilities within the framework of the human and minority rights conventions by examining its policies towards the Minorities since 1974.

Introduction

The issue of minority rights, which emerged for the first time in the 16th century with the emergence of religious minorities, along with the issue of human rights, constitutes one of the most important factors playing a role in international relations. Presently, the issue of minority rights is considered outside the realm of the jurisdiction of the states and a valid international concern. On the other hand, especially in the 1990s, common standards relating to minority rights have started to emerge in the documents drawn up by various international organisations. These developments have led the way to the formation of jurisprudence on minority rights separate from the international law of human rights.

These developments inevitably affected North Cyprus although Turkish Republic of Northern Cyprus (TRNC) is not recognised by any country other than Turkey as of June 2015. So, this paper aims to discuss Turkish Cypriot administration’s policies (first the Turkish Federated State of Cyprus, then the TRNC) towards the Maronite minority immediately after the Turkish military operation in 1974 and the de facto division of the island. Although Maronites are not considered as a judicial minority in the north, they rather formed a ‘factual’ minority group under the internal and international legal documents. So, this paper will discuss Turkish Cypriot administration’s legal and political responsibilities within the framework of the human and minority rights conventions that North Cyprus approved unilaterally, by examining its policies towards the Maronite community since the division of the island.

1. Domestic Legislation in North Cyprus with Regard to Minorities

In North Cyprus, there are no effective statutes on the rights of the minorities and none of the minority groups have any legal status or recognition by the law. This issue can be clearly seen in the TRNC Constitution of 1985, which is the supreme law in the hierarchy of norms. Even though this document consists of 164 articles and its initial goal was to create applicable solutions to a variety of problems, it can be stated that it does not provide any directly applicable regulations with regard to the rights of the minorities. The existing regulations are only indirect articles which introduce negative rights for the minorities. No positive rights were included in the Constitution for the protection of the rights of the minorities [1]. Therefore, it can be observed that while the TRNC Constitution provides regulations on the prevention of discrimination, it does not include any regulation for the protection of the minorities [2]. With respect to the negative rights and prevention of discrimination, it is possible to list many articles including; article 8 on equality and many other articles under Section Two, with the subheading of “Fundamental Rights, Freedoms and Duties”. But, after accepting the Convention on the Rights of the Child on 12 March 1996, the Parliament of TRNC has integrated the International Convention on the Elimination of all Forms of Racial Discrimination and the International Covenant on Civil and Political Rights to the internal law at its meeting on 19 July 2004 [3]. Especially the implementation of article 27 of the International Covenant on Civil and Political Rights and article 30 of the Convention on the Rights of the Child has not only placed a passive duty upon the TRNC administration for not interfering with the activities of the minorities towards protecting their ethnic identities but it has also introduced a positive duty to provide every possible support towards the success of these activities [4]. After the implementation of the Convention on the Rights of the Child and the International Covenant on Civil and Political...
Rights, the progress started in 2007 towards amending the Constitution and there were arguments about including provisions regarding the minority rights. The centre-left governing party at the time Republican Turkish Party-United Forces (Cumhuriyetçi Türk Partisi-Birleşik Güçler/CTP-BG) was the only party to make a proposal on this topic. It was proposed that under article 12/A of the draft Constitution, the following statement should be included “The state, protects the rights of the minorities (which arises from being a member of the minority group) living within the country’s borders”. But this attempt failed. In 2014, during the efforts to change the Constitution, the same party proposed another regulation for the rights of the minorities. Again under article 12/A, of the draft Constitution, this statement should be concluded: “Persons belonging to ethnic, religious or religious minorities shall not be denied the right, in community with the other members of their group to enjoy their own culture, to profess and practice their own religion and to use their own language. The state should create necessary conditions for the application of these rights”. But this attempt failed again because of the opposition of the rightist political parties in the parliament. According to the spokesmen of these parties, these kinds of regulations would create minorities within the Turkish Cypriot community and divide the Turkish Cypriots. Unfortunately neither these nor any other proposals were included in the Constitution as of June 2015 [5].

1. Applications Regarding the Maronites in North Cyprus

The Maronites have their origins from Lebanon. Their mother tongue is an Arabic dialect which is known as the Cypriot Maronite Arabic [6]. The Cypriot Maronite Arabic has been affected substantially by Greek language and it is only spoken in the Kormakitis/Koruçam village where most of the population is elderly people [7]. If they have originated from Kormakitis, the elderly people living in different places know this language as well [8]. The young population mostly speaks Greek since they are living with the Greek Cypriot community [9]. The Cypriot Maronite Arabic is not used as a written or religious language. The rituals are either carried out in a mixture of Syrian, Greek and Arabic or entirely in Greek [10].

Maronites were historically attached to the Catholic Church [11] and they had migrated to Cyprus under four different migratory waves in the eighth and thirteenth centuries, which were mainly caused by religious issues. The Maronites had migrated to Cyprus especially during the Lusignan rule and their population had increased to an important level [12]. However, this population decreased over time due to other migrations and assimilations within the Greek Orthodox Community [13]. In 1960, when Cyprus gained its independence from Britain, the population of the Maronites was 2,752 [14] and prior to 1974 it was stated as 4,830 [15] however, after 1974 various numbers were stated regarding the population of the Maronites. For example, in 2001, there was a census in South Cyprus and the population of the Maronites was stated as 3,658 [16]. If 165 Maronites living in North Cyprus at that time [17] are added to this number, total population of the Maronites in the island was found as, 3,823. However, it is stated that the exact population of the Maronites in the south is not known clearly as some Maronites are thought to be hiding their ethnic identities [18].

In the demography report of 2007, the Maronite population in the south is presented as 4,800. When 142 Maronites residing in the north [19] are added to this number, total Maronite population reach to 4,942. It is also stated that the representatives of the Maronite community has confirmed these numbers [20]. Apart from the official data, another source states that as of 2010, the population of Maronites living in the south is 4,300 [21]. In the same year, the population of the Maronites living in the north was 127 [22], so it is possible to assume that the total population of the Maronites was 4,427. Another source states that the population of the Maronites was 6,000 in 2011 [23]. As of June 2015, total population of Maronites in Cyprus is estimated as 5,000-6,000 most of whom are living in South Cyprus.

As for the residential areas of Maronites, prior to 1974, there were four main villages in north-western Cyprus. These villages were; Kormakitis/Koruçam, Ayia Marina/Gürpınar [24], Karpasia/Karpaşa and Asomatos/Özhan [25]. At this time the largest Maronite village was Kormakitis, where 1,260 Maronites resided. However after 1974, this number was reduced to 530 [26] and it is continuously decreasing since then.

Even though the opening of the check points on 23 April 2003 by the Turkish Cypriot authorities [27] was expected to increase the population of the Maronites residing in the north, the results were the opposite. To put this to numbers, the population of Maronites in North Cyprus (most of whom are residing in Kormakitis) was 152 in 2003, 146 in 2005, 145 in 2006, 142 in 2007, 136 in 2008, 131 in 2009, 127 in 2010, 126 in 2011 and 2012, 120 in 2013 and 116 in 2014 and 2015 [28].

The Ministry of Foreign Affairs of TRNC states the population of Maronites in North Cyprus as 156 as of 25 April 2013. 135 of these people are residing in
The decrease in Maronite population after 1974 has various reasons. The first and most important reason was that, from 1974 until recently, a homogeneous Turkish Cypriot nation-state was aimed to be created in North Cyprus and together with Greek Cypriots, Maronites were seen as untrustworthy outsiders. For this reason, until very recently, these people have been oppressed and their rights have not been granted to force them to leave their homes. For this purpose, Turkish Cypriot authorities have not given citizenship to Greek Cypriots and Maronites so far. Although these people have the right to receive TRNC citizenship according to the legal regulations, they are not recognised as citizens of TRNC [29]. Due to this limitation, the Greek Cypriots and Maronites cannot participate in the presidential, parliamentary and municipal elections that take place in North Cyprus. They do not only lack the right to vote and to be elected, but also in some fields members of both communities are deprived of enjoying the advantage of being citizen [30].

The second reason was that the Maronites did not want to change their status obtained with article 2/3 of the Constitution of the RoC due to the fact that most of the Maronites had chosen to be a part of the Greek Cypriot community and shaped their work and social life within this society. For this reason, when the island was divided in two in 1974 many of the Maronites had chosen to migrate to south with the Greek Cypriots.

The third reason was the occupation of the Maronite villages (except Kormakitis) by the Turkish army after 1974. Also, as it will be discussed in detail below, the Maronites have experienced various problems in different areas, economy and education as such [31].

The fourth reason was that the people who did not migrate to the south and had chosen to stay in their homes were mostly elderly people [32]. For this reason, the society was not able to renew itself.

The fifth reason was that the requests of some Maronites to return to their homes after 2003 was delayed by the Turkish Cypriot authorities.

3.1. Procedures on Education

As stated above, after Turkey’s military operation on the island in 1974, most of the Maronite population migrated to the south and the remainders were mostly the old generation. As a result, the village of Kormakitis which is almost completely populated by Maronites came to be known as “the childless village of North Cyprus”. While the authorities saw the restoration of the dilapidated school building of the village pointless due to the deprivation of children at the age of attending school, the villagers claimed that the families with children did not want to return to Kormakitis due to the lack of a school. The few students who existed in the past tried to continue their education with the support of a single teacher [33].

Despite this negative appearance, the decisions of the Council of Ministers of TRNC on 23 May 2005 which was related to the procedures for the establishment of primary, secondary and high schools has strengthened the expectations of the establishment of Maronite schools. However, as of June 2015, the expectations were not met and, no schools have been established for Maronites.

3.2. Procedures on the Freedom of Religion and Conscience

Another issue that the Maronites have complained about was the freedom of religion and conscience. Even though they were always allowed to freely worship in the following churches; Ayios Georgios Church in Kormakitis, Timios Stravros Church in Karpasia and Banaiyas Mariadis Church in Kambylı (Hisarköy) [34], they were prohibited from worshiping in churches and monasteries which were in military zones and this was the main point of complaint. Even though in the Fourth Inter-State application to the European Court of Human Rights (ECtHR), the RoC claimed that the freedom of religion and conscience of the Maronites had been violated, the Court did not approve the existence of any violations [35].

Encouraged by the positive developments that came with the freedom of movement in 2003, the Maronites began negotiations with the Turkish Cypriot authorities to carry out rituals in the churches that were previously closed for worship. These negotiations were successful and on 23 July 2006, in the Prophet Elias Monastery near Ayia Marina village which was located in a military zone, a ritual was carried out along with the company of the Maronites from the south. This was the first ritual since 1973 [36]. On 18 July 2010, permission was granted for the first time since 1974 to carry out a ritual in Ayia Marina Church in Ayia Marina [37]. Also the Maronites were granted permission to carry out Sunday services in Archangelos Michael Church in Asomatos village, which is also located in a military zone. However, permission had to be obtained from the Turkish Cypriot authorities for the rituals on the other days of the week. But, with the decision of the Ministry of
Foreign Affairs of TRNC on 21 February 2011, the application period for permits for rituals was reduced from 30 days to 10 days. Consequently, another important step was taken towards the freedom of religion and conscience of the Maronites.

The positive developments were not limited to these. An agreement was reached between the Turkish Cypriot authorities and the United Nations Development Programme (UNDP) in June 2008 and a project regarding the stabilisation and restoration of the Prophet Elias Monastery was completed in April 2009 [38]. Also, the Banaiyas Mariadis in Kambylı was restored in 2009 with the efforts of the civil organisation “Kormakitis Trust” (which aims to protect the Maronite cultural heritage) and the funding of USA International Development Agency (USAID) [39].

Despite these positive developments, it should be stated that on 31 May 2014 police forces prevented worship of Maronites in the village of Kythrea/Değirmenlik as they didn’t get permission from the Ministry of Foreign Affairs of TRNC [40].

### 3.3. Economic Issues

The main economic problem of Maronites was due to the seizure of their immovable properties by the Turkish Cypriot authorities as they had to be abandoned when Maronites migrated to the south in 1974. Behind this procedure, is the order which is titled as; 21/1962 Sayılı Mala El Kayma Yasasının 4. maddesi Uyarınca Hazırlanan Mala El Kayma Emri which came into force with the decisions of the Council of Ministers of Turkish Federated State of Cyprus on 6 October 1977 (No 1050-77) and 12 January 1983 (No Ç(K-1)73-83). With this order, the agricultural lands of the Maronites were seized along with their houses. Especially after 1983, every year in August, these plots of land were rented as treasury property to people close to the parties in government. In turn, these people rented the lands to other Maronite people for a higher rent. As a result, both the government and the people that rented the Maronite lands from the government have obtained ill-gotten gains from these lands [41].

The decision of the Council of Ministers of TRNC on 27 June 2004 (No T-1062-2004) created a particular development in this area. Under this decision, the immovable properties within the borders of Kormakitis, with the exception of houses which were used by people other than Maronites, were to be handed over to their original title holders. This decision covered the title holders from south as well. As other Maronite villages were deemed as military zones, they were not included within the scope of these handovers. Therefore, this decision was limited to the handover of those properties in Kormakitis with the exception of houses which was under the use of people that were not Maronites. Also, the decision did not cover the payment of loss of use to the Maronites for the period of 1974-2004. The complaints of the Maronites that they were not able to obtain their title deeds have continued for many years. Despite the complaints about title deeds, the Maronites have started to use, repair and improve their properties. Since the decision of the Council of Ministers, the appearance of Kormakitis has changed positively and especially during weekends, the village has obtained its old livelihood as of June 2015.

The developments by the Turkish Cypriot authorities were not limited to those stated above. Authorities also invited the Maronites of Kormakitis to return and settle in their village [42]. The development was not limited to the invitation. The bureaucratic procedures were simplified to support this goal. According to this, the Maronites were required to obtain an official confirmation from the chief alderman of the village that proves them as the natives of the village, then with this document, they would need to apply to the Ministry of Internal Affairs of TRNC to obtain an identity card which is normally given to all the foreigners living in TRNC. It was stated that with this identity card, Maronites would obtain all the property rights on their immovable properties.

Even though the Greek Cypriot authorities stated that they had no intention of preventing the Maronites from returning to their villages and the sole decision lay with Maronites themselves, nevertheless, the Maronites were cautious in their approach towards this matter. The main reason for this caution was due to the fear of being labelled as “traitors” in the event that they would decide to return to their houses and to obtain the identity card given by the Turkish Cypriot authorities. Also, some Maronite organisations had stated that returning to Kormakitis without the establishment of a permanent solution to the Cyprus problem and approval of the Greek Cypriot administration would push the Maronite community into dangerous policies and these would provide unexpected results [43].

After the expression of these fears, the Vice Prime Minister and Minister of Foreign Affairs of TRNC, Serdar Denktas stated that the return of the Maronites was not subjected to pre-defined criterion and for this reason the Maronites would not be forced to obtain any TRNC identity cards. Denktas also stated that regardless of their location of residence, the Maronites would be able to utilize their property. It was also stated that even if the Maronites were married to Greek Cypriots, their children would still be entitled...
to inherit their property. The Maronites were also free to sell their properties to other Maronites and foreigners [44]. On the other hand, this right did not permit the Maronites to sell their property to Greek Cypriots [45]. Also, this invitation was only made for the Maronites of the Kormakitis village. The old residents of other Maronite villages were left out of this invitation as their villages were located in military zones.

Despite these invitations for the return of the Maronites, it was stated in UN Secretary-General’s reports [46] for the Security Council that the applications of 11 Greek Cypriots and 44 Maronites for their return and re-settlement had not been answered by the Turkish Cypriot authorities. Correspondingly, Turkish Cypriot authorities declared that permission was given to 6 Greek Cypriots and 38 Maronites to settle down in their villages in the north as of 25 April 2013.

3.4. Procedures on the Political Rights and Freedoms

After 1974, another problem that the Maronites who chose to live in North Cyprus had to face was concerned with their political rights and freedoms. The Maronites that chose to join the Greek Cypriot community with regard to article 2/3 of the Constitution of the RoC, were prohibited from participating in the elections in North Cyprus neither as can-didates nor as voters and for many years, they were also prohibited from electing their chief alderman in their main place of residence, Kormakitis. The village had two chief aldermen who were respectively appointed by Turkish and Greek Cypriot authorities. Neither party recognised the chief alderman that was appointed by the other side. While the Turkish Cypriots were making these appointments on the grounds that the village was within their borders, the Greek Cypriot authorities were claiming that their right for appointing chief aldermen was based on “the sovereignty of the RoC to appoint chief aldermen in villages which cannot hold free elections as they are not under the control of the RoC” [47].

The appointment of the village chief aldermen by the Turkish Cypriot authorities continued until 17 April 2005. In its declaration on 15 March 2005, the Ministry of Foreign Affairs of TRNC stated that “On 17 April there will be elections for the positions of the village chief alderman and a council of elders composed of four members”. It was also stated that the prospective candidates should apply by 31 March. Within the stated time frame, one person for the position of chief alderman and four persons for the Council of Elders made their applications to become candidates [48]. As a result of this development, the Greek Cypriot authorities made an unexpected move and they declared Yoannis Cucukis, the previous appointee of the Turkish Cypriot authorities, as the village chief alderman. This move by the Greek Cypriot authorities drew considerable criticism from the Maronite communities of both North and South Cyprus [49].

In the elections, which took place on the designated date, the ballots were prepared in both Turkish and Greek and out of 112 voters, 74 people voted. The participation was 66%. Two votes were invalid. Ilias Yoannou Papas received 72 votes and became the first elected chief alderman of Kormakitis since 1974. As a result, Kormakitis had two chief aldermen, one of whom was living in the village and had been elected by the Maronites, and another that was appointed by the Greek Cypriot authorities. This meant that the official businesses of the Maronites would be carried out by Papas in the north and by Cucukis in the south. Andonis Hadjiroussos, representative of the Maronites in the Greek Cypriot Parliament of Representatives criticised this situation and stated that the election has proved that the Maronites did not want Cucukis as their chief alderman and he reminded the advisory decision of the European Parliament which stated that the Maronites of Kormakitis should elect their own chief alderman [50]. On 22 June 2005, in front of the Presidential Palace in the RoC, 50 Maronites of Kormakitis protested against the leader of the Greek Cypriot Community, Tasos Papadopoulos for not recognising the chief alderman election. The protesters stated that to resolve the issue, they would agree to the repetition of the elections in the south. On the other hand, the Turkish Cypriot authorities stated they would not permit the repetition of the elections in the south [51].

While the discussions were continuing in this regard, new elections in Kormakitis were held for chief alderman on 27 June 2010 and Papas was re-elected.

Another point of criticism by the Maronites regarding their political rights and freedoms was the fact that they had not been included in any part of the inter-communal negotiations which have continued since 1968. Maronites have always criticised the lack of interest towards their opinions regarding the uncertainty of the future of their villages [52]. Another important issue was that between the years of 1978 and 2004, there were five major plans to solve the Cyprus question and only the Annan Plan, which was finalised in 2004, had included regulations regarding the minority rights. Nevertheless, just as the Maronites have complained, none of the minority groups have been included in the drafting process of
the Plan, not even with regard to the issues which would directly affect these minority groups. Despite this issue, in the referendum for the re-unification of Cyprus on 24 April 2004, many Maronites voted yes due to the various rights that would be granted to them, mainly with regard to the political rights and freedoms and property rights [53]. The regulation of excluding the minorities from the negotiation process also continued during the negotiations which started on 3 September 2008 and continues as of June 2015.

Conclusion

This paper illustrates that, the Maronite community in North Cyprus has faced with various problems between 1974 and 2000s. The main reason behind this was to force these people (together with the Greek Cypriots) to migrate to South Cyprus with the goal of creating a Turkish Cypriot nation-state. But, especially after the Cyprus v Turkey case where ECtHR determined that Turkey violated the rights of Greek Cypriots living in North Cyprus, opening of the check points by the Turkish Cypriot authorities in 2003 and the positive impact of the Annan Plan have led to the improvement of the rights of the minorities including Maronites. Notwithstanding, the insufficiencies of the regulations prevent the development of further improvements. For this reason, all the regulations and especially the Constitution need to be revised in the light of international documents on human and minority rights. New implementations and regulations need to be made for the prevention of discrimination and the protection of the minority rights. But, this would not be sufficient. The important thing is to guarantee that these laws will be implemented and they will not just remain on paper. To achieve this goal, it is important to create bodies that would ensure the application of these regulations or to grant the necessary authority to the existing bodies. Through these organs, Turkish Cypriot authorities would be able to fulfil its passive responsibilities like not interfering in rights of the Maronites, but also the administration in the north has positive responsibilities for safeguarding the fulfilment of the rights of the minorities which would provide the necessary level of true equality. This issue is of utmost importance for the Turkish Cypriot side who wishes to be a part of the European Union (EU) as well as to integrate with international community.

References

[1] While the negative rights are civil rights granted to every member of the community without the distinction of being a member of the minority or majority groups, the positive rights are those which are granted to the members of the minority groups whom are usually at a disadvantage in comparison with the majority. The aim of these positive rights is to provide special rights to the minorities to bring them to a more equal footing with the majority, since it is generally difficult for them to protect their own distinctive characteristics. It is clear that if equal rights are imposed on parties under unequal conditions, then unequal results will be obtained. On this topic see Nigel S. Rodley, “Conceptual Problems in the Protection of Minorities: International Legal Developments”, Human Rights Quarterly, Vol. XVII, No. 1, (February 1995), p. 50. Also see Gudmundur Alfredsson and Alfred de Zayas, “Minority Rights: Protection by the United Nations”, Human Rights Law Journal, Vol. XIV, No. 1-2 (1993), p. 2.

[2] The distinction between prevention of discrimination-protection of the minorities, is an extension of the distinction between negative rights-positive rights and it plays an important role on the rights of the minorities. According to this, the goal of the prevention of discrimination is to provide equality between the majority and the minority groups. However, additional protection must be provided to these minority groups in order to answer their wishes for the protection of their primary distinctive characteristics. For the distinction between the prevention of discrimination and the protection of the minorities and the relation between these two elements see Baskın Oran, Türkiye'de Azınlıklar: Kavramlar, Teori, Lozan, İç Mevzuat, İçtihat, Uygulama, 5. B., İletişim Yayınları, İstanbul, 2008, pp. 36-37.

[3] As well as the aforementioned conventions, the Parliament has also implemented; The International Covenant on Economic, Social and Cultural Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[4] According to article 90/5 of the TRNC Constitution, which is titled as the “Approval of International Treaties”, an international treaty which is implemented through the application of correct procedures will become a part of the internal law and it cannot be taken to the Supreme Court for contradicting the Constitution.

[5] Even though there were shortcomings in the legislations, during the third part of the communal negotiations in Vienna, an agreement was signed between Turkish Cypriot leader Rauf R. Denktas and the Greek Cypriot leader Glafkos Clerides, between 31 July and 2 August 1975 about the Greek Cypriots residing in North Cyprus. These decisions are still valid and therefore binding on the Turkish Cypriot

[7] Maronites state that the Arabic they speak is closer to the Syrian Arabic (which used to occupy Lebanon) than the Lebanon Arabic. The reason for this is believed to be the fact that the Lebanon Arabic was affected by several languages due to the cosmopolitan element of Lebanon (Serhat İncirli, “800 Yıllık Arapça Konuşan Kıbrıslar”, *Kibris*, 19 November 1998). Nevertheless, as stated above, the language of the Cypriot Maronites has been strongly affected by Greek. Another important point that needs to be specified is the fact that there are several common words between the Cypriot Maronite Arabic and Turkish. It is possible to explain this situation due to the large number of Arabic words adapted to Turkish and the increased contact between the Maronites and Turkish Cypriots after 1974. For more information on this topic see Ahmet Erdengiz, “Kıbrıs Maronitleri ve Kormacit Araçaştı”, *Halâkilimi*, No. 51, (Ocak-Aralık 2003), pp. 115-118.

[8] A research shows that any Maronite under 26, does not know this language. Therefore, it is stated that the Cypriot Maronite Arabic will be forgotten towards the end of the 2000s. For the researches on this topic see Marilena Karyolemou, “The Demographics of the Cypriot Maronite Community and of Cypriot Arabic Speakers”, Brian Bielenberg and Costas M. Constantinou (eds.), *Empowerment through Language Revival: Current Efforts and Recommendations for Cypriot Maronite Arabic*, International Peace Research Institute (PRIO), Oslo, 2010, pp. 4-5.

[9] RoC is a state based on the principle of bi-communality. Turkish and Greek Cypriots form these communities. After article 2/1 and 2 of the Constitution of the RoC defines Turkish and Greek Cypriot communities ethnically, linguistically, culturally and religiously, article 2/3 compels persons belonging to other groups to join either to the Turkish or the Greek Cypriot community. Because of their Christianity, Armenians, Maronites and the Latines preferred to be a part of the Greek Cypriot community.


[11] The Cyprus Maronite Church answers to the Cardinality in Lebanon while the Cardinality answers to Vatican. As a result, the Archbishop of the Maronite Church is appointed from Lebanon. Even though it is attached to Vatican, the Cyprus Maronite Church still preserves some of the rituals of the eastern churches. As of April 2015 the spiritual leader of Maronites is Archbishop Yuseif Sueif who resides in South Cyprus.

[12] It is stated that after Greek Cypriots and Franks, the Maronites were the third largest society in Cyprus during the end of the twelfth century and the beginning of the thirteenth century. Karyolemou, op.cit., p. 2.

[13] This was especially encountered in the Ottoman era. The Ottomans who conquered the island in 1571, wanted to limit the power of Vatican and with a special order of the Sultan in October 1571, the Cyprus Orthodox Church was announced as the sole official church of the island and the control of all the other churches, including the Cyprus Maronite Church, was given to the Cyprus Orthodox Church. After obtaining this authority, the Cyprus Orthodox Church began to oppress the Catholics due to various economic and religious reasons. As a result, many Maronites were forced to leave the country and most of those that remained have been assimilated within the Greek Cypriot community. Even though the Cyprus Maronite Church had gained autonomous status in 1841, the oppressions of the Cyprus Orthodox Church continued. This problem was finally solved under the British administration started in 1878. Another reason for the decrease of the Maronite population is thought to be the fact that after the Ottoman occupation of 1571, many Maronites accepted/ were forced to accept Islam and they were assimilated in the Muslim society. For these information see Erdengiz, op.cit., pp. 108-113.


[23] Nikolas Kyriakou and Nurcan Kaya, *Minority Rights: Solutions to the Cyprus Conflict*, London, Minority Rights Group International, 2011, p. 15. One of the main reasons for not having a certain number of the Maronite population is thought to be due to the fact that the children born from a union of Maronite and Greek Cypriot parents are registered as Greek Orthodox. As it is stated that 70% of the Maronites are getting married to Greek Cypriots, the future of the existence of the Maronites in Cyprus are under serious dispute (for more information on this topic see Erdengiz, *op.cit.*, p. 103). It is also possible to state that some of the Maronites are forced to hide their identity and show themselves as Greek Orthodox due to discrimination.

[24] Ayia Marina, is a very important saint for Maronites. As a result, many Maronite settlements and churches were named after her.

[25] Like the Greek Cypriots, one of the main complaints of the Maronites is the conversion of the names of their villages. The people of both societies are demanding that the old name should at least be used alongside the new one.


[27] Until 23 April 2003, while Greek Cypriot administration did not prevent the passages of the Turkish and Greek Cypriots between South and North Cyprus, permission was not being given to by the Turkish Cypriot authorities. In order to get rid of the international pressures, Turkish Cypriot side has released the passages since 23 April 2003.

[28] These figures are taken from the reports of the Secretary-General on the United Nations Operation in Cyprus. For the reports see [http://www.un.org/en/peacekeeping/missions/unficyp/reports.shtml](http://www.un.org/en/peacekeeping/missions/unficyp/reports.shtml). In the report of the UN Secretary-General on the activities of the UN Peacekeeping Forces in Cyprus which was submitted to the Security Council in 2004, neither the population of the Greek Cypriots nor the population of the Maronites residing in the north was included. But, in the human rights report of the US Department of State which was published in 2004, the population of the Maronites was stated as 140. (U. S. Department of State, *Country Reports on Human Rights Practices, 2004 Cyprus*, http://www.state.gov/g/drl/rls/hrrpt/2004/41676.htm, 11.03.2015). On the other hand, it is possible to state that as the report of the UN Secretary-General states, the population of the Maronites is decreasing every year and since these reports are deemed as the most trustworthy ones, the number of 140 for the year 2004 can be seen as doubtful.


[30] A solid example would be the prohibition on having hunting rifles and the grant of hunting licences. In several interviews with these people, they stated that they were saddened due to the fact that while they were not allowed to hunt within their traditional territory, other people that come from all over North Cyprus could hunt. This is solid proof of the general lack of trust towards the members of the community. On the other hand, the TRNC authorities claim that these people were not granted citizenship because they did not wish to become citizens. These people are provided with a different identity card than the other citizens. According to this, while the ID card of Turkish Cypriots is red, the ID card of the Greek Cypriots and Maronites are blue.

[31] Despite the existence of various problems, when compared with the Greek Cypriots, it is a fact that the Maronites draw less suspicion. The concrete proof for this is the fact that in the period prior to 2003, the Maronites have been granted more freedom for visiting and greeting their relatives from south.


[33] For example, in the semester of 1998-1999 there was only one student and one teacher in Kormakitis. Serhat İncirli, “Akseniz’in Eşitsiz Kormacit’te Başkadir”, *Kibris*, 18 November 1998.

[34] When Cyprus came under British rule started in 1878, Hisarköy was one of the main settlements of Maronites. In time, the Maronite population was
replaced by Turks (Karyolemou, op.cit., p. 3). As of June 2015, not a single Maronite is residing in the village.


[42] Despite this development, it is noted that two Maronites that were residing in North Cyprus were not allowed to return to their homes after going to the south (U. S. Department of State, Country Reports on Human Rights Practices, 2005-Cyprus. http://www.state.gov/g/drl/rls/hrrpt/2005/61643.htm, 11.03.2015). Later on, it was stated that this ban was lifted for these people. U. S. Department of State, Country Reports on Human Rights Practices, 2006 - Cyprus. http://www.state.gov/g/drl/rls/hrrpt/2006/78807.htm, 11.03.2015; U. S. Department of State, Country Reports on Human Rights Practices, 2007 - Cyprus. http://www.state.gov/g/drl/rls/hrrpt/2007/100554.htm, 11.03.2015.

[43] Kibris, 11 January 2006. On the other hand, Andonis Hadjirooussos, the representative of the Maronites in the Greek Cypriot Parliament of Representatives, had stated that the Maronites are living scattered throughout South Cyprus and that they needed to return to their villages in the north to become a proper society again. Hadjirooussos also stated that if this did not happen soon, the Maronites would inevitably face extinction due to the resultant assimilation from outside marriages. İbrahim Beyazoğlu, “Kıbrıslı Maronitler Yok Olmak Üzere”, Kibris, 29 June 2008.

[44] Kibris, 12 January 2006. As well as the government, some other political parties like New Cyprus Party (Yeni Kıbrıs Partisi-YKP) supported the return of the Maronites and started campaigns (Yenidüzen, 7 July 2008). The difference between YKP and the governing party was that the YKP requested the return of all Maronites, not just the ones from Kormakitis.


[49] These criticisms were so intense that the Maronites of Kormakitis stated that they would apply to the European Court of Human Rights if their right to vote was not recognised by the Greek Cypriot authorities. Kibris, 16 April 2005.


[52] For the complaints of the Maronites regarding the matter see Beyazoğlu, *op.cit*, *Avrupa*, 30 September 2000.

[53] For the statement of Andonis Hadjiroussos, who is the representative of the Maronites in the Greek Cypriot Parliament of Representatives, see Beyazoğlu, *op.cit*. The minority rights which were included in the Founding Treaty of the United Republic of Cyprus and the Constitution of the United Republic of Cyprus (which were created within the scope of the Annan Plan) were supposed to be applicable to religious minorities, as well as the Turkish and Greek Cypriots who would be living in designated villages within the borders of the constituent states. Therefore, the minority rights that were stated in the Founding Treaty of the United Republic of Cyprus and the Constitution of the United Republic of Cyprus were not just limited to religious minorities but also they covered people who would be deemed as religious and linguistic minorities in the areas they reside (See Founding Treaty; the heading of “Fundamental Rights and Freedoms” article 4, subsections 2 and 3. Also, the Constitution of the United Republic of Cyprus, part III under the heading of “Fundamental Rights and Freedoms”, sub-heading “Fundamental Rights” article 11, sub-section 4 and 5. The main difference between this Constitution and the Constitution of the RoC is that the religious minorities are clearly defined as Maronites, Armenians and Latin people.
Changing Policies of the US during the Cold War towards its Allies

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Abstract: It has been a general belief that the bipolar character of the Cold War offered the two superpowers a position to dominate every issue in their respective areas. In fact, however, the bipolarity did not mean that the leader of a pole was able to do everything it wanted. After the Second World War, the Soviet Union (the SU) and the United States of America (the US) emerged as two superpowers in the world arena. The US claimed that the SU was running an expansionist policy and aimed at containing it in the Eastern Europe, the Middle East, Asia and elsewhere. During the hot period of the Cold War, the US perceived a communist threat in its area and acted very tough and allowed little latitude to its allies to act according to their national interest. During the Cold War the unity of its alliance was vital and any problem between the allies had to be solved inside the alliance. The internationalization of any problem had meant the interference of the SU, the biggest threat of the West. However, when the détente started in the beginning of the 1970s, the US strongly supported it. The aim of this study is to examine the reasons of the US attitudes towards its allies during the Cold War. Changes in the US policies towards her allies, Greece and Turkey, are discussed within the context of Cyprus problem. The approach of the US in Cyprus was similar in the cases of 1964 and 1967, whereas in 1974 after the institutionalization of the détente, it acted differently. In this study the reasons of the different approaches of the USA are discussed. The paper is based on the primary sources of the US archives.

Introduction

After the Second World War, the SU and the US became the two superpowers in the world politics. As the main goal of the US was to contain the SU all around the world it pursued a tough policy towards the communist bloc and a disciplined one towards its NATO allies. The national interests of the NATO members were shaped according to the global policy of the US. This offered little latitude to its allies to act within the context of their own national interest. Also during the Cold War period the unity of its alliance was vital and any problem between the allies has to be solved inside the alliance. The internationalization of any problem had meant the interference of the SU, the biggest threat of the West. However, when the détente started in the beginning of the 1970s, the US strongly supported it. The policy change of US gave more latitude for her allies and their national interests were now preferred. While the US was successful in the first period of the Cold War in her global policy, during the détente her allies like Turkey and Greece acted according to their own interests and US had difficulties to maintain the unity of NATO.

1. The Cold War confrontation

By the end of the Second World War, the State Department and the Council on Foreign Relations drove the general lines of the US foreign policy[1]. This policy required the collapse of colonialism and political rationalization of self-determination policy.

In fact, it was Great Britain which first adapted this vision between 1944 and 1946. However, the Civil War in Greece disclosed Great Britain’s inadequate resources in the region. Therefore, Great Britain consigned the mission over to the United States, the new leader of the Western World.

During the Cold War the term “containment” referred at a specific American policy of containing the Soviet Union to promote a liberal economic and political world order. From the American perspective, the struggle between freedom and communism was the main factor which determined world politics. Secondly, the main threat towards the free world was the communist states’ military attacks against the weakest points of the non-communist world. To defeat the united and determined communist front required the reaction of a united and determined free world. The United States could not collaborate with the Soviet Union in the United Nations. Thirdly, the core element of the free world was the United States. When the United States took on the responsibility of securing the free world, it gained the privilege to decide and design the policies of the world [2]. According to this understanding, the US tried to pursue three goals in Europe and all around the world. These were: creating military, economic and political stability in Europe; keeping the strategic nuclear umbrella over the Western Europe and the US; and forming a global defense organization under her leadership. In order to reach these goals, the US firstly declared the Truman Doctrine and Marshall Plan; secondly, prepared the North Atlantic Treaty; and thirdly, constructed the organizational mechanisms of NATO [3].

1.1. Instruments of the Implementation of the US Policy and its Practice in the Eastern Mediterranean
President Truman, in his speech in Congress on March 12, 1947, asked the Congress to support the assistance program to Greece[4] and Turkey[5]. The speech gave birth to the famous Truman Doctrine where Greece and Turkey were seen as a bulwark against the Soviet Union [6]. Parallel to this move the US announced Marshall Plan to aid the sustaining economic recovery of the Western European countries.

The North Atlantic Treaty Organization (NATO) was founded in 1949 and in the same year, the Soviet Union exploded an atomic bomb. On the other hand, the Chinese Communist Party took control in China in 1949 and signed an alliance treaty with the Soviets in February 1950 [7]. The tension increased and directed the US to produce one of the most important American documents of the early Cold War, namely, the National Security Council Document 68 (NSC-68). This document forecasted a Soviet attack as a part of a plan for global domination, and called for a vast increase in the US defense expenditure[8]. In this context, NATO became an essential part of a new European security order that aimed at containing the Soviet Union[9].

Clearly, the US policy in the Eastern Mediterranean was designed according to her global policy. In the cases of Greece and Turkey, the US began her attempts to strengthen the security measures towards the SU in 1949 [10]. Turkey’s and Greece’s membership of NATO was one of the measures. In 1952, Turkey and Greece became members of NATO and received responsibility to secure the Alliance interests in the region by containing the SU. Consequently, in the Middle East both Greece and Turkey came under the American influence. Turkey and Greece, by receiving American assistance, became part of the “American Security Strategy” in containing the SU. They were treated as a part of so-called Northern Tier zone which covered the area from the Balkans to Central Asia confronting the SU.

In the very beginning, Turkey and Greece accepted the American interventions in their policies. They saw it as a leadership privilege of the US within the Western World. Moreover, in February 1953, Greece and Turkey signed a “treaty of peace and friendship” and in August 1954 jointly initiated the Balkan Pact with Yugoslavia.

In 1952, Dwight Eisenhower was elected as US President due to a campaign pledge to end the Korean War and to roll back communism. Despite the Truman Doctrine, until 1952, the US strategy in the Middle East rested to some length on the assumption that the security of the area was primarily a British responsibility. The more direct involvement of the US in the Middle East was a result of the role and influence of the SU in the region which increased when the regimes of Egypt, Iraq, and Syria changed and anti-American elements came to power in these countries[11]. The years after 1955 saw a rising tide of Arab nationalism sweep through the Middle East. In 1955, Nasser signed an agreement of delivery of Czechoslovakian weapons. This agreement and the later arrangements turned the region into a new international area of tension and a battleground of the Cold War. Now, the most feared scenario became real and the SU was inside the American sphere of interest.

The US tried carefully not to stress too strongly the containment of the Soviet Union as the main basis for friendship with the Arabs for while the US saw the SU as the main threat, for the Arabs it was Israel. Consequently, the US tried to prevent the Soviet entry into the region but she failed. In this context, relations between Cyprus and “radical” Arab states, which the US saw as the clients of the Soviet Union, became very critical. One dimension of the American policy in the region was designed accordingly.

1.2. First Case: Cyprus Issue as the Theater of the Allies

Cyprus is an island in the Eastern Mediterranean. The northern shore faces Turkey, from which the nearest point is 43 miles distant and the Greek mainland 500 miles away. In addition to the Greek Orthodox population, a second major population group, namely the Turks, started to settle down in the island during the Ottoman rule. About one-fourth of the island’s population was Muslim when the Ottoman rule ended in 1878[12]. Since then, the aim of the enosis movement was to unite Cyprus with Greece[13]. Until the 1950’s Greek governments did not openly support the enosis struggle[14]. In June 1953, Archbishop Makarios demanded that Greece, as the mother country of the Greek Cypriots, should take immediate recourse to the UN[15]. However, until 1954, Greece rejected Makarios’ suggestions that Greece should raise the Cyprus question in the UN. In 1955, the British government called a conference in London to discuss Cyprus issue with Greece and Turkey. It was Makarios who created problem. For him, the Cyprus issue was purely a question of self-determination and concerned the British and the Cypriot people only[16]. Because of the improvement in the Turco-British relations in the 1930s, Turkey had little concern that Cyprus might be used as a staging ground against her.
during the 1940’s and 1950’s, Turkey was in favor of British sovereignty over the island.

Before 1954, the US did not have a specific interest in Cyprus and she viewed any problem in Cyprus as an internal matter for Great Britain. For the US prevention of any major conflict among her allies would be enough because the Cold War competition made this necessary. Obviously, the US did not want any problems between the two NATO partners, Greece and Britain, to destroy the united front against the communist world.

Being aware of both Greek national aspirations and British imperial interests, the American policy makers were primarily concerned with the continuing Soviet expansion in this increasingly important region. The US ignored the growing tension on the island raised mainly by the Greek Cypriot activity for the unification of Cyprus with Greece[17]. The US did not want the Greeks to raise the issue in the United Nations but on the other hand she could not oppose the right of self-determination in public. The US had to balance the principle of self-determination with her strategic interests. Americans believed that it was wrong timing to raise such a question in the UN because it would cause serious and undesirable consequences. In order to prevent this, the US Secretary of State, Dulles, sent a message to the Greek Foreign Minister Stephanopoulos on July 28, 1954. Dulles stated that the US believed the security and the defense of the “free world” required the fullest cooperation and continuing mutual sympathy of Greece, the United Kingdom and Turkey, which were the countries primarily concerned with the future of Cyprus[18]. On December 17, 1954, a New Zealand resolution ‘not to consider further the item’ was supported and adopted by the United States at the UN[19]. As a reaction to the Greek proposal rejection at the UN in 1954, EOKA started its violent enosis campaign in the spring of 1955[20]. On April 1, 1955, EOKA (National Organization of Cypriot Fighters) started its armed resistance against British colonialism[21].

In 1957, some members of the Cypriot Government personnel and the American Consul Belcher seized the opportunity of a favorable climate for new suggestions. They proposed a solution between partition and enosis in the form of a guaranteed independence according to the American plans of April 1957[22]. Since all the efforts of the United Nations, Great Britain and NATO had failed, Turkey and Greece realized that the solution could only be found bilaterally. During the NATO Ministers Meeting on December 16-18, 1958, Greek Foreign Minister Averoff told the Americans that in discussions with the Turks, a mutually acceptable formula for an independent Cyprus was found to be possible[23].

Finally in 1959, continued negotiations between the concerned parties produced an agreement on the establishment of the Republic of Cyprus. A series of accords were announced in Zurich on February 11 by Averoff and his Turkish counterpart Zorlu. The agreement was signed in London on February 19 by those two ministers and by representatives of Britain and the Greek and Turkish Cypriot communities. In addition to the establishment of the republic, the pacts provided a Treaty of Guarantee, under which Great Britain, Greece and Turkey guaranteed the independence and territorial integrity of the Republic of Cyprus, and a Treaty of Alliance between Greece, Turkey and Cyprus, which provided a system of defense in opposition to any aggression against the Republic[24]. Cyprus was declared a republic on August 16, 1960, under the presidency of Archbishop Makarios III and the vice presidency of Dr. Fazıl Küçük, the leader of the Turkish Cypriot community. When the London and Zurich agreements were finally signed Washington greeted the announcement of agreement positively. The US was successful to prevent a clash between her allies and secured the unity of NATO.

1.3. Second Case: The June Crisis and the Johnson Letter

The armed conflict started in Cyprus in December 1963 and triggered between Greece and Turkey a confrontation which was a major concern for the US officials. After stopping the fighting in the island, on June 4, 1964 the US Ambassador in Ankara Mr. Hare reported the State Department that the Turkish Prime Minister İnönü had intention to invade Cyprus but Turkey would wait until June 5 for the views of the US Government[25]. Foreign Minister Erkin told Hare that the situation on the island was very critical and the “Cabinet would meet at night to decide what to do, with [a] possible intervention [in] Cyprus”[26]. Secretary Rusk immediately informed Ambassador Menemencioğlu in Washington that “the President was gravely concerned [about] the cabinet meeting” where the intervention to Cyprus could be decided. The US view was that there was a flat assurance from the Turkish Foreign Minister that “an intervention step would not be taken” and that “there would be full consultation with the allies”[27]. According to the Americans, a common understanding on security commitments had to prevail between the NATO allies and the Turks were not an exception. Also the members of NATO had to remember the 1956 resolution that problems between allies should be solved by peaceful means.
Rusk’s connection with the Turkish Ambassador was the first attempt to stop the Turks and the Americans increased the pressure as they perceived the escalation of the Turkish threat. Secretary Rusk instructed Ambassador Hare to meet İnönü immediately, “calling him out of the cabinet meeting if it was necessary” to express the US opposition to a military intervention in Cyprus [28]. Hare had “to use all the instruments in his arsenal to pull the Turks back from any such decision” and to insist upon consultation. To stop the Turks, the US reaction consisted of a very strong letter from President Johnson to the Turkish Prime Minister[29]. A US Navy carrier task force was positioned eight hours from Cyprus in readiness to conduct a show of force, evacuate US citizens, and “carry out other operations as required” [30].

The letter that was sent to İnönü on June 5 became known simply as “Johnson Letter”. In the letter, Johnson stressed that such a course of action by Turkey was not consistent with the commitment of İnönü’s Government to consult in advance fully with the US and the other guarantor powers. Therefore, Johnson urged İnönü for complete consultation with the United States before such an action was taken. The President stressed that partition of the island was specifically excluded by the Treaty of Guarantee. As Turkey had not consulted with the Guarantor Powers as the Treaty required, “the right to take unilateral action was not yet applicable.” On the other hand, a Turkish intervention in Cyprus would lead to a war between Turkish and Greek forces. For Johnson, as Rusk declared before, the adhesion to NATO, in its very essence, meant that the members would not wage war against each other. Furthermore, the Turkish military intervention in Cyprus could lead to a direct Soviet involvement. The most critical point of Johnson’s letter concerned a probable Soviet attack. The President reminded İnönü that if Turkey took a step which resulted in Soviet intervention without the full consent and understanding of its NATO allies, they had no chance to consider whether they had an obligation to protect Turkey against the Soviet Union. Moreover, Johnson called to İnönü’s attention that Turkey was “required to obtain the United States consent for the use of military assistance for purposes other than those for which such assistance was furnished”[31]. In this context the US could not to agree the use of any US supplied military equipment for a Turkish intervention in Cyprus under the present circumstances. The letter was effective and the Turkish Government cancelled the preparations for an invasion of Cyprus [32].

The US tried hard to prevent the Turkish attacks because she wanted to prevent the Soviet penetration in Cyprus. Some American diplomats believed that the Soviets were not only in some of the Middle East countries but also now on the shores of Cyprus. The view of these officials was the following: Soviet arms were in Cyprus: Makarios was very close to Nasser, a man that worked with the Soviets; the Cypriot Greek communist party AKEL was increasing its power. Consequently, in 1964 the United States reluctantly got fully involved with the Cyprus issue. In 1964, the US President hosted the Turkish and Greek Prime Ministers in Washington D.C. to encourage them to reach a solution and he tried hard to solve the Cyprus problem with a tough plan. The President even discussed the invasion of Cyprus by Turkey and Greece for double enosis. Ball and especially Acheson worked on enosis/double enosis plans and discussed the scenarios with the Turkish and Greek representatives[33]. The US again was successful to limit the confrontation of Greece and Turkey that would give the chance to the SU to internationalize Cyprus issue and to benefit the Greco-Turkish confrontation.

1.4. Third Case: 1967 crisis in Cyprus, the Turkish Show and the Greek Cypriot Attacks

In 1967 Turkish and Greek Cypriots clashed again. This increased tension between Turkey and Greece that pushed the US in a direct involvement in the Cyprus issue. The reasons for renewed fighting in Cyprus in the end of 1967 were twofold. On the one side, it was the Turks who provoked the Greek Cypriots[34]. On the other side, the Greek Cypriots tried to show their “governmental power” and attacked the Turkish Cypriots. According to Hughes, from the Bureau of Intelligence and Research, the “key to the situation is General Grivas”[35]. At that time Grivas was the Commander of the National Guard and also of the Greek Armed Forces in Cyprus[36]. Hughes explained that since March 1967 the Turkish Cypriot fighters had begun to prevent the Greek Cypriot patrols from entering the mixed village of AyiosTheodoros. They closed the highway between Nicosia and Limassol even though the UN was to blame the Turkish Cypriot commanders for increasing tensions. The Greek Cypriots did not accept the action of the Turkish Cypriots and decided to intervene militarily to open the road[37]. The plan included the surrounding of the nearby village of Kophinou by the National Guard and Police in order to prevent the potential interference of the Turkish Cypriot fighters [38].

With the support of Britain and the UN, the US officials requested that Government officials in Nicosia
to postpone the patrol or at least have it escorted by UNFICYP[39]. For the Americans, a peaceful solution could be found, as Turkey and the UN were offering it[40]. These efforts were not successful and the Greek Cypriot patrols started as scheduled. The patrols did not meet any resistance. Grivas even took a newspaper editor and photographer to record “his success in beating down Turkish intransigence.” The Greek newspapers gave the “victory” wide coverage. Hughes stated that, after all this, the Turkish Cypriots felt compelled to oppose the next patrol on November 15[41]. On November 15 the National Guard not only entered AyiosTheodoros, but simultaneously launched a full scale attack on Kophinou, although there was no Turkish Cypriot resistance. During the attacks 28 Turkish Cypriots died. Most of them were civilians, while the Greek side had only two casualties [42]. The United States was well aware that in such circumstances Turkey would not hesitate to act.

As the United States expected, the Greek Cypriot attacks alarmed the Government of Turkey and she decided to act more forcefully. Deputy Minister of Defense General Atalay who appreciated that this time round there was no “Johnson Letter” from Washington, informed Hart that the Turkish cabinet had decided on the night of November 15 to 16 to launch air strikes against Cyprus[43]. Now Turkey decided to teach the Greek Cypriots a lesson so that they would not attack again. For Turkey, the Greek Cypriots had violated the constitution for a long time and the mainland Greek troops had illegally entered Cyprus [44]. The Demirel Government decided on November 17, to confront the Greek junta with a message. In the message, Turkey placed the responsibility for the incidents on the Greek Government [45]

Ambassador Talbot in Athens urged Prime Minister Kollias to order General Grivas to return back to Athens in order to calm things down. Kollias claimed that he could not do this, because it would seem like a decision taken under American pressure[46]. Finally, it was the King who issued the order for Grivas’ withdrawal [47].

The Americans nevertheless saw the situation so dangerous that President Johnson had to get personally involved in the crisis on November 17. Johnson sent three similar messages to Makarios, King Konstantine and President Sunay and urged them to do everything within the power of their respective governments “to reduce the threat to peace now hanging over [the] region [48]. After these messages, Secretary Rusk decided not to engage the US deeper and tried to bring the British, the Canadians and the UN into the picture [49]. Furthermore, the US Ambassadors in the region tried to calm down all sides. The Americans thought that the withdrawal of Grivas from Cyprus might make sense in Ankara. Nevertheless, when Hart was informed that Grivas would leave Cyprus, he secretly informed and urged the Turks not to stage more fighting[50]. The period needed something more than the US involvement and the American officials had to find that something for the parties to talk about. For the US the problem was the war hysteria in Turkey. In spite of the American representation in Ankara and the evidence of some Greek concessions, the Demirel Government resisted the call to act moderately [51]. Clearly, Prime Minister Demirel tried to avoid the fate of İnönü, who did not intervene in 1964 and got the reputation of a coward. For Çağlayangil the war decision was not a question of days but of hours [52]. On November 19, the Americans became involved in the issue even deeper and Foreign Minister Çağlayangil explored with Ambassador Hart what seemed to be the last chance to avoid a Turkish military intervention in Cyprus.

During that evening, the American Ambassador worked out together with the Turkish Foreign Minister a set of Turkish demands on Greece [53]. Hart produced a proposal of five points. These were: A Turkish reaffirmation of the inviolability and integrity of the Republic of Cyprus; the withdrawal of all Greek and Turkish troops apart from those permitted by the London and Zurich Treaties; UN supervision of the withdrawals and an extended UNFICYP mandate, as well as a replacement of the Cyprus police and irregular bands in Cyprus by a mixed police force; payment of indemnity to the Turkish Cypriot victims of AyiosTheodoros and Kophinou; and special security measures for the non-protected Turkish Cypriots[54]. If all these efforts were not enough Hart thought that threatening Makarios with a Turkish invasion was the only alternative[55].

Turkey accepted that these points could be the basis for the solution of the crisis of 1967. However, as the State Department was still reluctant to be in the forefront of negotiations it organized a tripartite initiative with the British and Canadians[56]. Canadian officials later presented the declaration orally to the governments involved[57].

Not only the US but also NATO representatives were busy trying to cool the situation in Cyprus [58]. At the meeting of the Permanent Representatives it was agreed that NATO Secretary-General Manlio-Brosio’s personal messages to Turkey and Greece for moderation and restraint would be useful. Howe-
ver, a message from Ankara on November 20 alarmed US officials in Washington [59]. The “five points” were presented to the Greek Foreign Minister Panayiotis Pipinelis[60]. During the Ambassador’s second representation Pipinelis told him that Greece could not agree to withdraw troops from Cyprus. Instead, Greece was willing to militarily deescalate the tension step-by-step simultaneously with Turkey [61]. Thus, Talbot’s efforts failed [62]. For the Americans, the situation on November 22 was extremely critical as war seemed inevitable. Hughes, the Director of Intelligence and Research, believed that “it was unlikely that any government in Athens could meet all of the [...] conditions imposed by Turkey, certainly not the present military junta” [63]. This was because of the different perceptions of Greece and Turkey. To save NATO’s southeastern flank, Hughes advised, and the US leadership agreed, that an urgent initiative was vital to prevent the Soviet entry in Cyprus. For the sake of the future of NATO, the US was trying to prepare a plan acceptable to both Greece and Turkey. The US also, hypothetically, thought that both Greece and Turkey would act within the context of the Cold War containment policy. However, both of them had their national priorities that did not suit the Americans.

As the State Department officials had asked for immediate action, Secretary Rusk proposed sending a personal representative of the President to the region. The former Deputy Secretary of Defense, Cyrus R. Vance was selected by the President as his personal representative [64]. On Rusk’s instruction all the ambassadors in the region were alerted to help the team. The team could count on the support of the British, the Canadians, UN Secretary General U Thant’s special representative José Rolz-Bennett and Secretary-General Brosio. Vance had only received a general instruction to do everything to prevent war and, thus, he was allowed to handle the crisis by himself.

During the next four days, Vance shuttled between Ankara and Athens in the role of an “honest broker”, and tried to reformulate the Turkish points in a manner that would be acceptable to both governments. The crucial difference between the two governments was that Turkey demanded that “Greece begins to withdraw her troops from Cyprus, whereas Greece insisted on a simultaneous Turkish de-escalation of the military preparedness.” To satisfy the parties, Vance redrafted the points to four. The main leverage was that if Turkey invaded Cyprus, the US might suspend all aid to her [65]. In the end, on November 23, when more pressure was needed, Rusk instructed Ambassadors Hart, Talbot and Belcher to do everything to prevent war without any thought as to future relations with the parties[66]. Rusk openly stated that Cyprus was not important to the US national interest and “trivial compared to peace between Greece and Turkey” [67]. The US stance was deeply connected with the Cold War politics where nothing was more important than the unity of the western alliance [68].

Finally, the US team saw light at the end of tunnel. On November 28, after a long shuttle diplomacy in Ankara and Athens, the Greeks and the Turks agreed on the last version of Vance’s proposals. Secretary General U Thant got the responsibility to present the “Text of Accord” to Greece, Turkey, and Cyprus. This offered Greece the chance to accept a UN appeal instead of Turkish demands [69]. There was no big difference from the first proposal but the point was who did the offer. The task with the “motherlands” seemed to be completed but Vance had to convince Makarios to put the proposal into practice.

During their discussions, US officials realized their weak position in relation to Makarios. Although American officials tried with all means to press the Greek Cypriot Government to accept the proposal they couldn’t. The reason was that the US could not pressure Makarios because she had no leverage in Cyprus[70]. As Secretary Rusk correctly observed, the United States did not have much to handle Makarios. The US had no economic or military aid program. On the contrary, the US was dependent on Cyprus as she had communication facilities on Cyprus soil. In other words, the US could not apply its usual threats to achieve her aim. The only thing that the US could do was to lay responsibility on Makarios if Turkey invaded and this worked quite well.

Finally, on December 3, U Thant issued his appeal. As Vance pointed out, the “skillfully drafted appeal [...] accepted by Greece and Turkey [...] left Makarios with no feasible alternative [but] compliance” [71]. On December 6, Makarios told Belcher that he would order the National Guard to pull back from its positions. He would also lift the remaining roadblocks for freedom of movement. Moreover, he would lift the economic restrictions on the Turkish Cypriots [72]. Those improvements were the priority of the Turks and the Americans were happy that “normalization” efforts had started in Cyprus.

Vance strongly stressed that only “the United States Government could have prevented war from breaking out in the area in the past two weeks”[73]. In conclusion once again the US was successful to control the critical developments in Cyprus which would have opened a crack inside NATO.

After the Second World War the United States had three assumptions in her new policy. The first one was the unity of communist theory and practice. Accordingly, communism was directed from one center. Secondly, the main threat towards the free world was the communist states' military attacks on the weakest points of the non-communist world. Thirdly, the core element of the free world was the United States[74]. However, in 1970 the US Foreign Policy started to change. A briefing paper of the State Department for the Under Secretary on August 28, 1970 explained the new look of the United States “foreign affairs policies and problems”[75]. According to the paper, there were four important characteristics of the modern era. The first important characteristic of the modern era was “the growing interdependence of nations.” The second major characteristic may contradict with the first one. It was the nationalism. For the Americans, nationalism could work for or against their interests. In many countries, anti-Americanism had become the sine qua non of nationalistic movements. The third development was the evolution of the US relationship with the Soviet Union “from one of strategic superiority to one of strategic parity.” The policies, capabilities, intentions and reactions of the Soviet Union continued to be the foremost consideration in the US foreign policy. Yet, it has become possible for the United States and the Soviet Union, through dialogue and experience with the nuclear deterrence, to identify common interests and create some sort of rules of behavior. Finally, there were important trends in the economic development and resource flows throughout the world. Meanwhile, the multinational corporations had become increasingly important as vehicles for the transfer of capital, technology and managerial know-how among developed countries and between industrialized and developing nations.

The US respond to these developments was the President’s Report to the Congress in February 1970. The key aspects in the report were the partnership and the search for a broader share of responsibility. In security matters, the Nixon Doctrine was developed. The President’s goal was to move from confrontation to negotiations in the foreign policy. The results were the nuclear non-proliferation treaty and the SALT talks. The US also improved the relations with Communist China and held the Warsaw talks. Of course, the new course of the US required reducing tension in areas which could lead to great-power conflict. The ideology dominated American policy until the détente between the United States and the Soviet Union. Then, the US became more pragmatic and started to take into consideration the détente factor in her foreign policy as well[76].

In this period, the regional policies of the United States were also designed according to her global foreign policy. In the late 1960s, the US strongly supported the relaxation of the relations between Turkey and Greece, Greek Cypriots and Turkish Cypriots and she sought to reach an agreement through the negotiations of the parties. However, the positive atmosphere in the relevant countries did not produce a solution to the Cyprus issue.

In the 1960s, the US perceived a communist threat in Cyprus. However, this argument disappeared as the communists were unable to gain significant power in Cyprus and also because of the détente between the superpowers which emerged in 1970. Therefore, the US changed her enosis policy and started to pursue a policy to exclude enosis or partition. After 1967, she did not support enosis and preferred an independent Cyprus. There is a clear reason why the US supported an independent Cyprus. For the Americans, it was not a free choice but a way to balance the interests of the parties. During the last quarter of the 1960s, Cypriots lived through a period of normalization which could be termed a “local détente.” The US was happy because the Cyriot Communist Party was tamed and did not seek a change in the status quo. It became a supporter of Makarios. During this period, the US tried to benefit from the “positive atmosphere” and push the local powers to negotiate instead of fight. However, the main obstacle of the new atmosphere was the internal struggle among the Greek Cypriots. The US in this period sided with Makarios against the “rightist-nationalist” powers.

The Soviet warm relations with Makarios changed after the Soviet-Turkish rapprochement began in late 1964 and the leverage of the Soviet Union over Makarios deteriorated. Moreover, relations between the United States and the Soviet Union improved because of a new phase of détente [77]. The Soviet Union continued to blame the anti-communist junta in Greece for its acts in the whole crisis. Yet, it can be said that “the general rhetoric and frequency in statements on the crisis suggested a rather distant observer role” [78]. The main aim of the SU during the crisis was to assure the independence of Cyprus. For the US it was a test of Soviet intentions on Cyprus and it was perceived as positive as the rules of the Cold War continued to become settled. Accordingly, neither of the superpowers would interfere in
the domestic (and in the settled spheres of interest) affairs of the other party.

2.1. Fourth Case: Cyprus during Détente

NATO Ministerial meeting of Lisbon in 1971 was the meeting where the Greek and Turkish representatives decided to continue supporting the existence of independent Cyprus. However, in 1974 Lisbon consensus of Turkey and Greece over Cyprus collapsed and after the Greek coup and Turkish military operation in Cyprus, the island became de facto divided.

General George Grivas secretly returned back to the island on 31 August 1971 and he reorganized a terrorist group called EOKA-B which was a kind of continuation of the anti-British organization EOKA formed in 1950s [79]. This time the target was President Makarios. After the death of Grivas the clashes between the Greek Cypriot groups continued and Ioannides’ coup in Athens in 1973 decreased the tension between Greece and Makarios.

The State Department considered this situation as the ‘dynamic’ solution to Athens’ concern about Makarios. According to reliable intelligence, Ioannides had speculated on Makarios’ effort to remove the Greek officers from the National Guard which was Athens’ main instrument of influence on the island and provoked the events [80]. Ambassador Tasca shared the views of the State Department and considered that Makarios apparently misjudged Ioannides. President Makarios believed that Greece’s confrontation with Turkey on the continental shelf would give him the opportunity to eliminate the Greek officers from the National Guard [81]. In the eyes of Ioannides, Makarios’ unpardonable sin was not only the rejection and repelling of the “Motherland” but also the publication of his letter to Ghizikis without Greek approval. This probably led to the decision of a violent confrontation with Makarios[82].

When Greek junta organized a coup against Makarios on July 15 American officials regarded the situation as very critical and on July 15, the Secretary instructed Tasca to seek an immediate appointment with Ioannidis to convey the following: The United States continues to regard Cyprus as a single, sovereign and independent state and US actions in this matter will be governed by this continuing fundamental tenet; The United States cannot condone any action by Greece to change the political and constitutional structure of the island; The US continues to support a peaceful resolution of the Cyprus problem through the intercommunal talks with a view to assuring appropriate guarantees for the security of the Turkish community; The US strongly urges all parties to utmost restraint and to avoid actions which might further destabilize the situation in the eastern Mediterranean, exacerbate relations between two NATO allies, and create room to exploit the situation to the detriment of an opportunity to forces extraneous to the Western security interests [83].

The United States stated her opposition to enosis and she supported Cypriot ‘independence and territorial integrity and its constitutional arrangements.” Although the US supported Cypriot independence which Makarios had advocated, the United States was not enthusiastic about Makarios himself: “Washington’s chief objective was to preserve peace between the Greeks and the Turks in the area”[84]. Although the US had no problem with Makarios because of his non-aligned stance and his relations with the Soviets Union after 1970 the “Kissinger factor” must be remembered here. Kissinger as a realist did not take individuals into consideration very much. For him, the states and the balance of power between them were important and the new balance in Cyprus decreased the importance of Makarios as a political figure.

In the Minutes of the Meeting of WSAG, Secretary Kissinger reminded them that the first objective of the US was to prevent the internationalization of the situation. Kissinger was not satisfied with Tasca’s early communication with the Greek leadership and asked him to obtain a new appointment. He strongly believed in the continuation of stronger pressure on Athens. The Ambassador had to make sure that the Greek leader(s) received the American views. Kissinger did not want an ambiguous statement of Greek intentions towards Cyprus because he wanted “to defuse the Turk[ish] angle” that was the prevention of the enosis. Kissinger was tough: “Let’s get the word to Ioannides. I don’t care which way, but do it” [85].

The US first objective was to take the heat out of the Turks. The way to go was to tell the Greeks that there should be no change in the existing status of the island or on Turkish Cypriot rights. The US also did not want UN involvement and preferred to settle the issue within the alliance [86]. On the other hand, the American officials were sure that the Soviets regarded the Greek coup with extreme hostility. They anticipated a strong diplomatic reaction from the Soviets against the forcible change in the “formerly independent and nonaligned status of the Cyprus Republic”[87]. Consequently, the US policy after the junta’s coup in Cyprus was to pursue low-key diplomacy. The US
wanted to prepare a situation in which the Turks would be satisfied and not to act militarily in Cyprus. A Greco-Turkish clash had been disastrous for the NATO’s South-Eastern flank and for rapprochement between the US and the SU.

2.2. US “Failure” in Cyprus during Détente?

After the coup in Cyprus, the US Ambassador in Ankara Macomber thought that Turkey viewed the coup as “a major step toward enosis, a violation of the 1960 agreements, and a product of Hellenic (not Greek Cypriot) officers.” The American diplomats in Ankara continuously urged Washington for a concentrated effort to “diffuse the Cyprus situation for fear of an armed Turkish intervention”[88]. However, the decision was made in Ankara but before any action the Turks felt that they had to consult the Americans. On July 17, Prime Minister BülentEcevit explained his belief that the coup was completely engineered by the Greeks and the “de jure enosis move in immediate future.” Ecevit clearly explained to the Ambassador Macomber that Turkey would not accept the coup as an internal problem. For Ecevit, any postponing of the intervention only made it “bloodier”. Therefore, Turkey was in a hurry and she would not delay the intervention beyond a “few days”[89]. He said that they would explore all peaceful solutions before considering the others. Ecevit would be grateful to have Secretary Kissinger’s comments while he was still in London and discussing with British for a joint intervention[90]. Thus, the Prime Minister showed his hand and began to wait for the American reaction. Once again, the American concern was that the Turkish military intervention in Cyprus would mean a war between Greece and Turkey - a situation the Soviets would exploit. Although the US had planned to run a low-profile diplomatic course, all diplomatic means were now necessary, but the military options were again excluded.

In the WSAG meeting, Kissinger decided to give the President advice to send someone to London. There, the emissary would see Makarios and Ecevit and explain to them the position of the US. The Secretary believed that the Sampson regime constituted de facto enosis in the Turkish view. He also believed that Sampson was the “most unattractive guy” and it was not in the US interest to “have him”[91].

After the coup in Cyprus, one of the first things the Americans did was to identify the positions of the international actors. Kissinger firstly talked with Secretary General Waldheim whose goal was to avoid a Turkish intervention. Kissinger told Waldheim that the US officials were dealing with the Turks and he would keep the Secretary General informed[92].

The basic issue was to get the consent of the Soviets. Kissinger had two telephone conversations with the Soviet Ambassador Dobrynin on July 15. Kissinger firstly tried to appease the Ambassador and asked for coordinated actions with the Soviets. Kissinger told the Ambassador that the US supported the existing constitution of the Republic of Cyprus. Dobrynin was pleased because this was the main concern of the Soviet Union. The Ambassador requested continuous information from the Americans. Kissinger promised to keep the Ambassador updated and told Dobrynin that the United States had no unilateral interests in Cyprus. Kissinger believed that the US and the Soviets would coordinate their actions and the Ambassador totally agreed with him[93]. Now, the goal of the US was to find a way to stop Turkey. It would not be easy because détente had given more room for the allies to act. The US could not stop junta’s coup in Cyprus and her attempt was perhaps even a desperate one.

The question of the probable US support for the junta’s coup in Cyprus has been discussed for decades. In this respect, the meeting at the State Department on June 18 is enlightening[94]. This meeting is very important to grasp the insights of American foreign policy during the Cold War, especially on power and ethical matters. Secretary Kissinger told American officials that the reasons for the US support for the withdrawal of the Greek officers from the island was not that “it interfered with the internal affairs of Cyprus.” The reason was that “it tips the internal balance on the island and might foster the rabble in the National Guard.” However, the US was in a hurry to act but she wanted the situation to crystallize in order to help concerted action later. Kissinger believed that overthrowing the Greek Government because of the US goals and bringing Makarios back to power was a high price to pay[95].

Clearly, Kissinger’s concern was to secure not only the global but also the regional and Cypriot balance. Consequently, the US assessed that precipitating the present situation to a crisis which would cause the overthrow of the Greek government would also open the way to a Soviet intervention, force a Turkish intervention and initiate a course of action that could not be sustained. For some years, the American officials called Makarios as the “Mediterranean Castro” and the “red priest.” Then, the United States changed her policy and accepted independent Cyprus as a preferable solution to the Cyprus problem. Since then, the US-Cyprus relations developed to a point that President Nixon called Makarios as a “wise
leader.” Obviously, the US did not oppose Makarios’ leadership unless the balance in Cyprus and the balance between Greece and Turkey required it. It is worth mentioning that Kissinger did not oppose Makarios either. Kissinger simply calculated the possible gains and losses with Makarios. Contrary to the NSC Contingency Plans of May 1974 the Secretary did not think that Makarios was a big leaguer. However, although he was not a big actor, he was able to create problems that could affect the American-Soviet relations. Kissinger did not want a split between the United States and the Soviet Union over Cyprus and over Makarios. The US would not oppose Makarios. Yet, if he were to return to power again, it was better that he “comes back with US backing than with Soviet backing.” Furthermore, Kissinger strongly believed that “if the Turks go in and restore” Makarios, the Archbishop had no alternative but to lean on the Soviets and the Eastern World [96].

Secretary Kissinger firstly sought to learn about the Greek and Turkish priorities and then to shape US policy in the UN. For Kissinger firstly, the US had to see through Joseph Sisco’s diplomatic efforts in London and find out what was negotiable between the Greeks and the Turks [97]. Sisco’s mission to London, Ankara and Athens began on July 18, 1974 [98]. In London, he met Callaghan and Ecevit twice [99]. There, Ecevit took the line already known to Americans. The Turkish Prime Minister also held a news conference and accused Greece of continuing to send troops to Cyprus and warned that if not countered, this action would lead to the complete entrenchment of the Sampson regime [100]. At their second meeting Sisco and Callaghan focused on the possible points that might contribute to a solution of the Cyprus problem. These were: Flexible constitutional arrangements; Turkish access to the sea under UN supervision; replacement of Greek officers in the National Guard; closer UN supervision of troop rotation; and the strengthening of the Turkish presence on the island.

At their second meeting, Ecevit took a more extreme line and presented some ideas which were similar to partition. He said that Turkey could not tolerate the situation created by the coup in Cyprus and he believed that a “creeping enosis” was taking place. To prevent enosis, Ecevit offered two autonomous provisional governments. Moreover, he asked for free access to airports and seaports supervised by the guarantor powers. Sisco agreed to examine all these ideas and discuss them further with Ecevit in Ankara the following evening. However, Sisco commented to the State Department that Ecevit’s call for “strengthening of the Turkish presence” in Cyprus would not be acceptable neither by the Cypriots nor by the Greek Government.

Sisco’s strategy for Athens and Ankara was as follows: In Athens, his aim was to get Greece committed to the talks with the U.K. in London in the spirit of the London-Zurich agreements. This was important because he had to have “something” to offer to the Turks. In Ankara, Sisco would present three proposals in one package namely: returning to constitutional arrangements; returning to constitutional armaments; and the appointment of moderate Clerides as the acting President. Of course, the main goal of all his efforts was to get the Turks to give assurance that they would not undertake any military action [101]. Parallel to Sisco’s efforts, the State Department briefed Ambassadors on July 18 about the US primary objectives: to prevent a Turkish decision to intervene militarily, and to prevent the development of positions by other countries which might contribute to the outbreak of civil war in Cyprus. In either event, the Soviets would exploit the situation to their advantage, thus enhancing their position in the Eastern Mediterranean and strengthening the Communists in Cyprus [102]. Thus, the State Department believed that the ideal solution was a negotiated agreement between U.K., Turkey and Greece as the guarantor powers.

Sisco had two long discussions with the Greek Prime Minister and the Foreign Minister. Interestingly, General Ioannides and General Bonasos also participated in the discussions with Sisco without prior notice. The Greeks authorized Sisco to inform the Turks that Greece would go to London to consult with the UK. Greece would use her influence on Cyprus to work out arrangements for strengthening the UN role, especially on the effective control of certain seaports and airports to stop the import of clandestine troops, arms and material to the country, and to assure the regular rotation of the Greek and Turkish units [103]. In Ankara, Sisco planned to tell the Turks that the US was not against Makarios but Sampson [104].

Obviously, the US began a diplomatic attack from a different angle. While Sisco shuttled between Athens and Ankara, Macomber stressed to the Turks that “military action won’t settle the problem on Cyprus or in the area as a whole, and would only invite Greek counter activities.” The US did not support enosis and pushed hard to find a diplomatic solution that everybody would agree on [105]. In spite of all his diplomatic efforts, Sisco believed that they could not prevent Turkish military action. His gut feeling was that there was nothing to do in this case because for the Turks the situation was ideal to
realize the long-term goal of double enosis with the intervention [106]. Day by day the Turkish intervention in Cyprus became more inevitable to the Americans. For example, the Director of Central Intelligence Agency Colby predicted on July 19 that the Turkish military movements indicated that “the Turkish invasion would occur [on] July 21 or 22 or possibly earlier.” Then, on the same day, it was reported that the Turkish fleet had weighed anchor and was steaming towards Cyprus [107].

Nixon thought that both the Greeks and the Turks had to lean on the United States and because of the American influence, the Greeks and Turks had to negotiate - anyway they knew what would be “the penalty of failing to negotiate.” Nixon was also irritated with Turkey and Greece because they had damaged their relations with the US. The President could not believe what Turkey and Greece had done to NATO. Kissinger agreed and claimed that “it is two totally irresponsible governments going [at] each other”[108].

In the early morning hours of July 20, Turkish forces began landing in Cyprus. Clearly, US officials believed that they could not stop the Turkish military action in Cyprus. Moreover, the principle of NATO unity and the alliance’s policy that the allies could not use military force and would use peaceful means to solve their problems and the détente with the Soviets had limited American operational room.

The Second Détente period between the US and the Soviet Union started in 1970 and the United States designed her regional policy accordingly. Nevertheless, one must not forget that détente was not the end of the Cold War but only a period of relaxation in great power relations. In this context, the State Department was very keen to prevent the Cyprus conflict from “complicate[ing] evolving relations [of US] with the Soviets [109]. Here it was very important for the parties to refrain from actions and statements which might give the other superpower the impression that they were being cheated.

During the first phase of the Cold War, the relevant parties in the Cyprus conflict were forced to run power politics. Until the end of the 1960s enosis or double enosis were seen as the preferable solutions. Then, throughout the détente, moderation prevailed in relations between the parties. Consequently, between 1970 and 1974, the US designed her Cyprus policy parallel to détente. The US supported the intercommunal talks in Cyprus and the Soviet Union did not oppose them. The American policy turned problematic when the relations between the Greek Cypriots and Greeks became strained. The Greek coup and the Turkish reaction in 1974 dramatically changed the balance in Cyprus, and the US had to accept it.

Conclusion

Cyprus was not the most important place in the world that the United States had to deal with in 1964 - 1974. However, when the Soviet Union felt that she found an opportunity in Cyprus to extend her influence in the Eastern Mediterranean, the United States got deeply involved with the Cyprus problem. During the Cold War, the main concern in American foreign policy was to contain the Soviet Union. Here, the level of the US involvement depended on the level of the perceived threat. In the first phase of the Cold War, the Soviet Union was seen as the biggest threat and the US acted accordingly. In 1970, the US declared the Nixon Doctrine to share the burden and responsibility against the Soviet Union. However, the US had problems in implementing her policy because of the mentality of her allies. The US faced problems in the relations with Turkey and Greece, especially in the Cyprus problem.

The US did not usually see her relations with the allies as a patron-client relation. That is to say that the quality and content of the relations varied. During the starting period of the Cold War, the US relations with her allies were stricter and inflexible because of her confrontation with the Soviet Union. However, in the following years, she was more flexible. The US took into account the views of the allies in the policy evaluation and decision-making. The flexibility colored the US engagement with Cyprus. For example, in the 1950s the US was in favor of the unification of the island with Greece. The US believed that Greece as a NATO member would offer an opportunity to use the island for the purposes of the alliance. However, when Turkey became involved in the Cyprus problem the US changed her policy and offered a solution that would balance the interests of Greece and Turkey. Consequently, the Republic of Cyprus was born in 1960. When the Cypriot government decided to run a non-aligned policy the US did not accept it because of the Cold War confrontation. However, when détente replaced confrontation in 1970s, it paved the way for an American-Cypriot rapprochement.

Turkey and Greece did not consider the Cold War context and their national ties mattered more than global responsibilities. Moreover, the rising nationalism in Turkey, Greece and Cyprus made it difficult for the US to run a containment policy towards the Soviet Union because the peoples in these countries
were usually more hostile against each other than against the Soviets. When the guarantors could not find a solution, American policy changed and direct engagement in the Cyprus problem began.

Internationalization of the Cyprus conflict was a problem because the US believed that the Soviet Union would benefit from it and international communism would welcome the inter-allied differences on the international platform. When clashes in Cyprus continued and Turkey declared her intention of a military intervention in 1964, the US intervened again to prevent a military clash between Greece and Turkey. President Johnson had to send a threatening letter to prevent a Turkish intervention because such an action could have triggered the Soviets to come in. Clearly, the US wanted to solve the problem within the family. In order to prevent the internationalization of the problem, the US tried to solve the problem with a partition plan of Cyprus, namely the Acheson Plan. In this period the US realized the limit of her power and the fact that she could not always impose a solution to the parties. Makarios, who was backed by the Communist and Non-Aligned countries, rejected the plan and the US initiative collapsed.

The position of the Soviet Union in Cyprus was designed within the framework of Soviet-Turkish and Soviet-American relations. After the Soviet-Turkish rapprochement in late 1964, Turkey was perceived more important than Cyprus and the Soviet relations with Makarios changed and the ties with Makarios were loosened. In the early 1970’s, détente reshaped world politics. It also became clear with the Sino-Soviet confrontation that communism was not directed from one center. The Americans began to understand the growing interdependence of nations and, accordingly, their relations with the Soviet Union started to improve. Consequently, it became possible for the United States and the Soviet Union to identify their common interests and create some sort of rules of behavior. The growing pragmatism was a central element of détente as well. Both parties started to take into consideration the “détente factor” in foreign policy. Between 1960 and 1974 the Soviet attitude changed according to the changes in the international system.

In the 1970s, the communist threat in Cyprus was not on the American agenda anymore. The intra-Greek violence in Cyprus in the beginning of 1973 did not change the balance of power either. Yet, two changes in Greece and Turkey reshaped the fate of Cyprus. In Greece, Papadopoulos fell and Ioannides took power and in Turkey, Ecevit became the Prime Minister. Ioannides had a great antipathy towards Makarios and he was presumed to act tougher than Papadopoulos in the island. Ecevit declared that Turkey would support a federal solution in Cyprus. This new position of Turkey caused the suspension of the intercommunal talks. Consequently, the power change both in Athens and Ankara created problems in Cyprus, contrary to the will of the US. Now, Makarios had little interest in the successful conclusion of the talks because Athens would then launch a propaganda attack on him arguing that he had sold Cyprus.

The US worked hard to prevent Ioannides’ coup against Makarios. Kissinger opposed such an act and instructed Tasca to stop Ioannides. The US believed that such an act could have disastrous consequences not only for Cyprus but also for Greece and Turkey. It could generate chaos and lead to a Greco-Turkish confrontation. A lasting settlement could be best achieved by peaceful means. The junta acted in July 1974 because Ioannides’ “misljudged” his position. He believed that the US would back him in Cyprus because of the American bases in Greece. However, after the coup, the US still supported Cyprus as an independent state because any change there would provoke Turkey. Thus, the main American goal was to prevent a war between Greece and Turkey and Soviet exploitation of the situation. Cyprus had the potential to harm détente which had become the cornerstone of the US foreign policy.

The “Contingency Plan” of the US was designed according to the “realities of the détente”, and it rejected unilateral American actions in Cyprus. The US was to make low-key diplomatic representations to Greece and Turkey to prevent the Cyprus problem bringing them into an armed confrontation. The US followed this plan during the July 1974 events in Cyprus and considered decreasing Soviet suspicions of a NATO plot to subvert Cyprus. The Soviet interest was to secure the independence and neutrality of Cyprus and if Cypriot interests were threatened, the Soviets would use diplomatic pressure on the US and other parties. Consequently, as the US did not want a deep Soviet involvement in Cyprus she ran low-key diplomacy. We have to remember that both Greek and Turkish troops were NATO troops and if there was a borderline between them the vital interest of the US would not be challenged.

On the other hand, many people think that it was Kissinger who did not stop the Turkish military operation in Cyprus. However, it was not his preference and he could not stop the operation. The reason was the international factors. Firstly, détente with the Soviet Union had limited the American room to maneuver. Secondly, the Soviet Union was
against the junta and its coup in Cyprus and they perceived the Turkish first military operation as “legitimate” and as a move against the junta’s influence in Cyprus.

References


[11] Actually, especially in the case of Egypt, the policy of Nasser was not anti-American at the very beginning. It was the policy of the United States that led Egypt to become anti-American. For more information, see I. Ashm, Modernleştiren Ortado–ğu’da Batı-ABD Mirası (West-US Legacy in Modern(ized) Middle East), KibrisYazıları, No. I (Winter 2006), pp. 34-43.


[13] Enosis as a political passion emerged first in Crete in the 19th century. In the middle of the 20th century the Greek Cypriot society started to gravitate progressively towards enosis.


[20] Ibid, p. 57. The armed struggle of EOKA surprised the US because contrary to earlier assessments of a possible increase in violence, the armed struggle was not organized by communists.

[21] During this period the Turkish Cypriots created their own underground organization, known as VÖLKAN. TürkMüdafaa (or Mukavemet) Teşkilatı (Turkish Resistance Organization - TMT) was the name of the last Turkish Cypriot underground organization. H. İ. Salih, Cyprus: The Impact of Diverse Nationalism on a State, The University of Alabama Press, Alabama, 1978, p. 9.

[22] Belcher, Airgram from Nicosia G-35, 12.12.58: doc. 747C.00/12-958, box 3285, NARA.


[25] Telegram from Janaf Attachés Turkey, C-1180, 4.6.1964: POL 23-8 CYP, box 2085, NARA. On June 4, Turkey gave an official statement that Vice President Küçük would proclaim the independence of certain Turkish Cypriot enclaves and asked for a Turkish intervention on June 5 or 6. Küçük would be reacting to Makarios rejection of his request to have a cabinet meeting to end the bloodshed. M. Drousiotis, *The First Partition: Cyprus 1963-1964*, Alfadi Publications, Nicosia, 2008, p. 217.

[26] Hare, Embtel Ankara Critic 2, (the Document number was not declassified), 4.6.1964: POL 23-8 CYP, box 2085, NARA.

[27] Memorandum of the Telephone Conversation of the Turkish Ambassador and the Secretary, 4.6.1964: “Possible Turkish Government Decision on Intervention in Cyprus”, POL 23-8 CYP, box 2085, NARA.

[28] Rusk, Deptel to Nicosia 904, 5.6.1964: POL 23-8 CYP, 2085, NARA.

[29] Rusk, Deptel to Ankara 1295, 4.6.1964: POL 23-8 CYP, 2085, NARA; Rusk, Deptel to Ankara 1292, 4.6.1964: POL 23-8 CYP, 2085, NARA; Rusk, Deptel to Ankara 1285, 4.6.1964: POL 23-8 CYP, 2085, NARA; Letter of General Lemnitzer to Dean Rusk with the Memorandum for the Record, 5.6.1964: POL 23-8 CYP, 2085, NARA.


[31] Rusk, Deptel to Ankara 1290, “Message from Johnson to İnönü”, 5.6.1964: POL 23-8 CYP, 2085, NARA.


[33] Hare, Embtel Ankara 1599, 5.6.1964: POL 23-8 CYP, 2085, NARA; Hare, Embtel Ankara 1616, 6.6.1964: POL 23-8 CYP, 2081, NARA. The Government of Turkey agreed to forego intervention on the condition that the US takes an active interest in seeking a solution on the island.

[34] Memcon between the UN and US Delegations, New York, 26.6.1964: POL 23-8 CYP, box 2086, NARA.


[36] Hughes to Rusk, Intelligence Note 919, Subject: “Turkish Forces Remain on Alert in Wake of Fighting on Cyprus”, 17.11.1967: POL 27 CYP XR POL 27-14 CYP/UN XR POL GREECE-TUR XR DEF 9 GREECE XR POL 29 TUR, box 2024, NARA.

[37] Battle to Rusk, Memorandum: Cyprus Situation Report for your Luncheon with the President”, 15.11.1967: POL 27 CYP, box 2024, NARA.


[39] Rusk, Deptel to Nicosia 68406, etc., 13.11.1967: POL 27 CYP XR POL 29 CYP, box 2024, NARA.

[40] Rusk, Deptel to Nicosia 68406, ibid; Belcher, Embtel Nicosia 622, 15.11.1967: POL 27 CYP, box 2024, NARA.

[41] Hughes to Rusk, Intelligence Note 919, 15.11.1967: POL 27 CYP, box 2024, NARA.


[43] Hart, Embtel Ankara 2389, 17.11.1967: POL 27 CYP, box 2024, NARA. Atalay confessed that Turkey “appreciated deeply that unlike 1964 there was no “Johnson Letter.”


[48] Rusk, Deptel to Nicosia 70960, 17.11.1967: POL 27 CYP, box 2024, NARA; Rusk, Deptel to Ankara 70962, 17.11.1967: POL 27 CYP, box 2024, NARA; Rusk, Deptel Athens 70961, 17.11.1967: POL 27 CYP, box 2024, NARA. Hart, Embtel Ankara 2389, 17.11.1967: POL 27 CYP, box 2024, NARA. Sunay responded to Johnson that “restraint no longer means wisdom, it can only lead to humiliation and surrender and it is obvious that the Turkish Government cannot follow such a policy.” Hart, Embtel Ankara 2407, 18.11.1967: POL 27 CYP, 2024, NARA.


[51] Cyrus Vance explained the atmosphere in Ankara as follows: “When I arrived in Ankara […] I found the Turkish Government and people poised for war […]. Turkey was prepared to invade Cyprus unless its demands were immediately met. […] Logic had [been] lost to passion […] and executive control had passed into the hands of a 20-man War Cabinet.” Vance to President, Memorandum, 5.12.1967: POL 27 CYP, 2025, NARA.

[52] Hart, Embtel Ankara 2421, 20.11.1967:POL 27 CYP, box 2024, NARA. Hart had no time to consult with the State Department and he “almost single-handedly drafted the Turkish demands.”


[55] Rusk, Deptel to Ottawa 71862 etc., 20.11.1967:POL 27 CYP, box 2024, NARA; The points of the Canadian Initiative is in: Rusk, Deptel to Ankara 71818 etc., 19.11.1967:POL 27 CYP, box 2024, NARA.


[57] Cleveland, Embtel US MISSION NATO 521, 20.11.1967:POL 27 CYP, box 2024, NARA.

[58] As Talbot put it in his message Talbot, Embtel Athens 2224, 20.11.1967:POL 27 CYP, box 2024, NARA.

[59] Rusk, Deptel to Athens 73688, etc., 22.11.1967:POL 27 CYP, box 2024, NARA.


[61] Talbot, Embtel Athens 2303, 22.11.1967: POL 27 CYP, box 2024, NARA.

[62] Hughes to Rusk, Intelligence Note: “Turkish Objectives in the Present Cyprus Crisis”, 21.11.1967: POL 27 CYP, box 2024, NARA.

[63] Rusk, Deptel to Athens 73197, etc., 22.11.1967: POL 27 CYP, box 2024, NARA.


[65] Rusk, Deptel 74061 to Ankara, 23.11.1967:POL 27 CYP, box 2025, NARA.

[66] Ibid.


[68] The following will be based on the “Text of Accord, 29.11.1967: NSF, NSC Meetings File, box 2, doc. 3, NARA.

[69] Rusk to Vance, Deptel to Nicosia 76019, 29.11.1967: POL 27 CYP, box 2025, NARA.

[70] Vance to President, Memorandum, 5.12.67: POL 7 US/VANCE, box 2025, NARA.
Frankly, this proves once again how dangerously narrow Ioannides’ view was: he was willing to resort to violence and perhaps even to murder.


[73] Vance to President, op. cit.


[78] Hughes to Rusk, Intelligence Note: “Soviet Government Criticizes Athens and Greek Cypriot Regimes, Is Soft on Turks”, 22.11.1967: POL 27 CYP, box 2025, NARA.


[81] Tasca, Embtel Athens 4494, 15.7.1974; RG 59, Central Foreign Policy Files, 1974, NARA. In document 81, www 1974.Tasca reminded them that earlier Ioannides had stated that he could get rid of Makarios within 24 hours whenever he wished.


[84] Salih, op. cit., p.90.


[88] Macomber, Embtel Ankara 5609, Nixon Presidential Materials, NSC Files, box 1312, NSC


[107] Deptel to White House 157175, 19.7.1974: Records of Joseph Sisco, 1951-1976, Chronology of Cyprus issue and Other Documents, Entry 5405, box 24, NARA.

Illegal Sex trades within Thai Society in 2013

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Abstract: Problems regarding prostitution has been increasingly severe in Thailand, originating from various factors concerned with economic, socio-culture and politics. There still are debates over prostitution policy in order to agree for appropriate solutions. This study was aimed to investigate the flow of economics originating from this illegal trade, number of direct and indirect traders in this business. This study applied both qualitative and quantitative approaches, utilizing reviews of past studies and in-depth interviews conducted with business owners, stakeholders, well-informed persons, persons who engage in sexual practice for money and persons working for non-governmental organizations which helps the women in trouble along with field work. The findings unveiled an ongoing increase of prostitution compared to previous years. The pattern of the business is changing constantly and almost $8,500 million annually is circulated within this illegal business. Income from the business is 2.5% of the National GDP over 240,000 prostitutes work in many establishments which are operated as legal businesses such as massage parlors, traditional massage parlors, bars and cafés. These businesses are protected by powerful persons and those who are empowered by the government. The results suggest two solutions for this situation. (1) Legal prostitution business must not be approved and stronger penalties must be applied; (2) Legalize the prostitution business in which case there would be a tax charged for those business owners, and the quality of life of those people working in this business must be taken care of, with strict rules and regulations.

Introduction

Global transition has reshaped the world society in many ways. While the world is advancing with higher technologies, it has also witnessed an increase of social dilemmas especially in human security, such as sexual abuse and victimization, conflicts on human right violations and drugs. Thailand is also facing these problems, which has caused it to allocate resources into solving and preventing these ongoing problems.

Problems concerning sexual abuse and victimization, conflicts on human right violations and drugs in Thailand are connected. Problems derived from prostitution have been innate and seen in many countries such as U.S.A, Australia, Germany, Netherland, Japan and China. Thailand, including some other countries in the ASEAN Community namely Myanmar, Laos, Cambodia, Philippines and Vietnam, are also challenged by issues concerning prostitution. In the case of Thailand, according to some studies, the number of people who work in the in prostitution business, is estimated to be approximately 2 million, the age of between 15-29 years old. Nowadays, there are approximately 8.5 million women in this age range, in every 4 women found one who engages in sexual practice for money [1].

Thailand’s Anti-Prostitution Law of B.E. 2539 (1960) has been enforced in order to abrogate the prostitution business, at this time legal business licenses previously issued for both business owners and the women under this type of engagement were terminated.

This research was conducted in order to investigate the business of prostitute in Thailand in terms of its structure, pattern of growth, volume and value of money, and number of sex workers in the business. The research findings were expected to be valuable as a guideline for future policy making and managing the solution.

1. Literatures Review

Problems in regard to prostitution could not be solved easily since the pattern of the trade has been changed. In 1991, a fact provided by a children foundation reported that, “there are 2 million prostitutes, 80,000 of which are children” [2]. National Operation Center on Prevention and Suppression of Human Trafficking reported in 1992 that there were approximately 200,000 prostitutes, 50,000 of which were children [3]. Several studies have predicted the number to be around 700,000 – 2,000,000 prostitutes [4]. Phasuk Phongphaijit (1996) forecasted in his study about gambling, brothels, drugs, and illegal business would be about 101,719 million Baht per year [5]. Those who engage in prostitution nowadays are not only women, men have also been found to be involved in prostitution business. Some data provided from the Division of Viral Diseases, Ministry of Public Health provided a notable notice in that the majority of women sex workers work in different kinds of establishments [6]. The survey of this research has also found all establishments are
illegal, according to *Thailand’s Prevention and Suppression of Prostitution Act, B.E. 2539 (1996).*

2. Research Methodology

This study applied both qualitative and quantitative approaches, presented in descriptive style. Primary data was obtained by utilizing interviews conducted with business owners, stakeholders, well-informed persons, the persons who engage in sexual practice for money or non-governmental organizations which give help women in trouble such as Empower Group, and Women’s Human Rights Groups. Survey was also included different areas in each part of Thailand: northern, northeastern, central, western, and southern Thailand. Secondary data was acquired from texts, journals, newspapers, past research, magazines, and other related organizations. Estimation of the amounts of illegal business utilized both direct and indirect estimation techniques. Currency approach was used as an indirect technique by suspecting that an individual retaining unusual high amount of money without job or prior wealth would be suspected to involve in illegal business. Direct estimation included survey and interview, in which the population was male and female sex workers in Thailand, based on the data provided by the Division of Viral Diseases, Ministry of Public Health. Addition to this included the frequency of customers using sex services and payment. The estimations conducted by use of the above techniques demonstrated the magnitude of the study, despite the fact that it was not 100% statistically accurate.[7] Significantly, the study would be benefited in policy makers.

This paper investigated illegal business and prostitution business operation in Thailand. Only cities with apparent economic growth were selected, which included Bangkok and neighboring cities, Chiang Mai, Chiang Rai, Nakorn Ratchasrima, Khon Khaen, Chonburi, Had Yai and Phuket. Moreover, this study incorporated case studies of growing prostitution businesses along Ratchadapisek Road and the zones nearby, manipulative factors of the prostitution business in Thailand, and how factors concerning economics and business patterns and structure have effects on prostitution.

3. Findings

Regarding the investigation of the prostitution business in Thailand in terms of its structure, pattern of growth, volume and value of money, the study found that the type of establishment with the highest number of female sex workers was beer bar (78,116), followed by Karaoke (45,008), traditional massage parlor (36,038), Ago go bar (21,234) and massage parlor (12,906). Coffee shops and dance clubs were found with the least number of female sex workers. This finding pointed out that the number of all female prostitutes from these top five conjured up almost 81% of the total number of female prostitutes.

In consequence, national policy from the government in resolving women prostitution should be put into a focal point on the five types of sex service business establishment abovementioned. Furthermore, there must be a more restricted control on issuing business license.

Many factors manipulating women into Thailand’s prostitution business were found. These included poverty, lack of education, persuasion and deception, economic difficulties and unemployment. However, a considerable factor was high income earned, which attracted women to work in this business. An estimation of the lowest income earned per month of a woman working in bungalow, guesthouse, disco tech, cocktail lounge and male salon was $950, while the highest was up to $8,800 for those who worked in massage parlors.

![Fig.1 Prostitution Business Structure](image-url)
Total income originating from the prostitution business throughout the country in the year 2013 was $8,500 million, with traditional massage parlors as the first-ranked income maker, making $2,700 million or 32% of the total income. Beer bars were ranked as the second, generating $1,647 million, followed by Massage parlors, $1,360 million, karaoke, $950 million and brothels, $463 million. In conclusion, the total income generated from these five types of establishment made up 84% of the total income generated within the prostitution business. Whereas the type of establishment with the least amount of income from sex service was male salon ($0.47 million), dance clubs were found with no income from sex services. The traditional massage sector was found to be vulnerable to the prostitution business it was the sector with significantly high income from sex services and hidden sex workers. Due to the fact that traditional massage has built a strong and positive image in Thailand, this finding seems to reflect blemish on the sector. In the long run, traditional Thai massage for health and wellness must be more promoted to the world’s recognition.

4. Recommendations

In responding to the findings of this research, there were some recommendations to be highlighted. Policy options towards prostitution in Thailand should be laid out within the following two approaches.

**Approach 1**: Legal prostitution business must not be approved.

**Approach 2**: Legal prostitution business can be approved.

6. Limitations and Future Research

Limitation of this paper concerns a question of whether the sample is a representative of the total population. Further research may study the level of risks and dangers from doing prostitutes and illegal business. The use of different sample sites for collecting data would add some value information to this ongoing problem. Additional studies should be focused on an exploratory research on what truly helps to understand the risks and dangers of doing illegal business, especially in respect to prostitute customers, as well as illegal business patrons.

8. References


Sustainable Development Management by Using Residence-Temple-School Model in the Neighborhoods where Temples are Dwelling Places: A Case Study of WatPracharabuetham Neighborhoods, Dusit District, Bangkok

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Abstract: The “Sustainable Development Management by Using Residence-Temple-School Model in the Neighborhoods where Temples are Dwelling Places: A Case Study of WatPracharabuetham Neighborhoods, Dusit District, Bangkok” research project aims to 1) to study Residence-Temple-School model, and 2) to examine the factors affecting the conservation of Thai traditional society in WatPracharabuetham Neighborhoods as well as its connection to the way of life in today's urban society. The research result shows that the foundation of these neighborhoods since their emergence is agriculture. It also found out that Thai people are not good at trading. The temple and the school are located in the frontage of the neighborhoods before the roads. They are the key for maintaining the interdependency in the neighborhoods where the monastery are not managed for commercial purposes. The inhabitants whose salaries are moderate or lower than the average are willing to use temple as residence. Therefore, they tend to participate in merit-making and interdependent activities. Following Bangkok Administration policies is not significant much for the inhabitants. In contrast, they rather pay attention to the peaceful coexistence and cooperation between the neighborhood president and the inhabitants. They usually pay respect to the elderly and renovate the old temple together. The renovated temple are the treasure and ambition of the neighborhoods.

Introduction

Bangkok is a unique capital in terms of the utilization of residential areas. Unlike in the West, residential areas had not been under land ownership law yet during its early settlement. The residential areas were divided in accordance with the classes of the residents who were either upper-class or lower-class. The rich received the land for building residences from the Kings while the lower-class could build residences in religious areas, especially Buddhist temples and the enormous temples built prior the 19th century. Since temples in Bangkok had too many lands to take care, it was hard to manage all of them. Hence, the areas within the temples were full of scary, thick forests. As a result, the temples allowed the local people to reside in their areas under the interdependent conditions. People living inside the temples' territories worked as the labor for the temples’ maintenance and cleanliness. At the same time, the temples spared some areas not only for building residences, but also farming and doing some businesses. When there were religious ceremonies, the residents would help the temples to organize the ceremonies without receiving any payments. Co-existence is an interdependent way of living based on Buddhism in which mercy for human kind and gratitude toward temples who gave them lands to live are the principles. The temple rent control law in the 19th century permitted the temples to be the landlords. The tenants could rent the lands in low prices.

The bond between people living in the temples' territories, including those who are tenants, was born from the interdependency between them. When there were the establishments of elementary and secondary schools in the temples' territories, these Thai communities were uniquely formulated by the independence between families, temples, and schools. This kind of relationships has been evident in Thai society since the settlement of Bangkok until today.

Lands used for setting up residences are common in all fifty districts of Bangkok. For the ancient areas like Dusit district and in the middle of Bangkok, the inhabitants still live inside the temples’ territories and the temples have not planned to revoke the lands. While people living in the same neighborhood are committed to the way of living in the society, temples’ activities, and attendance in the educational institutions in the temples’ territories. It found out that WatPracharabuetham (Pracharubuetham Temple) is an area that temples allow local people to live
in temples’ territories in the form of hiring a piece of land for more than a century and the temples’ tenants still maintain the Thai traditional way of life. However, the mechanisms for neighborhood management had been modified in accordance with Bangkok Administration Law (2005). In terms of the way of living, people in the neighborhoods still use the temples’ lands and activities as the center of neighborhood administration. The living atmosphere is still remained traditionally Thai in the midst of urban prosperity which influences the liberal lifestyle that lacks interdependency. Thus, before the arrival of capitalism would change the basis of the Thai society and its tradition and affect the way of living in the urban society, the study of “Sustainable Development Management by Using Residence-Temple-School Model in the Neighborhoods where Temples are Dwelling Places: A Case Study of WatPracharabuetham Neighborhoods, Dusit District, Bangkok” must be done in order to develop a guide to live in other urban societies. In the past, people used to live interdependently under the relationships between family, religious, and educational institutions. This model has become a basis of Thai neighborhood management for such a long time. Hence, the conservation of the traditional way of living which is a Thai cultural symbol should be studied at the moment.

1. Objectives

1. To study the Residence-Temple-School model applied in WatPracharabuetham neighborhoods.
2. To examine the factors affecting the conservation of Thai traditional society in WatPracharabuetham Neighborhoods as well as its connection to the way of life in today's urban society.

2. Theoretical Framework

The study of “Sustainable Development Management by Using Residence-Temple-School Model in the Neighborhoods where Temples are Dwelling Places: A Case Study of WatPracharabuetham Neighborhoods, Dusit District, Bangkok” consists of the following concepts and theories:

1. The Concept of Neighborhood Study of Brownell (1950) and Warren and Lyon (1983)

Bakor Brownell (1950:9) said, a neighborhood can be altered by humans who are the significant mechanism and bring about the unstoppable change. (2) Roland L. Warren and Larry Lyon (1983:7-10) suggests the importance of the city’s size and the change in neighborhood’s economy(3)

2. The Concept of the Neighborhood’s Existence in terms of the Bond between the Local People and the Neighborhood

Jeffres et al. suggests the importance of the bond toward the neighborhood in terms of living in the same neighborhood (Jeffres, Dobos, & Sweeney, 1987).(4)

3. The Modernization Theory and the Concept of Maintaining the Thai Neighborhood Identity

ChattipNartsupa criticizes that the national administration of Thailand has been influenced by the western culture. The adaptation to the western culture leads to the loss and local and neighborhood identities. The Capitalism also affects the traditional relative system and the land use as well as the mass production which brings the poverty to the lower-class citizens (Nartsupa, 2010: 150-159).(5)

4. Functionalism Theory by Talcott Parson

The studies in the field of sociology and anthropology suggests that the internal influence of the local people in the neighborhood is related to the pattern of neighborhood’s culture. Social roles, social systems, neighborhood’s economy, and changes will impact the changes within the society which has been retaining its status quo.

3. Methodology

1. Exploring the demographics of neighborhoods located in WatPracharabuetham’s territories (WatPracharabuetham Neighborhoods 1-4)
2. All-year-round Participatory Observing the official and nonofficial social activities of the neighborhoods
3. 3 Group discussions among the local people in the neighborhoods (classified groups into Elderly, Working Age, and Youth; there are 30 samples in total)
4. Interviewing the president of WatPracharabuetham Neighborhoods, the temple’s representative, the school representative, and three local people who have been living in the neighborhoods for more than 30 years
5. Organizing Neighborhood Development Planning Activity by using Appreciation, Influence, and Control (A.I.C) Approach A (Appreciation) I (Influence) C (Control)

4. Results

1. WatPracharabuetham neighborhoods still maintains the neighborhood’s culture by building up ‘home’ relationship between local people in the neighborhoods, the temple (WatPracharabuetham), and the school (an elementary school located in WatPracharabuetham neighborhood). When organizing an activity promoting the interdependency in the neighborhood, WatPracharabuetham Neighborhood is a leading player who ties in all other neighborhoods together. Only WatPracharabuetham Neighborhood 1 is used for residency while WatPracharabuetham Neighborhood 2, 3, and 4 are the areas where the private sector name them in reference to the same vicinity. Their strong formation and activities in the neighborhoods are stemmed from their unity in which WatPracharabuetham Neighborhood 1 is their center.

WatPracharabuetham Neighborhood is about 40,488 square metre. WatPracharabuetham is located in the middle of the neighborhood. The local people are Buddhists. There are 152 families and 536 local people living in 105 residences resided in this neighborhood. The origin of this community can be dated back for more than a century. There are 6 streets (soi) in this neighborhood. Every house has to use these streets passing the temple and going in and out the neighborhood. In general, the local people make a house rental contract to hire a piece of land within the monastery with the permission from the Department of Religious Affairs. Most houses are two-storey wooden houses. The upper floor is used for residency and the lower floor is used for doing businesses. There are very few one-storey wooden houses. People from other provinces or visitors tend to stay in this kind of residency.

WatPracharabuetham is considered as a comfortable area for visiting. There are three main institutions organizing activities with the neighborhood:

1.1 The Neighborhood (Households)

152 households are living within WatPracharabuetham’s territories. They always organize merit-making activities together all year round. Moreover, this merit-making activities contribute to the social bond in terms of Thai interdependency. Most of the local people are not rich. They are common merchandisers and employees. However, the local people give a lot of attention to the temple’s maintenance and renovation. The temple has been changed from a dusty hundred-year-old temple to a new renovated temple. The temple and the neighborhood collect the money for the renovation by receiving the donations from the local people and the outsiders.

1.2 The Temple

In this ancient temple, there is also a hundred-year-old ubosot. Since the temple was built in a farming area, when the surrounding neighborhoods elevated their lands, the temple’s areas was subsided. The temple and the neighborhood pulled up the old pillars of the temple and found a small Buddha image made of gold under the principle Buddha statue in the temple. This shows that the local people in the past offered this Buddha image for worshiping. The temple has kept this Buddha image and promoted the congratulations ceremonies among the religious followers. This is still in process and needs a lot of funds.

The temple receives less than 2,000 baht from each household rental contract a year. The temple provides some areas for the local people to open flea markets and collects money from that. There is a sermon hall in the monastery for the local people to organize merit-making activities and meditation. It is the center for money-making activities which nourish the employment in the neighborhood throughout the year.

1.3 The School

Bangkok administration founded this elementary school inside the monastery. Most of the children of the local people attend this school. The school cooperates with the temple and the neighborhood organizing year-round social activities.

2. By applying the A.I.C. approach to study the dimension of WatPracharabuetham Neighborhood’s culture, factors affecting the conservation of Thai traditional society in WatPracharabuetham Neighborhoods as well as its connection to the way of life in today’s urban society are consisted of the followings.

2.1 Environmental Factors
This neighborhood was originated from farmers’ community. Prior the landfills, the farmers’ neighborhood lived nearby the temple. These Thai local people are conservative and bound with the temple’s merit-making activities. When there are more and more people living in the monastery, they become friends with the farmers. This is the root of social and cultural strength that has the temple is the core of activity management.

2.2 Social and Cultural Factors

Before Bangkok established the local administration like in present, the tie between the local people had been emerged for such a long time already, especially in terms of paying respect to the elderly. There are always Buddhist merit-making ceremonies. One of the special features of this community is that on the New Year’s Day, the monks from this temple will go to ask for food offerings from every house in WatPracharabuetham Neighborhood 1. Additionally, during the Giant Candle ceremony, the local people will voluntarily collect money to buy and offer the giant candles to the temple.

During the Songkran Festival (particularly on the 13th of April), there is the Water Blessing Ceremony in which the younger individuals pour water on the hands of revered elders and ask for blessing. The younger individuals may also apologize for their rudeness during this event. This is to show the respect toward the elders and the interdependency between age groups.

2.3 Distinguished Characteristics that can be seen from the Peacefulness Ranking in terms of the Neighborhood’s Interdependency
- Participating in the temple’s merit-making activity altogether
- Relative bonds
- Helping each other
- Unity while working
- Ties with the places
- Ties with the neighborhood’s identity
- Continuing the neighborhood’s traditions
- Paying respect to the elderly
- Kindness of the local people
- Responsibilities toward the neighborhood

The research shows that the land provision for housing by the temple in the form of low-price rental makes the people believe that the temple is helping the lower-class people. Many elders do not want to leave this neighborhood due to their bond with their friends and the convenience for participating merit-making activities.

5. Discussion

The maintaining of WatPracharabuetham Neighborhood’s identity in the urban society shows that the bond creation by having the temple, the neighborhood, and the school as the basis for living is relevant to the concepts and theories of Bakor Brownell, Roland L. Warren, and Larry Lyon, David A. Karp, P. Stone, and William C. Yoels. It is also incoherent with e concept of the neighborhood’s existence in terms of the bond between the local people and the neighborhood according to Jeffres, Dofos and Sweeney (1967) in terms of relativity, friendliness, and good intentions. Moreover, this is correspondent with Functionalism theory of Talcott Parson in terms of the significance of roles and neighborhood’s structure. This idea is related to the Modernization Theory and the concept of Maintaining the Thai Neighborhood Identityby ChattipNartsupa that suggests the Thai society should be the basis of community’s economy in the study of neighborhood’s cultural economics because the application of the Western administration style into Thai society is failed. Therefore, the neighborhood-ness, no matter in the rural or urban areas, should be based on the real circumstances of the Thai society.

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References


ASEAN Integration Process of South East Asia

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Abstract: The region of Southeast Asia region had not been integrated with certain common rules or customs. Society in this region disconnected by forest, seas and mountain, focused more on their own respective localities than others outside their country. They retained control of the culture, political and economic development within their respective territorial spheres of influence. The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967 with the signing of Bangkok Declaration by Indonesia, Malaysia, the Philippines, Singapore and Thailand. At the beginning it was founded as a loose organization. ASEAN was build based on three principles of: Respect for state sovereignty, Non intervention in other state member internal affairs, and The non-use of force in resolving conflict.

Introduction

Southeast Asia is composed of eleven countries of impressive diversity in religion, culture and history: Brunei, Burma (Myanmar), Cambodia, East Timor, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam. It is also one of the most dynamic areas of the world economically, a factor which largely accounts for its growing international significance. [1]

The region of Southeast Asia region had not been integrated with certain common rules or customs. Society in this region disconnected by forest, seas and mountain, focused more on their own respective localities than others outside their country. They retained control of the culture, political and economic development within their respective territorial spheres of influence. Due to not much interaction, or interrogation of the Southeast Asian region naturally led to even more distinctive features and perspectives of each sub-regional society. The traditional rule of Southeast Asian nations, even in the face of an external threat as great as that posed by the European colonial powers later in the 20th century, met the challenge individually and not collectively.

1. Forerunner before ASEAN

The forerunner of the Associate of Southeast Asian Nation (ASEAN) the Association of Southeast Asia (ASA), composed of Malaysia, the Philippines, and Thailand was established in Bangkok on July 31, 1961. Originally, the Philippines and Malaya had sought an organization similar to the European Economic Community (EEC), but they assented to Thailand which insisted on an association with a looser structure and obligations. They hope the entire other Southeast Asian Nation join the ASA by assuming a less formal channel. However the ASA was seen as a political aligned to the west. From this it does not goes well with particularly Muslim prominent country like Malaysia and Indonesia.

There were other integration effort for the region Southeast Asian such as the MAPHILINDO that consist of Malaya, The Philippines and Indonesia, which was formerly established on July 1963 in Manila. Originally it was intended to draw together the Malay people who had been blocked communication during the colonial era; MAPHILINDO could not work due to the different interest of the participants nations. They had territorial disagreement with each other. MAPHILINDO was unsuccessful it is because mainly of military issue.

Another fail integration attempt in Southeast Asian was the; South East Asia Treaty Organization (SEATO). It was an international organization for defensive collaboration established on September 8, 1954. It has failed it is because it lack of agreement among members. The organization required unanimity in order to pursue policy or express a stance on an issue such as Vietnam’s invasion of Cambodia, but there were always several countries that expressed disapproval.

2. Establishment of ASEAN

The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967 with the signing of Bangkok Declaration by Indonesia, Malaysia, the Philippines, Singapore and Thailand [2]. At the beginning it was founded as a loose organization. ASEAN was build based on three principles of:

- Respect for state sovereignty,
• Non intervention in other state member internal affairs,
• The non-use of force in resolving conflict.

ASEAN was never a formal dispute-resolution mechanism and hence was not a collective security arrangement. The founders of ASEAN did not want ASEAN to be mistaken for a military grouping among political allies as some of its unsuccessful predecessors had been. The main objectives of ASEAN were to increase economic growth, increase social, cultural development and also to promote regional peace and stability in the region of Southeast Asia.

All members of ASEAN have different reasons for an affective regional organization in the region. Indonesia wants to repair its image in the region after its konfrantansi with Malaysia. Malaysia, Singapore and the Philippines supported ASEAN as a way to constrain Indonesia, while providing Indonesia with a channel for its aspirations to regional preeminence. Besides, this ASEAN members also saw that by joining ASEAN; it is an opportunity to exercise regional leadership and to reduce the ability of external power in Southeast Asia. For Malaysia and the Philippines, ASEAN was an opportunity to enhance their national prestige. Philippines also hoped that ASEAN would strengthen Filipino’s Asian identity and trading links, thereby counterbalancing the Philippine’s relationship with the United States. As for Thailand, ASEAN was a basis for ‘collective defense’ of the region, forming an organization that could supplement and perhaps eventually replace its own security relationship with the United States.

ASEAN is not a security-oriented structure. ASEAN made it clear that the organization would not deal directly with security matter of political controversies. However, security matters were of primary significant for ASEAN in fact a grouping of anti-communist states and also against foreign power in the region of Southeast Asia. The common political outlook was a major factor in bringing ASEAN members together, but ASEAN refused itself as a security bloc because it wished to avoid the polarizing effects of such position [3], [4], [5].

3. Major Principles of ASEAN

The principles of the ASEAN are based on the ‘ASEAN Way’, which mainly respect member nation’s sovereignty. The most important values of ASEAN Way is the notions of non-interference, informality and consensus building, generally supporting cautious diplomacy. ASEAN support the principles of non-interference; it respect each nation’s self interest. It tries not to infringe upon nation interest in the name of the region as a whole. As a Southeast Asian organization ASEAN recognizes the diverse ethnicities, cultures, history, religion and political system accordingly it accepts and respects each nation interest.

ASEAN adheres to its informality meeting are not held regularly but on an ad hoc basis. The member-state meets when there is a need to, such as an occurrence of international disputes or urgent incident. ASEAN arrange meeting in issue-by-issue issue coalitions. There are completely no completely strict and legal procedures to strain the members and the meeting because ASEAN believes such law might be checks that curbs national sovereignty. ASEAN respects procedural significance. Generally, meeting does not end with tangible and specific results; this sometimes poses a major problem of ASEAN. This is the case it is because ASEAN value the meeting among as members as progressive and having approached nearer to solving a problem. The consultative process itself is beneficial because one of ASEAN’s objectives is to promote its understanding of the norms and practices of international society to the rest of society, and the process serves this purpose well.

ASEAN seeks to postpone and compartmentalize sensitive or disputable issues so that they can focus more on the issue that states can share and agree on, ASEAN also sometime try to avoid to implement the policy needed. As a whole ASEAN practices cautious diplomacy, it does not instigate member states by enforcing them to sacrifice their national interest for those of the association. ASEAN also does not impose strict rules to deprive other member’s states of the freedom. At the same time ASEAN attempts to dissatisfy the least number of states by employing consensus-oriented method in dealing with certain sensitive issue. ASEAN does not welcome and sometimes ignore disputes and hence try to avoid them.

ASEAN’s first thirty years of its existence it is a most successful regional cooperation outside of Europe, second only to the European Union (EU). From this it has become the model for regionalism in many parts of the world. ASEAN was established as the result of an elite group of policy maker who responded to clear and straight forward
international structures. ASEAN came into being during the Cold War reaches its peak. ASEAN founder saw increasing regional cooperation as a means of strengthening Southeast Asia position’s in the Asia Pacific area and thereby reducing its risk of becoming a victim to great power global rivalry. One of the remarkable success of ASEAN is that the ASEAN member’s ability to harmonise ASEAN foreign policy and be able to speak as one voice in international affairs. ASEAN has worked well for many years because of its relatively low complexity involved in the political process.

In the predominantly non-democratic setting of Southeast Asia politics, peace and stability prevail not despite but because of first, the relative insulation of policy making and, second; well-defined an international structure that requires little policy adaptation over many years, these were the two pillars of quick and overall effective intra-elite policy coordination and conflict management. Also McClure [6] stated that by ‘The relative peace and quiet of ASEAN for the first thirty years of its existence has allowed political leaders, civil servants and business executives to come to know and interact with one another on a close, first-name basis in the process fostering a uniquely ASEAN non-legalistic consensual, low- key, pragmatic, approach to problem and settling issues’.

According to Khoman [7], the formation of ASEAN is the first successful attempt at forging regional co-operation was actually inspired and guided by past events in many arrears of the world including Southeast Asia; the fact that the Western powers, France and Britain, reneged on their pacts with Poland and Czechoslovakia promising protection against external aggression, was instrumental in drawing the attention of many countries to the credibility of assurance advanced by larger powers to smaller partners. The lesson drawn from such events encourages weak nation to rely more on neighbourly mutual support than on stronger state that serve its own national interest rather than those of smaller partners. This could be seen at the last ASEAN Summit in Bali, Indonesia where LPDR a predominantly small land lock country uses ASEAN to push its agenda with China regarding its constructions of its controversial dam project in the Mekong rejoin. Beside this, Malaysia also uses ASEAN to further its interest in world politics. It is stated in the Malaysian foreign policy of 2011 in KLN [8] that ‘In Malaysia’s foreign policy, regional cooperation has always been its major preoccupation. ASEAN remains our cornerstone. In this respect, Malaysia attaches vital importance to relationship with countries in our own Southeast Asian region. ASEAN will continue to be the cornerstone of our foreign policy and the predominant forum for maintaining regional peace and stability through dialogue and cooperation. The peace, prosperity and stability that Malaysia enjoys today are to a large extent, due to ASEAN’s role as an organisation that fosters trust and confidence amongst its member states.’

The growing mutual trust among ASEAN member and also together with the increasing convergence of interest has also seen ASEAN assuming a large and more important role in regional and international political and security affairs. The first three decades since the formation of ASEAN largely remain a network- facilitating framework for government elites. Thought the early formation years till the late 1990s the political process at both national and regional levels in Southeast Asia could be describe as static, highly centralized and one-dimensional. ASEAN has greatly benefited from its deviated performance. Due to this ASEAN has become a well established international fixture.

4. Strategic Goal of ASEAN

ASEAN leaders agreed on a shared vision of ASEAN as a concert of Southeast Asia nations, outward looking, living in peace, stability and prosperity, bonded together in partnership in development and in a community of caring society, furtherer more in 2003, the ASEAN leaders resolved that an ASEAN Community shall be established compromising on three pillars that is ASEAN Security Community, ASEAN Economic Community and ASEAN Socio-Cultural Community (Association of Southeast Asian Nation 2009). As Severino [9] said the ASEAN Charter has reaffirmed the ASEAN’s purpose and principles, it makes clear ASEAN objectives which are:

- An integrated regional economy, a single market, and production base;
- Regional cooperation on regional problem;
- Regional peace, security, and stability;
- A Southeast Asia free of weapons of mass destruction and non nuclear zone;
- The alleviation of poverty;
- Sustainable development;
- The development of an ASEAN identity;
- Non interference in the internal affairs of other; and
• Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations.

Acharya [10] stated that every ASEAN members are working towards their strategic goal that is to follow the ASEAN charter and also cooperation with each member country. It could be said that ASEAN member country has develop a way to gain its strategic goal and to strengthen more its relationship with each member nation, that is true the development of the ASEAN Way. The ASEAN Way is the process of intra-mural interaction and to distinguish it from other multilateral setting, especially, western multilateral setting [10].

In the pass years it could be seen that ASEAN has progress in many aspect such as in economic cooperation, defense and transnational issue. ASEAN has evolved in its own way. With only what is now the European Union as guide, the ASEAN member countries have tentatively moved forward. Dosch [11] stated that ASEAN stood for the most successful regional cooperation scheme outside Europe second only to the European Union (EU) and became the model for regionalism in many other part of the world. ASEAN regional cooperation could to be said that a way to strengthen Southeast Asia’s position in the Asia Pacific area and from this it reduce its risk of becoming a victim of other greater power in the world.

One of the biggest successes of ASEAN is that it has been the ability of its member state to harmonise their foreign policies and often speak with one voice in international affairs. Form this it allows ASEAN to established formal relation with the leading regional and global power such as the United State, the European Union, China and Japan. ASEAN worked very well for many years it is because of the relatively low complexity involved in the political process. Over the years ASEAN has develop into a working diplomatic community and has currently grown in international stature becoming in the process a factor of some significant in the calculations of both regional and extra states.

ASEAN has added new dimension to its organisation that is the ASEAN Regional Forum (AFR) it relates to security matter, ASEAN+3 this include country such as Japan, China and South Korea, and the newest and the most contentious is the East Asian Summit (EAS) inaugurated in December 2005; it brings ASEAN +3 countries together with India, Australia and New Zealand all of which will discuss the issue regarding economic cooperation, political cooperation and also in the issue of security in regarding security cooperation, terrorism treat and transnational crime. As Goh [12] stated that ASEAN has been the main channel of engagement with external power although these engagement were aim at enhancing ASEAN’s economics ties with the major develop countries, they were subsequently targeted at inducting secondary and rising power into the regional power into the regional order, this is seen as essential in helping to diversify the source of Southeast Asian strategic and economic stability.

5. ASEAN Way

The ASEAN Way is a styled of diplomacy or it could also be said a code of conduct among the ASEAN members. Mee [13] described that In contrast to a Western, ‘American’ or even ‘Cartesian’ style of diplomacy which some Asian regards as ‘formalistic’ and focused on ‘legalistic’ procedures and solutions, the ‘ASEAN Way’ stressed patience, evolution, informalities, pragmatism. Also stated by Snitwongse [14] “The ASEAN Way is a distinct political process developed by ASEAN and characterised by the habit of ‘consultation and accommodation’ fostered by frequent interactions among members”. The use of the ASEAN Way could be said when ASEAN uses the process talking to one another to solve problem and also the non-biding commitment rather than legalistic formulae and codified rules to solve problem like the European Union (EU) does. For the ASEAN Way to be affective it is important that ASEAN ministers and diplomat has good personnel relation to one another.

According to ASEAN 2011 [15], the ASEAN Way has its limitation and drew huge criticism from many scholars and also many policy makers in Asia and also from the Western powers themselves. This is so because it is not efficient and it does not solve problem, it rather add more problem to an existing one. For an ASEAN Way to work properly ASEAN need a formal institution like the EU, currently ASEAN is just a merely a talking forum without any positive action that produces concrete result. As stated by Koh [16] Southeast Asia could learn much from European experience of institution-building. The 1998 Asian economic crisis has shown that the ASEAN Way needs to be supplemented by a sound good institution. The time has come for Southeast Asia and ASEAN in
general, to strengthen existing institution and build new one to further strengthen ASEAN’. Beside Koh, an Indonesia diplomat by the name of Jusuf Wanandi [17], hesitated that ‘Basically, the old principles which guided ASEAN in the last thirty years- namely on personal, non-legalistic and informal system of cooperation between state or their bureaucracies and step-by-step approach, are no longer adequate to cope with fundamental changes happening in ASEAN members country and also the Southeast Asian region. ASEAN also practices a cautious diplomacy, conflict within ASEAN members are dealt with by postponing difficult issues, compartmentalizing an issue so that it does not interfere with other arrears of cooperation. As a result of this ASEAN is not capable of resolving many issues that arises among its members. What ASEAN is good in is that they ASEAN would push the issue aside so that this issue does not interfere in the progress of other area.

This could clearly be seen in the issue of the South China Sea. The South China Sea is a highly contested are not only among ASEAN member but also foreign power including China. Beside this, issue such as transnational crime and environ-mental issue are also a concern for ASEAN. But it was never address properly this is so because if the issue is brought up to one member of ASEAN. It would be considered interference in domestic issue of another member. Due to this ASEAN never fully developed into a full functional regional organization. One of the most serious issue that ASEAN faces is the recent conflict in 2010 between Thailand and Cambodia. This two ASEAN member military clashed regarding border dispute. The issue could not be solves this is so because Thailand and Cambodia regard this as an internal matter and any interferences by ASEAN is considered interferences in domestic issue. Due to this ASEAN’s unity is threatened. The conflict may drift ASEAN apart, in terms of political unity it affect the progress of regional cooperation.

It could be clearly seen that the ASEAN Way could not solve the current contemporary issue that faces ASEAN members. It could be said also that the ASEAN Way itself is an impediment for ASEAN itself to grow and develop.

6. ASEAN Problems

ASEAN has much problem also; some of its problem are serious and could lead to the failure of ASEAN itself. Some of this problem’s are border dispute between member’s country, uncontrolled migration, and maritime disputes between ASEAN members and also with China. Southeast Asian region is rich with diversity; this includes religion, population, political system, population and geographical conditions of member’s country. For example Malaysia, Indonesia, Philippines and Thailand confront serious internal ethnic, linguistic, religious division impending agreement on even a single set of national.

One of the most sensitive and taboo subject in the region is the issue regarding religion and population. Thailand is a Buddhism country while Islam is prevailing among Malay population in Malaysia and Indonesia. So for Southeast Asia to integrate, as a single organization could be a difficult task. Another kind of diversity of Southeast Asia that leads to different nation interests is the natural structure of the member’s countries. Indonesia and the Philippines are archipelagoes with around 13,000 and 7800 islands respectively. Malaysia and Thailand are embedded on the Asian continent and Singapore is a small island. Transportation, communication and most importantly defense problems call for entirely different concepts and policies in a state with numerous islands and state that is located on land.

These diversity grow even more when members such as Laos, Vietnam and Vietnam. These member country brought ASEAN’s original objectives into question. This is so because the political nature of these members country. Given such wide-ranging diversity among ASEAN members, it could not be as an integrated region like the Gulf State, Central American or the Western State. The numerous differences among ASEAN members have frequently made ASEAN member state difficult to agree on certain matter such as economic integration policy, ASEAN defense policy and also due to discrepancies in perceived national benefit.

Event ought the region’s diversity to relates to larger grouping, diversities in ASEAN do not means necessarily lead to an effectives economics integration grouping. The Southeast Asian region is too small to be effective as an economic integration grouping. Although ASEAN has a population exceeding the EU, its GDP size is less than 10% of its association. In addition to this, ASEAN the lack of balance between national interest and regional priorities is a major hindrance to a sustained
integration as a whole. ASEAN loose structure and the rule of non-interference, along with the tendency of Southeast Asian country to preoccupy them selves with sub-regional issue, contribute to the limitation that hinder the growth of a strong community. As the member nations have their internal problem at hand while the association does not requires them for more participation and contribution during meeting, ASEAN does not develop much.

Moreover, the very principles that ASEAN pursued; that is putting a side conflicting problems in order to prevent military confrontations. Due to this it makes ASEAN itself powerless to solve anything. From this ASEAN always practices the ‘ASEAN Way’ of leaving things unsolved to avoid problem among member countries. Distrust among ASEAN members remains a major problem also. ASEAN members lack the military power that is needed to form a credible bloc. Like the Northern Atlantic Treaty Organization (NATO) did for Europe. As a whole, ASEAN’s diversity in various spheres checks the member state from reaching a practical agreement on specific issues. The variety of nations does not lead to much benefit from economic integration either. The principles ASEAN adhere to also deter the way to further development of the region.

The non-intervention could be said as a tool that prevented ASEAN from further progress. Many issue such as non-traditional security such as piracy in the Malacca Straits, uncontrolled illegal migration, environmental problem and transnational crime need closer cooperation between ASEAN members. Most ASEAN problem is transnational in nature and the issue of non-interferences need to be lifted in order for future progress [18], [19].

7. Integration of Southeast Asia

Regional integration is processes in which states enter into a regional agreement in order to enhance regional cooperation through regional institutions and rules. Since 1980s the world has witness a resurgence of integration in world politics. Regional integration rose significantly as a result of development within Europe and also due to the successful negotiation and ratification of the North American Free Trade Agreement (NAFTA) and the increase momentum of co-operation efforts within Asia and continuing discussion within the Asia-Pacific region over new economic and security agreement. The wave of integration ranges from discussion of a world of regional trading blocs on the one hand and to increased emphasis on sub regional co-operation and integration on the other hand.

Characteristics of integration is multidimensional, it is important to compare geographically, it is still more important to examine the interrelationship between political, economical, and security issues. The analysis of integration, even of cohesive and effectively institutionalised integration, can no longer confine to the region of Europe. Western Europe and the Americas stand out as the areas where institutionalised integration has made the most impressive advance; a growing sense of regional awareness has been universal, although it has manifested itself in different ways.

Interstate cooperation in Western Europe was mainly influence and driven by one or other of the first three motives, but after 1945 there has been a shift to the fourth. Economic integration was seen as a means of achieving peace, so barriers to trade have been pulled down, national monetary policies harmonised and arrangement made for the free movement of people, goods, money and services, all in hope of bringing new levels of prosperity. This could also be seen in Western Europe, in the case of EU where the use of economic integration as a tool for cooperation among its members. Economic integration won’t end in itself; states have built economic ties and form this it could further transform into political integration like the EU. Gehring [20] sated that political integration can be defined as the process by which political leaders and citizen in separate country are encourage to create a new set of common governing institutions, to give those institution jurisdiction power, and to shift some of their loyalties and expectations to that new level of government. Instead of making separate decision on foreign and domestic policy, they either make joint decision or delegate decision making power to the new institution like the EU. The countries cease to function separately and independently, and instead work as one, with the result that political competition expand beyond the national arena to incorporate multinational values and priorities.

Ernst B. Hass [21] stated that it could be said that the EU integration is a gathering of sovereign state, which retain authority over their own affairs, give power to new cooperative bodies only when it suits them, and reserve the right to take back that power at any time, in short the EU only exists because the
member state have decided that it is in their best interest. Regional integration could be explained differently in two set of explanations that are: functionalism and neo-functionalism [21].

7.1 Functionalism

Roger M. Scully [22] in his paper presented on the “Explaining the Impact of Jacques Delors: Conceptualizing and Assessing the Commission Presidency” functionalism argues that the best people to build cooperation are technical expert, not government representatives. Furthermore is about the internal dynamic of cooperation, arguing that if states work together in certain limited areas and create new bodies to oversee that cooperation they will work together in other area through a bond of integration. It also argues that the European Integration has its own logic that the EU member states find hard to resist. Functionalism is based on the ideas of incrementally bridging the gaps between states by building functionally organization [22].

So instead of trying to coordinate big issue such as economic or defense policy, functionalism believe they could be promoting integration in relatively non-controversial areas such as the postal service, or a particular sector of industry, or by harmonising technical issue such as weight and measures.

Leon Lindberg and Stuart Scheingold [23] explained that functionalism has dominated the theoretical debate since the 1950s about how the EU has evolved. The two men often describe as the founder of the EU, French businessman Jean Monnet and French foreign minister Robert Schuman, were functionalists in the sense that they opted for integration of a specific area like the coal and steel industry with the hope that this would encourage integration in other area [23].

7.2 Neo-functionalism

According to Schmitter [24], it argues that prerequisites are needed before integration could happen. It include switch in public attitudes away from nationalism and towards cooperation, a desire by elites to promote integration for pragmatic rather than altruistic reason, and the delegation of real power to a new supranational authority. Once these changes take place there will be an expansion of integration caused by spillover: joint action in one area will create new needs, tension and problem that will increase the pressure to take joint action in another [24]. Take agricultural for example, the integration of agricultural will only work if related sectors such as transport and agricultural support services are integrated as well. Spillover takes several different forms. For example, with functionalism spillover, if states integrate one sector of their economies, the difficulty of isolating it form other sector would lead to the integration of all sector.

With technical spillover, different in standards would lead different states to rise or also sink to the level of the states with the strictest or most lax regulation. This could be seen if the integration of Southeast Asian countries would happen, where the standard and law of industrial safety is higher in country such as Singapore and Malaysia; and the low standard in country such as Laos and Cambodia. So when these countries integrate into one, problem will arise. Finally, political spill over implies that once different functional sector become integrated, interest group such as corporate lobbies and trade union will increasingly switch their attention from trying to influence national government to trying to influence the new regional executive, which will encourage their attention in order to win new power for itself.

The concept of integration has not been in the mindset of the people in Southeast Asia till the early 1990s. ASEAN originally has always been a talk shop and grouping against external threat. The theories of integration have mainly been developed to explain about European integration. Europe was the region of the world, where regional integration started in the early 1950s with the European Coal and Steel Community (ECSC) in 1952. When early theories of integration were developed there was much discussion on how to define the concept of integration. For instance integration is referring to a process or to an end product. Integration could be defined as a process that leads to a certain state affairs.

8. Integration Process

The ASEAN integration could be said is a integration of a community with diverse culture and bounded by a common regional awareness where people strives for equitable access to opportunities for total human development regardless for gender, race, religion, language, or social and cultural background. Other countries such as the United States, Japan and the EU welcome the ASEAN integration; this is so because they find it easy to
deal with Southeast Asia as a single entities. The United States found it useful consider ASEAN as a single unit when devising Asia-Pacific plans. The European community also recognized ASEAN as a whole, meeting Southeast Asian states as a whole, through ASEAN, instead of individual countries. Besides this, European countries moreover approved ASEAN latest proposal to set up a meeting of Asian and European States. This is so because they though they had been obvious of a good global market and that they now met a good chance to further advance into such market in the near future.

ASEAN is based on mutual benefit as well; ASEAN can be seen as a significant representative of Southeast Asian region. This regional identity is not acknowledged among all the members to the same degree. The level of commitment to the ASEAN identity varies from state to state, according to the circumstance of each state. ASEAN still has much problem to work on; one of them is the balancing between its non-interference principles and a more formal organization. This fundamental contradiction hinders the association from being an effective organization and not being able to carry out practical actions. Diversity is also an important problem ASEAN faces. Enhancing its policy could further be useful in reducing the conflicts occurred from such disparity. ASEAN need to improve more than this. ASEAN had not been a particularly successful organization especially in terms of an economic institution and security bloc. As an organization connecting various states in the region of Southeast Asia, ASEAN had affected and mitigated the disputes in one way or the other. ASEAN also help by contributing to political stability, it made the region more attractive for foreign investors. It is unlikely that foreign investor would have been interested in areas effervescent of conflict and wars [24].

Conclusion

In conclusion the region of Southeast Asia region had not been integrated with certain common rules or customs. To be integrated as one means that it is also to give up being a sole actor in the international arena. The whole region will share both positive effect and negative effect of the outcome of the integration process.

References


Russian Foreign Policy-Eurasianism in the Context of International Relations Theories

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Abstract: The aim of this study is to analyse the Russian foreign policy with its theoretical background. After the collapse of Soviet Union, Russian Federation policy makers have focused on rapprochement with western countries and institutions. However, after a while, Russian oppositions-Eurasianists increased their criticisms to Boris Yeltsin and Andrey Kozyrev regarding the conflicts in Post-Soviet sphere—near abroad and Caucasus region in Russia. Following the criticisms to Yeltsin and Kozyrev, Yeltsin has taken initiative to change the foreign policy orientation by doing amendment on the constitution of Russia as well. Therefore, Russia has begun to follow an “Eurasianist” perspective with the initiative of Yevgeni Primakov, who was replacing Kozyrev as the minister of foreign affairs of Russia. Afterwards, Vladimir Putin has strengthened the “Eurasianist” character of Russian foreign policy when he has become prime minister and president of Russia by declaring and implementing the second military doctrine of Russia.

Introduction

In this study, current Eurasianist character of Russian foreign policy will be analysed by referring to the significant historical figures-philosophers in Russian history and politics as well. Unless, we don’t give reference to the historical background of theory-policies, we cannot understand the logic and reasons of geopolitical stance of Russian policy makers (state) in conflicting regions and within international relations system too.

Eventually, this study will help to understand the current position of Russian foreign policy as related with the theories of international relations.

Russian foreign policy orientation-Eurasianism will be analysed by showing its various features. During the Soviet Period, Leninist –Stalinist ideology had been put on the centre of the state identity, which became the basis of foreign policy orientation as well. Mikhail Gorbachev has become the pioneer of the change on foreign policy of Soviet Union by withdrawing its military troops from Afghanistan and beginning for the disarmament talks with USA.

After the collapse of Soviet Union, Russia has left Leninist-Stalinist ideology and focused on drawing a new foreign policy perspective by rapproaching with the western countries and institutions. While analysing current foreign policy Russia, I will emphasize on using the arguments of Constructivists, which is perceived a kind of bridge between realists and liberals.

Alexander Wendt as the father of constructivist stream in international relations theory, argued that states’ foreign policy orientations and relations among themselves developing on the basis of identities and interests, which are constructed. Wendt see the identities as the basis of interests.[1]. Wendt pointed the significance of perceptions of the states as part of their identity, and so he expressed the changing of the perceptions of a state regarding to the characteristics and identity of another state. Wendt explained this as following: “States act differently toward enemies than they do toward friends because enemies are threatening and friends are not. Anarchy and the distribution of power are insufficient to tell us which is which. U.S. military power has a different significance for Canada than for Cuba, despite their similar "structural" positions, just as British missiles have a different significance for the United States than do Soviet missiles...” [2].

Hence, according to Wendt, anarchic character of the system is not sufficient to explain the relationship between the states, that why he emphasized on the constructed identities of the states which helps us to explain the foreign policy orientation of the states. The interactions of the identities and the policies of the states (international organizations such as NATO) are getting more important rather than the characteristics of the system. The positions of the states are determined on the basis of “self” and “other “, which also forms the power politics in the process as well.

If we adopt the arguments of Wendt to Russia’s
position on the relations with western countries-institutions, we may see the reflexes of Russia due to its Eurasian identity in which perceives western policies on cultural, political and economical fields as being attacks to its special cultural, geopolitical-continental sphere.

1. Historical Adventure of Russian Eurasianism

Russian Eurasianism is not a new political-philosophical thought, which derived from the discussions upon the placing-location of Russia to west or east which begun at the end of 19th century and raised up in the beginning of 20th century. Eurasianist perspective has developed within an inter-disciplinary system and comparing the social, cultural, geographical features of Russia-Eurasia with Europe. Classic Eurasianists tried to find out some answers regarding to the controversial issues-processes of Russian Empire. Hence, they analyzed these processes by doing critics and drawing the social, cultural and political map of the Eurasia. Danilevsky, Trubetskoi, Savitski and Vernedski can be identified as the important representatives of Classical Eurasianist Thought. These thinkers had analyzed the cultural, geopolitical sphere of Russian Eurasia by comparing content of identities of Europe-West and Eurasia. The common point of these thinkers is that Russia-Eurasian cultural sphere covers various ethnic groups and co-existence of different beliefs. However all these various ethnic groups are part of Eurasian culture in where there was never a “nation state” culture-structure. Due to such features, West could not understand Eurasia. Trubetskoi defined the situation with these words; 

“It is very difficult for West to understand Russia and Eurasia, because West and Russia has different past and traditions-customs. Russia has never become a nation-state by referring to one ethnic. All nations and ethnicities’ cultures are valued and respected under Russian-Eurasian culture. These ethnicities are at a different point from “panism”, therefore, Eurasianist idea will not have Pan-Slavism and Pan-Turkism customs-features. “ [3].

Trubetskoi’s analytical evaluations show that empire culture versus to nation-state culture. According to him, the different ethnicities having the conditions to pursue their lives without contacting to nationalist streams.

Vernadski and Savitski strengthened the idea of unique geographic characteristics of Eurasia by referring to the blended ethnic composition and roots of the state identity. Vernadski saw the Mongolian, Tatar and Byzantium state-society traditions as the sources of Russian-Eurasia state identity-character in which was threatened by Catholics. [4]. Vernadski had also pointed that the state created nation, nation did not created the state as in west. Such arguments of Vernadsky showed us how the west is perceived as “other” and “self” is defined as well.

Savitsky argued that Russia is a continental empire and more integrated than oversea (inter-continental) empires of the west.[5]. Savitsky has tried to prove his arguments empirically by comparing the transportation costs of the continental empire and oversea (inter-continental) empires in where transportation is seen as the most significant instrument for integration-interconnections of the peoples-identities who live under the empires. Savitsky also emphasized on the climate and geopolitical structure of the empire by showing some evidences.

Eventually, such arguments mean that classical Eurasianist thinkers try to show the identity differences and the importance of the geopolitical location of Russia-Eurasia, in this sense Mackinder has also pointed the importance of the geopolitical importance of Eurasia.

Gumilev can be perceived as a bridge between classical Eurasianists and neo-Eurasiansits, who brought the classical thoughts to the new generations. Gumilev’s ideas played crucial role for the formation of the current ideas and strategies of neo-Eurasianist intelligentsia in Russia. He argued that geographic circumstances pin downed the union of Eurasia and pointed that super- ethno would emerge in Eurasia geography with an empire tradition under a multi-cultural structure. Geographical, physical and biological coactions among the various ethnicities (Slavs-Ural-Altay-Turkic Groups) caused the emergence of super ethnos according to Gumilev’s arguments.

All these arguments illustrate us these philosophers have put forward the differences of Russia-Eurasia from west in terms of identity and geopolitical locations, hence west is perceived as “other”.

2. Emergence of Eurasianism as a practice in Russian Foreign Policy

After the collapse of Soviet Union, Russian policy makers focused on the rapprochement with western
countries and institutions. Andrey Kozyrev has became the pioneer of this policies as the minister of foreign affairs, Russia. Russian society has witnessed the savage characteristics of the capitalist system under the “liberalization of the economics” and rapprochement with western world. However, after a while Russian oppositions (Eurasianists) have begun to criticize economic policies of Boris Yeltsin and the foreign policy orientation of Kozyrev, who focused on rapprochement with western world and neglected the post-soviet sphere. Following the critics Russian oppositions, Yeltsin has made amendment on constitution of Russian Federation and increased the power of the president in security-foreign affairs issues and declaring the First Russian Military Doctrine which showed the signs of “Eurasianism” lightly. According to First Russian Military Doctrine, Russian policy makers pointed the importance of “self-defense” concept and underlined the significance the collective security in Commonwealth of Independent States (CIS) sphere, which has been called as Near Abroad (Blijzne Zarubejhe). In this military doctrine, NATO and Western countries were not named, however the using “foreign military blocks” would challenge the stability of Russia and region, implied the NATO and western countries (Russian Military Doctrine 1993). Additional to this, international terrorism, separatism etc. were defined as new threats to Russian security and underlined the vulnerability for the living conditions of Russian population in Post-Soviet republics. Even the First Military Doctrine shows us emphasizing on “identity” issue through the “self” and “other”. Hence, Russia put on forward firstly its practice by sending military troops to Tajik-Afghan border under the umbrella of CIS. That is not only an example for Eurasianist stream, it is also refer to the increasing the importance of regionalism and quietly connected with the liberal tendencies of collective security concept which developed after the cold war era under the regional organizations.

In spite of the declaration of this doctrine and deployment of the troops on Tajik-Afghan border, the critics continued to Yeltsin and especially to Kozyrev due to the conflicts in Chechnya, Georgia and Tajikistan as well. Kozyrev was dismissed from his office in 1996 by Yeltsin and replaced by Yevgeni Primakov.

Primakov had begun obviously to show the perspective of neo-Eurasianist policies in his foreign policy practices. Primakov was not only a politician, he has also academic identity and know historical things more than other policy makers of Russia. He is the person who acted as the part of intelligentsia on foreign policy issues of Russia with his publication and ideas. Primakov during his foreign affairs office and prime ministry periods emphasized on rapprochement with Iran and ignore the problems with Turkey as well. On the other hand, he strengthened Russia’s position in Near Abroad and tried to limit USA and Western countries’ presence in Russia and Post-Soviet sphere. Perceptions of Russian foreign policy makers have corrected the arguments of Wendt, who they perceived differently each country on regional and global level. Such as, Russia welcomed to cooperation with Iran on nuclear-uranium enrichment programs, however it does not orient itself to have cooperation with USA or Western institutions since Primakov period or doing it on low level.

3. Putin’s Pragmatic Eurasianism : Power Politics and “Liberal Foreign Policy Discourses”

Vladimir Putin has become the president of Russia in 2000 and has focused on providing the stability in domestic affairs and repair broken image of Russia in international relations system. Before analyzing Putin’s policies, it is important to mention neo-Eurasianist theoretical perspectives.

Alexander Dugin is one of the most important figures of the Eurasianist perspective in Russia and international arena too, who made contributions with his works and by creating the Eurasian Movement. Dugin’s doctrines are related with classical Eurasianist perspectives, however he has more spiritual values and also moved the perspectives of past to real politics’ frameworks and to geopolitics as well. Hence, he draw the map of the world system within 4 main zones and poles. Dugin has described the zones as Anglo-American, Pan-Eurasian, Euro-African and Pacific-Far East.

Dugin has underlined the importance of Eurasia-Heartland and continued to see West as “other” and Russia as Eurasia, “self”. Dugin argues that westernization means to loose the spiritual and moral values and assimilation. He does not believe satisfaction of liberal or Marxist thoughts, and refusing them and puts empire culture as Third Way and arguing that economy will be on the basis of spiritual and moral values as a civilization and the state will control the strategic sectors norms and values will have a organic combination with economic market.
Panarin is another important figure on the construction of neo-Eurasian idea and identity. Panarin has referred to the classical geopolitical thoughts (Spykman-Mackinder) and analysed the current situation of Eurasia space [10]. Panarin also see Russia that it has task as ruler of the heartland-Eurasia, however without rejecting the struggle for power-power politics in the affairs with Europe, Pacific in international politics. Although he underlined the realist approach in international politics and creating the “others-threats”, “identity conflicts”, he offers liberal-democratic values, economic prosperity, social welfare and federative structure for Russia-Eurasia space [11]. Panarin can be identified as more liberal version of Dugin relatively.

Putin has followed a pragmatic Eurasianist perspective on his foreign policy since 2000s, which can be defined by constructivist-liberal and realist theories of international relations. Because Putin administration follows foreign policy on the basis of Eurasian identity with sometimes arguments-discourses of realists and liberals as well. 2000 and 2010 military doctrines are the evidence of such policies and military operations in near abroad as well. Russian Military Doctrine 2000 was the repeat of 1993 Declaration, it was just underlined the importance of UN and OSCE due to NATO’s operation to Kosovo. Vulnerability of Russia was implied that NATO disturbs Russian interests from Balkans towards former Soviet republics. However, Military Doctrine of 2010 obviously underlined the enlargement process of NATO and its deployments are seen as a threat for security interests of Russia [12]. Russia shows its national vulnerabilities by using a realist discourse. On the other hand, Russia tries to increase the capability of Collective Security Treaty Organization which might be called as “Russia’s NATO”.

Russia also used to liberal arguments/discourses, such as in the war of 2008 with Georgia for Abkhazia and S.Ossetia, Medvedev referred to Responsibility to Protect concept (R2P). [13] R2P is a part of liberal discourse and argument, which is evaluated as the increasing the role of NATO as well. Because of that reason, Russia and China under the UN umbrella still are against to this concept. However, Russia has used this liberal discourse to strengthen its presence in the southern part of its Eurasian heartland. In the case of Crimea and Ukraine, we may see similar discourses and practices as well. Here, Russia see itself as responsible and having a task in the space of Eurasia, which includes Ukraine, Caucasus and Central Asia as well. Western countries and institutions such as NATO, are seen as the threats to Russian-Eurasian identity-integrity and Russia reflexes to Europeanization process of Ukraine and Georgia as well.

On the other hand, Russia tries to provide integration in Post-Soviet space through economic and military integration too. Such as, custom union has been already practiced with Kazakhstan and Belarus under the umbrella of Eurasian Economic Union. Such practices are related with Eurasian identity and liberal theory of international relations as well. As it is known that liberals also emphasize regional integration process and mutual benefits-interdependency as well through the international organizations in international relations system. Such processes can strengthen integration process in Eurasian space and keeping the “common Eurasian identity”. Russia also continues to rapprochement with Turkey and China through trade and common energy projects. Such practices on Russian foreign policy have similarities with the arguments of Keohane and Nye in terms of discourse, who mentioned the importance of multiple channels on the road to integration and interdependency [14].

Russian policy makers’ arguments and critics regarding the expansion of NATO towards ex-Soviet Eurasia can be seen closely to classical realists who they believe that NATO and such organizations can create chaos and cause erosion of “national sovereignties” after the cold war era. That shows the efforts of Russian politicians and intelligentsia focus on the national identity, which is called as “Eurasian identity”. However on the other hand, as we mentioned above, Russian policy makers have used the term of R2P to justify the intervention of Russia to S.Ossetia in 2008 which is the argument-discourse of liberals in international arena. Additional to this, Russia has used the “functionalist” perspective through the CIS and Eurasian
Economic Community (EEC) to strengthen its presence in the region by economic and social means. That functionalist perspective also could be interpreted as the part of neo-realist-liberal approach.

Conclusion

Eventually, Russian-Eurasianism currently sometimes use the liberals’ discourses-arguments, sometimes realist arguments, however all things are done for the “integration of Eurasia” and “Eurasian identity”, that is seen as a task of Russian Federation. Therefore, that may be called as identity politics in foreign affairs and can be defined with constructivist approach, which is perceived as a bridge between realism and liberalism.

References


Pakistan after the withdrawal of NATO forces from Afghanistan: Prospects and threats

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Abstract: The major goal of the article is to present political and economic effects of NATO withdrawal from Afghanistan for neighboring Pakistan. In vital political interest of Islamabad is to have as friendly government in Kabul as it is possible. Present one is not like that. President Ghani and chief executive Abdullah are seen as pro Indian politicians as well as their political supporters form the former Northern Alliance and their predecessor Hamid Karzai. There are strong evidences for New Delhi’s high involvement in Afghanistan (e.g. National Army Training, investment in iron ore mines, and building strategic road to connect Afghanistan with Iranian harbor omitting Pakistan). It makes serious concerns among Pakistani politicians and the army high-brass. Islamabad is trying to build friendly relations with Russia for the first time in its history, to counterbalance US-India close-up politics which has been started in 2008 by signing nuclear cooperation accord. Such cooperation will supplement close relations between Pakistan and China called usually as “all-weather friendship”. Very important for future Islamabad’s economy development are Chinese infrastructural investment, e.g. Gwadar Harbour, and strategic corridor from it to new SEZ in Kashgar.

The withdrawal of NATO forces from Afghanistan and a serious restriction of US military involvement in that country resulted in significant changes in the security architecture in the region. It also influenced strategic position neighboring Pakistan. Symptoms of this process were already visible at the beginning of President Barack Obama term. He used the term Af-Pak to describe the complex issue we have to deal [1]. His advisers rightly pointed out that the problem of Afghanistan cannot be treated without concern of the situation of its eastern neighbor. Until then, particularly during the presidency of George W. Bush, Islamabad has been treated as a natural and indispensable ally in the so-called “Global War on Terror”. In particular, as a base and transit route for operations in Afghanistan. Pakistan has been perceived as a victim of a sui generis process of "Talibanisation". It has fitted perfectly into the neoconservative, Manichean vision of the world. However, the situation is much more complicated.

It should be noted that Pakistan for almost ten years, if not supported, but for sure tolerated Taliban regime in neighboring Afghanistan. The radicals were on hand to him in terms of ensuring safety on the western flank towards a potential conflict with India. That’s troubled relations with the big neighbor has been the major determinant of Islamabad’s foreign policy since its emergence in 1947 as an independent state. Subsequent wars, from the creation of an independent Pakistan in 1947, till 1965 and 1971, made the threat from the east an integrating factor for ethnically diverse state where the religion – Islam has been only common value. Especially traumatic was the war of 1971, as a result of which Pakistan has lost its eastern part inhabited by half of the population and providing
significant portion of the national income in respect of jute export - today's Bangladesh. In this conflict, India actively supported the people of East Bengal in its struggle against the government in Islamabad (not just giving shelter to Bengali dissidents, but also by training local guerrillas on its territory), and finally committed its armed forces on a scale that determined the final military defeat of Pakistan [2].

The international community could not directly intervene in defense of the territorial integrity of Pakistan. On the one hand, events in East Bengal took place under the banner of the national liberation struggle, on the other hand, the Bengali guerrilla and Indian troops operated under the umbrella of the nuclear power: Soviet Union. However, diplomatic pressure of China and the US, caused that the western part of Pakistan survived independent, despite pressure on the authorities in New Delhi from the "hawks" in the general staff [3]. Awareness of this calamity is still a very important element of national identity[4]. It was used as an argument justifying the expenses, and exposure to the international ostracism when Pakistan successfully had acquired nuclear weapons[5]. The fear of a repetition of the situation with East Bengal-Bangladesh and the possibility of further dismemberment by the inspiration of Indian special services is one of the factors affecting Pakistan's vision of the international environment. The Indian threat has become an inseparable part of the political discourse in Pakistan.

These observations lead to the conclusion that Pakistan is crucially interested in the political situation of its western neighbor and involved in ensuring that government in Kabul belongs to forces at least neutral towards Islamabad. It must be remembered that as many other post-colonial borders, also this territory separating Pakistan from Afghanistan is a remnant of arbitrary action, in this case the UK’s. It has been demarcated as an effort of so-called“Afghan wars”. The line between now Pakistan and Afghanistan is called "Durand Line" (named after diplomat who offered her course), which remains to this day the state border [6].

It is worth noting that it is still disputed by Kabul. Striving for the change and recovery of areas inhabited by Pashtun people was the cause of symbolic opposition against Pakistan's accession to the United Nations in 1947, and border clashes, which nearly escalated into open armed conflict [7].

Fears of territorial claims and the possible necessity of waging war on two fronts was one of the reasons to engage Pakistan in support of the resistance against the Soviet invasion of Afghanistan in 1979, in addition to the factor of religious solidarity. The Soviet Union was in fact at the time ally of India. Thus, communist / socialist Afghanistan would become a natural partner of New Delhi. Withdrawal of the Soviet Army from Afghanistan, despite pressure from Pakistan, has not solved the border issue. His formal signatory, the last communist president of Afghanistan Najibullah, agreed only on the descriptive formula of the inviolability of "international borders", without a clear indication that the Durand Line is just one of them [8]. Withdrawal of the Soviet invaders from Kabul again opened chance of Pakistan to get friendly neighborhood and through a hedge against the rise of "second front". However, the most pro-Pakistani militant Gulbuddin Hekmatyar proved to be too weak to come to power in Kabul. It was therefore decided to change the ally. This is probably the ISI, the Pakistani intelligence officers were behind the rise of the Taliban movement, headed by Kandahar Mullah Muhammad Omar. Engagement in support of its movement also resulted from a fairly original concept, which was called "strategic depth" [9]. Military planners wanted to use Afghan territory to withdraw and regroup Pakistani forces there (in particular aviation) and fight back if India occupied a large part of Pakistan including its capital [10]. However, the Afghan-Taliban authorities did not intend to be a mere puppet of its mighty neighbor. It is important to say that even this seemingly sympathetic to the Islamabad Afghan government did not sign the border treaty ever. So they had not recognized the Durand Line as the official border of the state. In addition, Afghanistan has become a source of serious threats to internal security of Pakistan: drug trafficking, arms trafficking, and human smuggling. The radicals acting freely on the territory of Afghanistan and the Tribal Territories became a growing threat also to Pakistan, urging his own successful example as local fundamentalists to act at home against moderate government in Islamabad. It is worth mentioning that part of the ISI officers who supported the Taliban, has shared their vision of the world and had nothing against "Talibanisation" of Pakistan itself [11]. Pakistani-Afghan borderland became also a hideout for local criminals, and terrorists with international aspirations, which the central government could not cope, and perhaps some of their officers were not interested to deal with. And
that last sentence is crucial for the further course of events.

When after September 11, 2001 Pakistan became a member of the international anti-terrorist coalition, but soon became obvious that there are significant difference of interests between him and the United States. Already setting out the principles of cooperation, Islamabad sought to obtain assurances that the new government in Kabul will be favorable to Pakistan, and in any case will include also political forces positively disposed toward him. While Americans strongly supported people of the former Northern Alliance, whose members for various reasons were far from sympathy to Pakistan (murdered 10 September 2001, the leader of this party, Ahmad Shah Massoud openly declared his mistrust to eastern neighbor) [12].

Also efforts to convince Americans that the political base of the new government should include “mo-derate Taliban” ended in failure. Along with the relative stabilization of the situation in Afghanistan (total could not be reached for reasons beyond the scope of this analysis) Indian involvement in the reconstruction process has been growing. Authorities in New Delhi tried to gain the sympathies of the new Kabul government not only in the politico-military, but also economic way. Therefore they have been training soldiers of the new Afghan National Army, and has financed the purchase of Russian military equipment useful for its modernization [13]. They has been engaged in some major investments in strategic sectors. Indian companies have invested among others in the mining sector, buying for nearly 10 billion, USD iron ore mine in Hajigak. Construction of the so-called Road 606, linking the territory of Afghanistan with Iran can be clearly visible as anti-Pakistani move [14]. It has broken Islamabad’s monopoly on the transit of goods to and from ports on the Arabian Sea. It was a source of considerable income for Pakistanis (both legal and illegal, because under the bilateral agreement, transports heading for Afghanistan was only sealed in the harbor, which allowed the “disappearance” of a certain amount of load on the Pakistani bazaars) [15]. Threats of transit closure also served as an effective tool of political pressure on the government in Kabul (transport was blocked by Pakistan, among others in the 1950s) [16]. These events aroused serious concern in Pakistani decision-makers. It is no secret that they do not enjoyed the new Afghan government. Despite official assurances of goodwill and neutrality, it was clear decline in enthusiasm for the military operation conducted by NATO forces. It has resulted in modification of the White House’s strategy towards as it was then called, Af-Pak. It was noted that the government in Islamabad does not meet US expectations as to the scale of involvement in the fight against the Taliban, focusing only on those among them who threatened the political interests of Pakistan (taking the fight with his army and attacking government targets). Those who treated Tribal Areas as a “refuge of safety”, by not taking action against the hosts, could feel relatively safe [17]. USA has intensified its campaign of physical elimination of terrorist suspects by using the so-called “Drones” not only in Afghanistan but also the eastern side of the Durand Line. The Pakistani side pointed out that it not fully comply with the principles of international law (violation of the sovereignty of Islamabad by killing its nationals on its territory), as well as the principles of criminal law (the kind of “executions” were made without a court order, whether it is Pakistani, or even if the US court) [18].Because of the disparity of power, Islamabad could not effectively resist such practices. So it has been limited to verbal protests. The problem of the violation of Pakistan’s sovereignty by the US has also become the subject of an internal political debate. At the forefront of the campaign against drone raids occurred leader of the opposition political party Tehrik-e-Insaf, Imran Khan [19].The local parliament of Khyber Pakhtunkhwa province where this group has a majority of seats, it was even a resolution prohibiting the use of such warfare. But it was only a symbolic act, because the provincial government does not have such competence [20].

According to data revealed by Amnesty International, the period 2004-2013 drone attacks killed from 2200 to 4700 people. According to information provided by the Government of Pakistan 600 of fatalities were civilians [21]. Such actions undermine the confidence of the local population to the central authorities which are not able to ensure their safety, which is the primary responsibility of the state. In this way, the battle for the hearts and minds of civilians has been definitely lost. Support of the local people is an essential factor in the fight against terrorism.

The last straw was filled with US special forces operation, which resulted in the killing of Osama bin Laden on Pakistani territory, in a house located on the outskirts of Abbotabad, about 30 miles from
the capital. The city also houses a military academy and villas of the high brass officers and high government officials. Whether the government in Islamabad knew that the leader of al-Qaeda had been hiding in this place or not, it is still the subject of speculation. It is also unclear, whether Islamabad was informed about the planned operation at the stage of planning or implementation. Version reproduced in the wider pop culture replicates the thesis about Pakistan's lack of knowledge [22]. However, some media put the idea that bin Laden lived under house arrest, and his liquidation was in need of a propaganda action of President Barack Obama's success [23]. In the absence of access to archives one cannot clearly say which position is correct.

Whichever version of the events of 2 May 2011 would be true, it is the common thread: it was a spectacular example of violation of the sovereignty of the state. It's no surprise that Pakistan-US relations have deteriorated significantly then. Also China has presented its opinion. Beijing is an ally of Islamabad (relations are commonly referred as "all-weather friends") [24]. They threatened serious consequences of violating the sovereign rights of state of Pakistan, stating that "any attack on Pakistan would be treated as an attack on China" [25].

Another reason for the deterioration in US-Pakistani relations was the Washington's rapprochement with India. This process has been initiated in 2008 by signing an agreement on cooperation in civil nuclear energy [26]. It gives India an access to advanced US technology. It remained a dead letter in practice until February 2015, when during Barack Obama's visit to India at the invitation of their new prime minister Narendra Modi agreed, inter alia, the possibility of buying uranium, officially for peaceful purposes [27]. However, in practice this means that India can use its own resources for military purposes. Cooperation in the field of atomic energy between New Delhi and Washington is controversial not only in Islamabad but also in Brussels, since it opens the door to violations of the NPT (Non Proliferation Treaty) [28]. While clearly we see that the current American administration is trying to build good relations with India, disregarding the interests of its existing ally- Pakistan. In this situation, according to the traditional paradigm of shaping its foreign policy, Islamabad has begun searching for another power cooperation with would help to offset India's military superiority. The existing alliance with China is very important but not sufficient in this regard. From the standpoint of geopolitical reflection it leads to the logical conclusion that the direction in which Pakistan can turn is Russia. And indeed it did. That was the first time since the end of the Cold War, the Russian defense minister visited Islamabad in November 2014 years [29]. Both parties had signed an agreement on military cooperation. In its result, Pakistan will have access to modern Russian military technology. According to initial assumptions, this means, for example, the purchase of upgraded assault helicopters Mi-35 and jet engines for JF-17 aircraft (which has been built jointly with China). During the visit to Moscow, Pakistani Defense Minister Khawaja Muhammad Asif extended the catalog of cooperation for the training of staff of command. In this way, Russia replaced its loss due to selection by India American supplier of helicopters. So Moscow moved down into the second place after the US in terms of value of the military supplies for New Delhi [30]. It has been also planned to conduct the first joint Pakistan-Russian drills in the history of bilateral relations [31]. This change of alliances may seem shocking, because Pakistan has been (or maybe wasn't?) engaged with a long and seemingly fruitful cooperation with the United States. It was institutionalized through membership of SEATO (since 1954) and CENTO (since 1955) [32]. But anti-communism was not the most important determinant of foreign policy of Pakistan. During the state visit to Moscow on April 4, 1965, President General. Ayub Khan declared that his country is not "irreversibly anti-communist" and the current foreign policy exclusively justified the Soviet Union's close relations with India [33]. The ideological factor has begun to play a more important role in Pakistani politics (both internal and external) since gen. Zia ul-Haq rule (years 1977-1988), and in particular during the Soviet intervention in Afghanistan [34].

This does not mean a complete break of cooperation with the US. In April 2015, the United States proposed military aid to Pakistan amounting to nearly a billion dollars. It is to be spent on the purchase of AH-1Z helicopters and rockets to them. Officially, this equipment is intended to encourage Islamabad to intensify action against Taliban guerrilla on the border with Afghanistan [35]. It should be remembered that the biggest arms supplier for Pakistan is China, and Islamabad is the largest importer of arms from Beijing [36]. This is especially true when it comes to cooperation in the field of aviation technology (joint projects: Karakoram K-2 training jet and J-17 fighter), as well as the naval. Pakistan plans to buy eight Chinese submarines.
The next four will come from "surplus" of European countries, Australia or Canada [37].

Another event which can play an important role in changing geopolitical situation of Pakistan, is a conflict in Yemen. There is a civil war between Saudi Arabia supported the deposed president Abd al-Rab Mansur al-Hadi on the one side and aided by Iran Shia Houthi tribe fighters on the other side [38]. There was a debate in Islamabad parliament preceding the vote on joining Saudi Arabia led coalition against pro-Iranian Houthis. The deputies decided to retain neutrality on the grounds that "the possibility of occurrence in the future as a mediator" [39]. Such a decision could be seen as an act of courage, because so far Saudi Arabia has been the main supplier of economic aid for Pakistan, apart from China and the US [40]. Relations with Iran since the 1979 revolution could be called at most valid. Pakistan is a country mostly inhabited by Sunnis. There is however a large Shiite minority (approx. 30-40 million), making that country the largest community of that sect outside Iran [41]. They always played an important role in Pakistani politics. Keep in mind that the founder of the state, whose portraits hang in offices and other public institutions, and whose name has been given the capital's largest avenue - Mohammad Ali Jinnah was raised in a family of Shia, but in old age he could not be called a particularly religious man [42]. In such a situation, engaging in religious conflict on the side of Saudi Arabia would be very detrimental to Pakistan. It means that engagement against Tehran could open another internal front along that against so called Pakistani Taliban, this time in the form of fighting between sects within the framework of Islam. Relations between the two communities in Pakistan are very delicate. Sunni radicals even tried to pass in the parliament right, recognizing Shites as non-Muslims... The representatives of this large minority are more often victims of terrorist attacks [43]. Thus, adding one more reason to destabilize the internal situation is not in the interest of Pakistani government. However, be aware of the strong competition for leadership in the Islamic world between Iran and Saudi Arabia. Pakistan by virtue of their size and nearly 200 million citizens, and above all because of the possession of nuclear weapons cannot afford to be completely neutral. Islamabad as a relatively poor state, hoping to buy an expensive nuclear technology, had to find external sources of financing. One of them was the sale of ready-made centrifuges used to enrich uranium, and technology for their production Iran. The transaction has been done in the early 90s [44]. In 1995, the Iran has thus bought more modern centrifuges class P-2. Discussion remains to this day whether the agreement took place with the knowledge of the then Prime Minister Benazir Bhutto, or whether it was the result of "private initiative" of General Aslam Beg – then commander in chief of the Pakistani army [45].

At the same an agreement with Saudi Arabia has been signed. According to that Pakistan acquired money for its nuclear program, especially nuclear test explosion, in exchange for the transfer of ready-made warheads if needed [46]. The case returned to the world's media on the occasion of aggravation of bilateral relations between Riyadh and Tehran. Saudi Arabia has expressed concern about the shape of an agreement concluded by the permanent members of the Security Council and Iran. It is likely that involvement in the conflict in Yemen aims to break this agreement so as to prevent the lifting of the embargo on oil and gas exports from Iran to the West, and thus prevent the development of Iranian nuclear program in the future [47]. In parallel to these activities, there is information that Saudi Arabia may return to Pakistan with a proposal to purchase nuclear weapons as probably has been agreed before [48]. It may be a "proposition he cannot refuse" in exchange for the serious financial involvement of Saudi Arabia in Islamabad's nuclear program [49]. Thus, the statement of the representative of the Saudi royal family, the former chief of intelligence during the Soviet invasion of Afghanistan, prince Turki al-Faisal is a kind of reproaching Pakistan, who surely hasn’t forgotten Saudi’s role in Islamabad’s position of nuclear power [50]. The goal may not so much be in fact to acquire the bomb to effectively deter Tehran (which would require a tightening of diplomatic relations with the US), but much more to cause to Pakistani politicians recalled the degree of political and economic dependence of Riyadh. Saudis are interested that their action against the Shiite rebellion in Yemen would have the broadest possible support in the Muslim World that Pakistan is a vital component. The situation in Pakistan regarding the conflict between the countries with whom relations are in its strategic interest, is very complicated and requires proper conduct of diplomacy. Will the policy of keeping equal distance, or at least favorable neutrality be effective, it is difficult to assess at this time.

Potential abolition of the economic embargo on the export of raw materials from Iran to may have
positive economic benefits for Pakistan. Tehran has the second largest deposits of conventional natural gas. Over the years of the sanctions imposed in connection with work on nuclear technology, ability to sell this raw material abroad, as well as crude oil was severely limited. The negotiations which has been held since 2013 have gained considerable acceleration when the West imposed economic sanctions to Russia in connection with the annexation of the Crimea and eastern Ukraine fights on [51]. From the EU countries point of view of Iran would become an important supplier of gas, and thus raw material prices could fall. Moscow is interested in the fact that Iran has won funds for the purchase of military equipment and disposal of nuclear fuel in Russian factories (which provides a working version of the agreement) [52]. Benefits of opening access to Iranian gas fields could gain also China, and also for their cause Pakistan. It is connected with the proposed gas pipeline, which is going to connect Iranian deposits with potential customers in China and Pakistan too. Part of this investment has already been implemented: there has been created section of the pipeline, connecting the gas field with Pakistan border. Islamabad, however, does not have sufficient funds to develop its part of it. There remain two possibilities: either commercial bank loans, or in the new Asian Infrastructure Investment Bank (AIIB), whose members three countries concerned are [53]. Currently planned pipeline will lead to the Pakistani port of Gwadar, where the gas will be liquefied for transport to China, and pumped into the local distribution network. It is worth mentioning that in 2012 the Chinese bought shares in the harbor managing company from previous Singapore shareholder. Previous strategic investor could not fulfill the contract signed in 2007. In this way, Beijing gained total control over the infrastructure, strategically located near the Strait of Hormuz and the border with Iran [54].

This investment is expected to cost circa 2 billion USD[55].

However, this is just a small part of the great Chinese project that was presented to the World under the name of New Silk Road. Within the concept of the construction of large communication and energy networks, there is a plan to build a gas pipeline, road and railway linking Gwadar with the Chinese city of Kashgar (Xinjiang-Uighur province). This project, called CPEC (China-Pakistan Economic Corridor) is expected to cost a total of 46 billion USD (34 billion for energy part and 12 billion for road and rail elements). All the money has to come naturally from the Chinese side. Agreement on the start of construction was signed during the recent visit of President of China Xi Jinping in Islamabad 20 April 2015 [56]. This investment will provide Beijing with a shorter gas and oil route from Iran, as well as goods produced in a new special economic zone in Kashgar to European consumers.

The second largest city of Ujgur-Xinjiang province became the seat of the Special Economic Zone in 2010 and within a five-year plan approved by the central authorities is to undergo a significant transformation, similar to those experienced by cities in eastern and central China. The beneficiaries of this project are to become not only China, but also the neighboring countries of Central Asia and Pakistan. Traders from Islamabad has already opened their shops, using preferential legal conditions [57]. In this way, Kashgar regain its historical significance as a city on the Silk Road, but lose the character of the Uighur city as an effort of social processes typical for special economic zones in China: the Han population migration [58].

Change of the strategic situation on the western border also carries serious challenges. It also causes the reactivation of old threats. Afghanistan is 7th (where 1st is the “worst”) in the list of failed states (The Fragile States Index Rankings 2014). Pakistan is only three positions above [59]. In terms of the
terrorist threat, Afghanistan and Pakistan occupy 2nd and 3rd place (where 1st Iraq is in the worst condition) [60]. Pakistani-Afghan borderland (FATA-Federally Administered Tribal Areas) remains virtually beyond the control of the authorities in Islamabad. It is base for terrorist and criminal hideout. Similarly, deteriorating is the political situation in Baluchistan. Local militants struggle against unequal distribution of income from the key infrastructural investments between the dominant province of Punjab, and their backward and underinvested homeland [61]. The terrorist threat is a serious obstacle for the construction of the previously mentioned major projects related to pipelines, roads, and high-speed train linking Gwadar with the Chinese Kashgar [62]. The government in Islamabad openly accused India of supporting separatism in Baluchistan. Analysts from well-known US think-tank Stratfor indicate that India is not interested in closer cooperation between Pakistan and China. It can lead to increased Indian intelligence involvement in the destabilization of their western neighbor [63].

Another serious threat for Pakistan’s security (this time non-military) is drug production and trafficking. According to the UNODC (United Nations Office on Drugs and Crime) Afghanistan produces annually approx. 7,000 tons of pure heroin, whose market value reaches 3 billion USD. This is 90% of world production of that drug [64]. The fight against heroin production in Afghanistan focuses mostly on destruction of crops. It causes the resistance of local farmers for whom it is an irreplaceable source of income [65]. One of the trafficking routes leads to China, where demand for drugs is constantly growing. In 2006 Xinjiang police detained 16 offenders and confiscated 65.14 tons of heroin. In 2007 they arrested 29 offenders and 147 tons [66]. Pakistan no more just a transit country (about 40% of the smuggling leads this way), and becomes the consumer. Drug consumption reaches 20 tons of heroin per year [67]. This generates serious social and health problems, including an increase in the number of infections/disease of HIV/AIDS.

A drastic reduction of the US troops presence in Afghanistan is slowly changing geopolitical situation in the region, and influences situation in Pakistan. Islamabad fears proved that emergence of the new government in Kabul: Afghanistan's presidents elected after 2002 are far from sympathy to Islamabad. Their foreign policy is based on rapprochement with India. Concerns may also raise of the strongest in history, nearly 200 thousand of Afghan National Army, which according to Pakistani strategists may be used in the future conflict between India and Pakistan (or just tie serious amount of troops on the western border). We shall remember that the case of the border between the two countries is not regulated by law in the way accepted by both parties. Change in prices on the gas market, and the prospect of concluding an agreement P5 + 1 and Iran, which will result in lifting of the embargo on the export of strategic raw materials opens new opportunities for Pakistan's economic development. It may become a key transit route for fuel necessary for the development of China, especially economically backward Xinjiang-Uighur province and a special economic zone in Kashgar. This will bring Islamabad significant financial benefits arising from transit fees, raise the quality of transport infrastructure (rail and highway). To import gas from Iran to Pakistan will provide a relatively cheap energy source needed for further economic development. Keep in mind that especially during the summer season there are serious shortages of electricity supply, which affects economic growth and deters foreign investors. Greater involvement of China in the construction of trans-Pakistani infrastructure may also have a positive impact on Pakistan's growth and sense of security. Beijing will in fact interested in maintaining the continuity of transportation of raw materials and commodities, and therefore in its interest will prevent the escalation of tensions between Islamabad and New Delhi. To this end, China today actively participate in the development of Pakistan's defense capabilities through joint projects in the aerospace, maritime and will do it in the future. Reducing the technological gap to its eastern neighbor would provide a relative sense of security for Pakistan. Unfortunately we have to consider serious risks associated with the escalation of Islamic terrorism and national separatism along the Durand Line. The image of one out of three most terrorist-affected countries deters foreign investors and tourists, depleting revenues to the state budget. The victims of attacks are representatives of religious minorities (Shiites, Christians) and common civilians (bombings take place often in public places: bazaars, schools, mosques, churches). One should watch with deep concern the possible announcement of allegiance of Pakistani to the Islamic State (ISIS).

Prospects of economic development, and thus also social, to a large extent therefore depend on external factors: the evolution of the situation in
neighboring Afghanistan and the progress towards the normalization of relations between Western countries and Iran. The key is the role of China, and their continued interest in financing major infrastructure and investment plans in the territory of Pakistan. Only internal stabilization will allow the government in Islamabad effective implementation of pro-development policy. Experts from Goldman Sachs presented analysis in the 2005, according to which Pakistan has been included in the so-called Next-11 group - the eleven most promising economies in the world. With the help of Chinese investments, and under favorable international circumstances, Islamabad can fulfill these predictions.

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INTERNATIONAL ACADEMIC CONFERENCE ON LAW, POLITICS & MANAGEMENT


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Politics and Government Policies Affected Potential Production Structure and Price of Palm Oil in Thailand

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Abstract: The purposes of this study were to examine the effects of politics and government policies towards potential production structure and price of palm oil in Thailand, and to find ways to enhance the productivity and cultivated area for palm oil in Thailand. This was a mixed method of qualitative and quantitative technique. Time series data was performed by utilizing monthly data from January 2007 to December 2011. The variables included crude oil, soybean oil prices, crude palm oil prices, consumption of biodiesel, import of palm oil from foreign and foreign exchange rate. The method of study included econometrics as a tool to analyze the factors that affected the price of palm oil modeling in the Multiple Regression Analysis with the following steps. The findings revealed that palm oil was demanded fuel higher than others energy. So there is a role for human life as an important factor. From study found that Thailand is shortage palm oil which results to shortage crisis in country. Due to price situation of drought has affect to higher price of palm oil and the end-product for consume not shifting as raw materials, because controlled product is in short supply. In term of output quality control is ensure to compliance with government policies. From research found increase the area under oil palm in right field, improved oil palm plantation by a thoroughbred and restructuring of the industrial production of palm oil and palm oil to the production efficiency.

Introduction

Palm oil is an important crop and demand of the global market. Due to when oil is extracted from palm oil have many benefits. It is whether the benefits in terms of nutrients, key ingredients for consumer goods industry and various processed products. It is used in a variety of industries, food processing industry and renewable energy. Because of oil is a plant with production costs and lower prices for other crops, high yield, less risk of damage from natural disasters, produced in large quantities to meet the needs of a growing world population is increasing in the future. Palm oil is a plant of future and tends to the needs of the global market increased steadily. Indonesia and Malaysia is the nation's largest producer. They have output of crude palm oil production in 2007 with a volume of about 27 million tons and 18 million tons, or a yield of over 87% of the total palm oil production. Thailand is the third most important production. But the volume of crude palm oil produced is less when compared to countries like Indonesia and Malaysia. Thailand production of crude palm oil is about 1.9 million tons or accounting for only 3.3% of the total production of crude palm oil. Palm oil is a important plant of Thailand, both in economic terms as well as help stabilize the food and the country’s energy. In 2013, Thailand led by palm oil used for consumption within country and biodiesel to 75%, while another 25% are exported to maintain the balance of inventory in the country. Mainly oil palm plantation is in the south and east of Thailand is suitable for palm oil plantations. But nowadays, with the expansion of cultivated outside the area for year 2013, Thailand has an area of 4.50 million Rais of oil palm yield of 3.98 million Rais. Production source are first of five include Surat Thani, Kribi, Choomporn, Nakhon Si Thammarat and Prachuab Kirikhan. Although Thailand is able to produce enough oil to meet the needs of local businesses but most of the production structure is a small garden. Manufacturers are farmers and small entrepreneurs. Palm oil breed is less developed and the lack of effective management and policy. Thailand makes the production of palm oil has a higher cost than the major manufacturers as Indonesia and Malaysia. This is a main weakness that will affect their ability to compete for the palm oil Thailand. Cause of the production of palm oil producing countries both have the potential to produce higher than Thailand. From both the arable crop plantation at large seed can make a unified planning and control costs more effectively. Especially, Malaysia has maximum production potential from weaknesses which will have effects on the competitiveness of the palm oil industry in Thailand has already mentioned above. The farmers and entrepreneurs in the business of oil palm Thailand need to improve the production of palm oil for whole system of Thai-
land since the growers, crushing and refining crude oil. Thailand should have a strategy of focusing on cost reduction increasing the yield of production. Including creation of added value to keep prices competitive with imported palm oil and expand opportunities into the ASEAN community.

1. Objectives

1. To Study structure factor of produce palm oil.
2. Productivity and promote increasing cultivate area.
3. To Study price of palm oil in Thailand.

2. Research Methodology

In this study, the material can be divided into 2 parts, e.g. Descriptive Method and Quantitative Method has description as follows.

1. Descriptive method is analyzed using descriptive with spreadsheet and statistics is simple in order to describe the condition in general, production structure and the market price of oil and future prospects of the oil industry was refined palm oil.

2. Quantitative Method using time series data as monthly from January, 2007 to December, 2011. Such as crude oil, Soybean oil prices, crude palm oil prices, consumption of biodiesel, imports of palm oil from foreign and exchange rate. This study is method of study econometrics as a tool to analyze the factors that affect the price of oil palm modeling in the Multiple Regression Analysis with the following steps.

2.1. Testing stability of data (Stationary). To test the stability of the data used to eliminate problems with time series data used in this study. Due to analysis time series data may have no relationship to each other, literally. If the variable is not there to test the stability of the data could be found that these variables did not Spurious Regression. Therefore, prior to estimation in the model must be tested variables used by the Unit Root that all variables have a Stationary or Non Stationary. If the time series data which is a Non Stationary, namely, mean and variance of data changes as period may cause problems of Multicolinearity. (Rungsun, 2538: 22-24).Variable is Stationary and Non – Stationary has 3 properties as follows.

Assume variable Yt has character of Stationary, variable Yt has properties as follows.

Mean: \( E(Y_t) = \mu \)

Variance: \( \text{Var}(Y_t) = E(Y_t^2 - \mu^2) = \sigma^2 \)

Covariance: \( E[(Y_t - \mu)(Y_{t+k} - \mu)] = \gamma_k \)

Assume variable Yt is Non – Stationary, variable Yt has properties as follows.

Mean: \( E(Y_t) = \mu \)

Variance: \( \text{Var}(Y_t) = E(Y_t^2 - \mu^2) = \tau \sigma^2 \)

Covariance: \( E[(Y_t - \mu)(Y_{t+k} - \mu)] = \tau \gamma_k \)

For will be deniers or accept such hypothesis testing Unit Root such Test will considered from Augmented Dickey-Fuller Test Statistic has criteria of consideration as follows.

1. If value of Augmented Dickey-Fuller Test Statistic more than Critical Values will denial main hypothesis shown that variable has Stationary.

2. If value of Augmented Dickey-Fuller Test Statistic less than Critical Values will accept main hypothesis shown that variable has Non-Stationary.

2.2. Testing stability of data (Stationary). After test properties of any variables in initial model will estimate the Coefficients in the model using least squares to determine the direction and magnitude of the relationship between the independent variables and the dependent variable. If the sign of the coefficient of independent variable is positive shown independent variable and dependent variable are correlated in the same direction. On the other hand, if the sign of the coefficients of independent variables is negative dependent variable and independent variables are correlated in the opposite direction.

Model of study

Econometric model of the factors has affected the price of oil in types of crude oil in Multiple Linear Regression. From Demand and Supply theory and pricing by market forces taken as a guide to determine the factors that affect crude oil has following factors or variables.

\[
PPO_t = \beta_0 + \beta_1 \text{PSO}_t + \beta_2 \text{PF}_t + \beta_3 \text{QS}_t + \beta_4 \text{EX}_t + \beta_5 \text{IM}_t + \epsilon_t
\]

Defined

PPO is price of pure palm oil (baht/kg.)

\( \beta_0 \) is constant

\( \beta_1, \ldots, \beta_5 \) is coefficient

PSO is price of soybean oil size1 L (baht/L)

PF is price of crude palm oil (baht/kg.)

QS is quantity of consume Bio-Diesel (L/day)
EX is exchange rate(baht per US. dollar) 
IM is quantity of import palm oil(ton) 
ε is error 
t is periodt = 1,2,…,48 

Hypothesis of model

To study factors affecting the price of crude oil for finding the right equation from created models of any factors. Such as price of soy bean oil, crude palm oil, consumption of biodiesel, imports of crude palm oil from abroad and the exchange rate with a sign of coefficient.

3. Result and Discussion

Education statistics on a monthly basis from January, 2007 to December, 2009, such as pure palm oil (PPO), soybean oil (PSO), crude palm oil (PF), consumption of biodiesel (QS), import of palm oil from abroad (IM) and the exchange rate baht per US dollar (EX). In order to analyzing by multiple regression analysis, Ordinary Least Square is a time series of data with macroeconomic variables.

Part 1: Testing stillness of data on test Unit Root has stability of data (Stationary).

Tests showed that the ADF Stat of independent variables is all variables failed to reject the null hypothesis that each variable has Non-stationary. Shown that all variables have Non-stationary if the variable to be estimated coefficient crashes literally no relationship or Spurious Regression has upgraded the data into testing Unit Root. Tests then showed that the independent variables have all Stationary, if the variable was estimated using least squares will not cause problems of no relationship entirely.

Figure 3: Testing Unit Root of Augmented Dickey-Fuller (ADF).

<table>
<thead>
<tr>
<th>Variables</th>
<th>ADF Stat</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Level</td>
</tr>
<tr>
<td>Price of Pure palm oil (PPO)</td>
<td>-3.24</td>
</tr>
<tr>
<td>Price of soybean oil (PSO)</td>
<td>-2.92</td>
</tr>
<tr>
<td>Price of crude palm oil</td>
<td>-3.07</td>
</tr>
</tbody>
</table>

Part 2 Testing properties of any variables in basic model and evaluation coefficient in model by Least Square.

The change of the dependent variable was the best because Equation 2 is the t-stat is statistically significant at a confidence level of more than 99percent, while the Adjusted R-squared increases and the SE of Regression unchanged. The Log Likelihood values change very little from - 109.63 to -112.40, which does not reflect the significant loss of variables in explaining changes in crude oil. In addition, the Akaike info Criterion higher from 1.63 to 1.68 indicated an equation that contains variables that are statistically significant. Based on the t-stat equation is more suitable as compared to Equation 1 to calculate the Q-stat, which is used to test the Autocorrelation. Found that the Q-stat of changes in crude oil was at 2and 4, so that not a problem in Serial Correlation. Therefore, estimate the coefficients of the least squares this is a good method to estimate the change in crude oil.

Figure 4: Evaluation coefficient of factor has influenced to price of pure palm oil.

<table>
<thead>
<tr>
<th>Method of evaluation</th>
<th>OLS</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Equation 1</td>
</tr>
<tr>
<td>C</td>
<td>0.17 (0.77)</td>
</tr>
<tr>
<td>PSO</td>
<td>0.22 (4.17)</td>
</tr>
<tr>
<td>PF</td>
<td>0.59 (11.22)***</td>
</tr>
<tr>
<td>OS</td>
<td>-1.17 (-2.26)</td>
</tr>
<tr>
<td>EX</td>
<td>0.25*** (0.496)</td>
</tr>
<tr>
<td>IM</td>
<td>-4.82 (-0.33)</td>
</tr>
<tr>
<td>Adjusted R-squared</td>
<td>0.76</td>
</tr>
<tr>
<td>S.E. of regression</td>
<td>1.63</td>
</tr>
<tr>
<td>Log likelihood</td>
<td>-109.63</td>
</tr>
<tr>
<td>Akaike info</td>
<td>3.91</td>
</tr>
</tbody>
</table>
Variation in pure palm oil (DPPO) by the appropriate factor is the change in the price of soybean oil (DPSO) changes in the price of crude palm oil (DPF) and changes in the rate of change is the change in the price of oil (DPSO) in relation to the direction of change in crude oil (DPPO) at a confidence level of 99%, matching the assumptions in the model. By making the other factors constant and rate of change of the price of soybean oil (DPSO) rising 1% would result in a change in crude oil (DPPO) rising 0.22% change in the price of crude palm oil (DPF) is associated in the same direction. Changes in pure palm oil (DPPO) at a reliability level of 99%, matching the assumptions in the model. By making the other factors constant, the rate of change in the price of crude palm oil (DPF), an increase of 1% would result in a change in crude oil (DPPO) increased by 0.5. Change of use biodiesel (DQS) is not statistically significant. Due to production of biodiesel and pure palm oil used material is palm oil, then demand of palm oil is higher. Likewise, the amount of demand for bio-diesel is not very popular. Changes in exchange rates baht per US dollar (DEX) is associated with a change in the same direction of pure palm oil (DPPO) at a confidence level of 99%, matching the assumptions in the model. By making the other factors constant, the rate of exchange rate changes baht per dollar US (DEX), an increase of 1% would result in a change in pure palm oil (DPPO) rose 0.25%. Change of palm oil imports from abroad (DIM) is not statistically significant. Due to the volume of imports of palm oil from foreign countries increases on average about 2% compared with the volume of production within the country.

4. Conclusion

The results showed that the shortage of palm oil in the oil crisis in the country due to lack of drought. It’s affecting to price of palm oil is higher in the country. Palm oil prices to consumers but at its downstream palm oil consumption rose by raw material prices, not because it is used to control the products in short supply. Thai people have to queue to buy palm oil consumption and restrictions for the family. The output quality control is to ensure compliance with government policies. From research found increase the area under oil palm in right field, improved oil palm plantation by a thoroughbred, restructuring of the industrial production of palm oil and palm oil in the manufacturing sector more efficient and able to respond. Energy policy is a key mechanism for maintain stability in the market and have been encouraging farmers to grow palm oil by providing a better understanding of how to produce maintaining accurate and suitable for oil palm.

Factors that affect pure palm oil is to change the price of soybean oil (DPSO) by making the other factors constant, the rate of change of the price of soybean oil (DPSO) will affect the pure oil prices (DPPO). Due to soybean oil is used to replace it with palm oil. If soybean oil prices rise, consumers have resulted in the adoption of refined palm oil instead. When demand increases, the price increases to customers and changes in the price of crude palm oil (DPF) will affect the level of crude oil (DPPO). Due to palm oil is main raw material used in the processing of pure oil. This is the cost of production, so if costs rise, it would affect the yield to rise accordingly. For 3 factors: the amount of biodiesel (QS), palm oil imports from abroad (IM) and the exchange rate baht per dollar US (EX) failed to explain the change in pure palm oil prices as statistically significant. This may be caused by biodiesel was not used much and mainly oil palm for use in food industry as portion of 60%. In addition, government has policy of support plantation area for more production with amount of demand. Moreover, Thailand is large producer mainly import is for export promotion zone. Reference price with palm is higher in Malaysia. Since Malaysia is a major manufacturer in the world. The exchange rate baht per US dollar (DEX) and changes in the volume of imports of foreign oil (DIM) is not statistically significant.

5. Suggestion

Palm oil is plant oil that is still likely to increase steadily. Both for direct consumption in the form of pure oil and downstream industries that use palm oil as raw material. Including new industrial has potential and the opportunity to use palm oil as raw material for the manufacture of biodiesel. The fluctuation of pure oil was adjusted as price of crude palm oil significantly and flexible on the price of crude palm oil. So the next time that research should study the mechanisms of consumer demand in the ASEAN Free Trade Area.
6. Acknowledgment

The author would like to thank the Research and Development Institute, Suan Sunandha Rajabhat University, Bangkok, and thank you the Office of the National Research is achievement on support research project.

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[1] Department of Agricultural Extension. 2537 Academics document Title, palm oil, Ministry of Agriculture and Cooperatives.


Title: Development Institution for Competitive Advantage enter the ASEAN Community: Suan Sunandha Rajabhat University

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Abstract: This paper studied the development institution for competitive advantage enter the ASEAN community by the year 2015. The data collection tools included participating observation, indepth interview and focus group discussion. Informants covered luminaries, executives of the educational institution and lecturers. It was found from the study that the development of educational institutions includes (1) increasing graduate capability to reach international standards; (2) strengthening higher educational institutions; and (3) enhancing roles of educational institutions in the ASEAN community. English and other ASEAN languages have been set in educational systems. It is collaborations with ASEAN countries on academic personnel and student exchange, research, training, curriculum and higher educational system development. Therefore, Thai higher educational has potential, education personnel has capacity on modern instruction and produce qualified graduate and international competition.

Introduction

Development education enter the ASEAN Community by the year 2015 the Ministry of Education has policy on ASEAN Charter, including the dissemination of information to create a good attitude about ASEAN, development of students’ skills appropriately, development of educational standards to prepare for the liberalization of education in the region and Youth Development as a vital resource in advancing the ASEAN community [3]. Preparing for the liberalization of education Commission on Higher Education (CHE) has prepared Thailand strategic to become ASEAN and support the free trade in higher education service: (1) increasing graduate capability to reach international standards; (2) strengthening higher educational institutions; and (3) enhancing roles of educational institutions in the ASEAN community is main factor in set up long-term education frame 15 years, volume no. 2. As well as promoting Thailand as a center for education in the neighbor countries. As well as development data centers of higher education institutions in the region make the most of the short term plan is to supplement the curriculum in the ASEAN community. Moreover, provides a teaching of English and other languages used in the region, creating partnerships with the ASEAN countries to exchange academics staff and students, research, training, development of joint programs and system tools in higher education. Education personnel have potential, modern instruction and producing quality graduates compete at the international level. The researcher suggests that Rajabhat University is Thailand higher education institutions under the Commission on Higher Education, which is preparing to enter the ASEAN Community. Have the course for foreign students, educational cooperation with neighboring countries. Moreover, it is development potential of personnel in foreign language communication, academic cooperative project, research and any training with neighboring countries. It is development potential of higher education in desired direction. For free trade service in education is cross-border trade service has consumed abroad. Has been established to serve and to permit personnel ASEAN working, which affect the education institution to strengthen its role in ASEAN. They are strong development of the education and empowerment of graduates with international quality standards. Countries around the world, including Thailand, are currently changing and developing to achieve global competitiveness and to become knowledge-based societies in order to compete economically, politically, socially, scientifically, technologically, and educationally [1]. SSRU also takes a major role in responding to, guiding, and warning communities and society, as well as assisting in solving their problems. It is a source of wisdom and spirit for society. To perform efficiently and successfully its responsibilities in accordance with the specified roles and duties, it is necessary for SSRU to have freedom and flexibility in carrying out academic, budget, and resources management, also in creating and searching for new knowledge and truth to develop innovations and academic advances for communities, the society, and the country to be able to compete with other
countries. Meanwhile, accountability to society and the country through public and government supervision and monitoring is also emphasized. To efficiently administer the University, it requires unity of policy; good governance; transparency; participation and collaboration of SSRU management team, all faculty members, and personnel of every level from all departments; and systematic empowerment in order to lead and drive all parts of the University to achieve its targets and objectives. We focus on mobilization of resources, creation of partnerships, and participation from government and private sectors, alumni, local organizations, communities, and local people. The aforementioned problems and weaknesses have triggered the move towards reform. Targets and directions have been determined to increase its strengths to become a leading quality university for all, that will provide assistance to communities and the society, as well as to compete with other international universities. The researcher team has studied the development of the institution in order to advantage competitive advantage of nations at Suan Sunandha Rajabhat University. Suan Sunandha Rajabhat University (SSRU) is regarded as a fundamental source of wisdom, which will guide the country in the right direction. Therefore, it is inevitably necessary for SSRU to develop and improve the education and teaching systems to cope with the rapid and harsh changes. The first step has been to adopt a good governance principle and to implement proactive strategies to ensure quality educational management; to meet social requirements; and to compete efficiently with other local and international universities. The policies and targets for Suan Sunandha Rajabhat University development are as follows: (1) To produce high quality graduates to satisfy communities’ and society’s needs; to uplift the living standard and quality of life of people in communities and localities to become self-reliant; (2) To promote the use of basic, applied, and policy research processes which are practical to improve the quality of life in communities and this includes laying foundations for development, and creating innovations and inventions from local Thai wisdom adding value to the University, communities, and the society; (3) To be a mechanism, which drives, develop, and guide communities, localities, and the society to become knowledge-based, stronger, sustainably self-reliant, and efficiently competitive with other countries; (4) To implement an efficient management system, strategic administration, and good governance, which promote quality, flexibility, freedom in performing academic activities, efficiency, effectiveness, transparency, accountability, and monitoring under the supervision of the University Council. This depends on the need and necessity to develop students, lecturers, personnel, communities, local people, and the society in general; (5) To be the service center which disseminates information about art and cultural heritage in Rattanakosin period, and to make local Thai wisdom universally recognized; (6) To upgrade the quality and standard of lecturers, government officials, and other related staff to be more efficient and competent in the knowledge-based society by promoting and supporting them in terms of position, profession, and welfare which are appropriate for their knowledge and proficiency; (7) To improve the standard for mobilizing funds and income to become a professional quality university-business incubator (UBI); and (8) To encourage proactive public relations and marketing management by preparing effective marketing and public relations plans; and disseminating SSRU’s academic achievements and researches with an aim to promote its good image and academic reputation among students, entrepreneurs, communities, and the society. SSRU has specified the following targets for in order to develop ourselves in becoming a leading quality university for all, an international university, and a university under supervision. This research has public official, executive education and the others involved in offering guidance and opportunities to promote the excellence of the institution into academic center of development. The result of study is not only a basis for guidance on policy matters. But can also be used as a guide for agencies involved in the development of education. Thailand is also competitive advantage of being a regional center for education and research and development in ASEAN in the year 2015 as well.

1. Objectives

1. To study the preparing to enter the ASEAN community.

2. To seek the development of the institution in order to competitive advantage of nations.

2. Literature review

Under any ASEAN Cooperation framework mechanism of education cooperative is regard as factor of driven widely development, result to target of integrated as ASEAN community in ASEAN summit of 15th at Cha-Am-Huahin. ASEAN leader is Cha-am
3. Research Methodology

This study researcher is study document and qualitative research on collection data and analysis data as following.

Population and sample group of research

The population in this study is the Executive of Suan Sunandha Rajabhat University, Thailand, Dean of the Faculty of Industrial Technology, Dean of Faculty of Management Sciences, Dean of the Faculty of Humanities and Social Sciences, Dean of the Faculty of Science and Technology, Dean of Innovation and management, Director of the College of Allied Health Science, Director of the College of Nursing and Health.

Collection data

1. Research documents, study and analyzes the information from the document and article. It is related any research report such as minutes of development of ASEAN cooperation in the field of education, Cooperation Strategy in Thailand higher education readiness into ASEAN. Moreover, is essence of the ASEAN Community operating under a cooperative education Suan Sunandha Rajabhat University with educational institutions and educational agencies in ASEAN.

2. Data collection in qualitative terms from primary source. Is root source of information with continuous observation, including in-depth interviews with individuals such as administrators of Suan Sunandha Rajabhat University, Dean of the Faculty of Industrial Technology, Dean of Faculty of Management Sciences, Dean of the Faculty of Humanities and Social Sciences, Dean of the Faculty of Science and Technology, Dean of Innovation and management, Director of the College of Allied Health Science, Director of the College of Nursing and Health in key issues of development education as

1.1 The development potential of higher education institutions in the framework of ASEAN to gain competitive advantage.

1.2 Discussion groups on key issues for promoting the excellence of the institution into a center of academic and research.

Scope of research

1. Scope of content, study theories and concepts of development, essence of ASEAN.

2. Scope of analysis heading in the direction of development in accordance with the policies of the Government, National Economic and Social
Development Plan, Policy of the Ministry of Education to implement the ASEAN Declaration on Education for ASEAN and strategies of Thai higher education in preparation for becoming an ASEAN Community by the year 2015.

3. Scope of time; consider fiscal year of 2013-2014 under the administration of policies of government. And consistent with our development strategy within the National Economic and Social Development Plan No. 11 (BE 2012-2016).

Qualitative analysis data

In a qualitative study, analysis and data processing can proceed with the process of data collection has following method. Study papers or literature related lead to a database in a preliminary analysis. After collection data has been observed, Depth interviews and focus groups with audio recording, recorded data were analyzed for relationships and linkages. By way of comparison, according to the information and organize the questions in the study. To the conclusion that the explicit presentation of the data analysis.

4. Results and Discussion

Suan Sunandha Rajabhat University is recognizes the importance of developing the capacity of universities to a competitive advantage in ASEAN. Cause has been defined framework and university has focused on the development of various universities to lead the University has success in "Top quality universities for People: A Leading Quality University for All" in the following areas. Develop a management system based on principles of good governance has objective on main strategic is management based on the principles of good governance, People's quality of life and well-being of workers. Build good relationships with alumni and the community. The main strategic objectives is alumni and community involvement contributes to a better relationship with the University. Raise the standard of teaching and the quality of graduates as identities of Suan Sunandha Rajabhat University. Main objective is the quality of graduate as identity was recognized at the national or international level and to maintain its presence in the community. Development of research and innovation as a base in development university, community and the nation. Main strategic objective is to create research/creative work has been published in national or international and benefits to social. The preparation into ASEAN community. Main strategic objective is management to support the ASEAN community and cooperative education or research. Center of learning and leading academic service. Main strategic objective is a center of learning and academic societies. To provide the student-driven education, which covers various fields of study, and still maintains SSRU’s remarkable uniqueness. To focus the strategic-driven education by promoting the fields we have expertise in while complying with the government’s strategies in order to push the country forward to be a knowledge-based society and economy. To link and integrate with researches, academic services, and student activities by relying on external cooperation, for example, collaboration with entrepreneurs in establishing a cooperative education, and cooperation with local and international universities. To develop and improve the quality and standard of SSRU’s: lecturers, government officials, and related staff. To promote and maintenance cultural arts into international. Main strategic objective is the conservation, development and dissemination of art and culture at the national or international level. Reform resource management, assets and intellectual property. Main strategic objective is management asset and intellectual property more efficiently and cost effectively.

5. Conclusion

From strategies of Thai Higher Education in preparation for becoming an ASEAN community, as well as increasing capabilities of graduates with international quality standards. It is development of students’ performance in English of Thai student for work, development of professional competencies of graduates and working across cultures. Moreover, the strengthening of institutions for the development of ASEAN by developed Staff has global capacity, promote the creation of knowledge and innovation in higher education institutions with ASEAN, development curriculum and teaching to the highest quality, development infrastructure to international standards, development of academic and research excellence, development of ASEAN Higher Education and role of higher education in Thailand and ASEAN strategy. By promoting the leadership role of the institution Thailand related to the three pillars of the ASEAN Community building. Especially in the Column of the ASEAN Socio-Cultural Community, creating awareness of the ASEAN integration and the role of Thai higher education in the development of ASEAN both positive
and negative, and to promote the country as a center for education in developing countries information on higher education institutions in ASEAN. The capability development of educational institutions includes: (1) increasing graduate capability to reach international standards; (2) strengthening higher educational institutions; and (3) enhancing roles of educational institutions in the ASEAN community. English and other ASEAN languages have been set in educational systems. It is collaborations with ASEAN countries on academic personnel and student exchange, research, training, curriculum and higher educational system development. Therefore, Thai higher educational has potential, education personnel has capacity on modern instruction and produce qualified graduate and international competition.

6. Acknowledgment

The author would like to thank the Research and Development Institute, Suan Sunandha Rajabhat University, Bangkok, and thank you the Office of the National Research is achievement on support research project.

References


Staff’s Level of Happiness at the Workplace: A Case Study at Suan Sunandha Rajabhat University

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Abstract: The purposes of this research were to study the level of staff’s of happiness at Suan Sunandha Rajabhat University and to examine factors related to their happiness. The population was 1,840 university staff. A questionnaire was developed and utilized for collecting data. Statistic description included percentage, mean, standard deviation, maximum and minimum values, Pearson Correlation Coefficient, and Chi-square. The findings revealed that the overall level of work happiness was at a high level in terms of positive attitude, work satisfaction, life satisfaction, and negative attitude. In addition, the level of expectation factor of personnel overall was high in terms of career advancement and job security; personal job factor overall was at high level in terms of policy and administration, and welfare and payment. When considering the job environment aspect, the aspect overall was at a high level in terms of human relations, job condition and work environment, respectively. The factors regarding demographic characteristics that were related to happiness at workplace: age was related to happiness at work in all aspects; income and experience were related in terms of life satisfaction, job satisfaction and positive attitude of personnel. Marital status and job position were related to happiness in terms of job satisfaction and positive attitude. Also, educational background was related in terms of life satisfaction and job satisfaction. Moreover, expectation factor and work environment factor were related to happiness at workplace in all aspects; in particular, job satisfaction and positive attitude.

Introduction

Happiness is desired and searched for by all. Amidst the changing conditions of the economic, social and technological situations, it is a foundation of economic and social development based on levels of intelligence. Moreover, happiness is at the heart of direct repercussions to work. Work happiness is matter of the heart. What would happen if one was satisfied at work, employed and pleased to work to one’s full ability? Such a scenario begins from being satisfied with work – work will go well in such case, and one does not grow bored of the work, even if there are obstacles. (Kasem Tuntiphachiwa, 2003) [1].

Currently, humans give great importance to work. Work is meaningful and is important because it is a source of income to cover expenses incurred by things necessary for a good life, and helps to bring about well-being (Puongpen Chunhapran, 2006) [8]. For a person to have a sense of accomplishment in the value perception of work, one must have a clear goal in working, have fun and be happy to work. This leads to a good mood and creative thinking, good decisions, and confidence in work. A good feeling towards one’s work and organization is an important contributor to the value and sense of accomplishment felt by personnel.

In regards to organizational commitment, this enables the organization to retain capable personnel. Building organizational commitment is, therefore, an important avenue for an organization to survive. Happiness serves as a measure of the state of the lives of personnel, including satisfaction felt towards main life goals. If an organization can find knowledgeable and capable people to recruit, the organization can build motivation for the work delegated to the personnel, inspiring a desire to stay with the organization. This creates stability for the organization, reduces resource losses and makes it possible to reach objectives and experience success. (Jin-da Luengta, 2010) [3].

In Thailand, there is a school of thought to create happy organizations. The Federation of Thai Industries began a program for the development of quality of work life in business establishments to promote and develop long-term and secure quality of life for business establishment workers. This is necessary to the social economic development of the nation. Financial support is granted by the Thai Health Promotion Foundation. Standardsof management system of quality of work life (MS-QWL) have been determined, which cover 4 areas of well-being: physical well-being; emotional well-being; social well-being; and spiritual well-being.
The research results of VisutChirathiyuk clearly show that MS-QWL standards help to reduce sick leave, leave of absence rate, and missed work days. (Prachachat Turakit, 2009) [7].

Organizations have an important part in ensuring that personnel produce quality work and have work happiness. If an organization pay wages that satisfy their personnel, establish occupational security, and manage welfare the work environment to cater to personnel needs, the personnel will have a good work life, be happy, and the happiness even extends to personnel well-being in their daily lives. (Sirinthorn Seachuw, 2010) [11]. Happiness is at the heart of direct repercussions to work. Whether personnel or organization, both depend on each other, which gives rise to the question, what is personnel’s work happiness like? The answer will allow the organization to use research results as data to adapt future employment methods, and to use such data for the purposes of better development, improvement, and management of human resources. It will also lead to the development of personnel capacity for quality work, so that the university will reach determined objectives and be an efficient organization.

From the above, work happiness is a matter of the heart and emotion, stemming from sense of accomplishment in the perceived value of work, creating confidence and the boldness to confront conflict or challenges to responsibility. This is achieved by considering and deliberating on the true state of the organization in order to discover new methods of cooperation in the same organization, leading to happiness, flexibility, not clinging to old methods, and being ready to adapt to future changes with confidence so that the university will reach determined objectives and be an efficient organization.

1. Methodology

1. Theory and Related Official Paper

1. The purposes of this research were to study the level of staff’s happiness at the workplace of Suan Sunandha Rajabhat University; and to examine factors related to their happiness. This research mainly applied Diener’s theory, covering 4 areas: Life satisfaction, Work satisfaction, Positive attitude, and Negative attitude.

2. Other 5 related theories applied in the research included Motivation and Leadership at Work of Steers, Porter and et.al; Goal Setting of Edwin Locke and et. al; Job Characteristics of Hackman and Oldham; Model of Organizational Commitment of Meyer and Allen; and Maslow’s Hierarchy of Needs.

2. Definition of terms in this study

1. Work happiness means: a person’s emotion or feeling that occurs in the heart and mind and the person’s outward expression, including the work environment and work experience that effects a person’s emotions or feelings during work.

2. Expectation factor means: the expression concerning desire identification, thought, emotion, feeling, needs, forecast and trend forecast owing to individual experience.

3. Job factor means: the perception on job, efficient and effect job outcome, assessment criteria, and organization support.


![Fig 1. The conceptual framework](image-url)
C. Research tools

1. The population was 1,840 university staff which included 406 government officials, 207 government staff, 512 full time employees, and 714 part time employees. By utilizing stratified random sampling, the sample size of 329 respondents was selected. A questionnaire was developed and utilized for collecting data. Dependent variables included life satisfaction, work satisfaction, positive attitude, and negative attitude. Whereas the independent variables were four groups: group one was about demographic factors such as gender, age, marital status, level of education, income, and work experience; group two included the expectation factors such as career advancement and job security; group three included the job factor such as policy and administration and welfare and payment; and group four included the job environment such as job condition, human relations, and working environment.

2. To determine the work happiness/expectation factor/job factor/job environment levels of Suan Sunandha Rajabhat University personnel in this study, the following criterion were used:

Average score from 4.21 - 5.00 refers to the highest level.
Average score from 3.41 - 4.20 refers to a high level.
Average score from 2.61 - 3.40 refers to an intermediate level.
Average score from 1.81 - 2.60 refers to a low level.
Average score from 1.00 - 1.80 refers to the lowest level.

3. The research tool was tested its content validity by 3 experts. Reliability was also tested by try-outs on a group of 30 members with similar characteristics to the sample group, and the reliability value was 0.9735.

4. The data was statistically analyzed by computer program to calculate the statistical value, showing the demographic distribution of the sample group by frequency and percent. The data on work happiness was also calculated overall, and in the 4 specific areas by average and standard deviation. In addition, expectation factor; job factor; and job environment, were also focused.

5. The analysis on the relationship between factors and happiness was divided into 2 categories: regarding qualitative variables, Chi-square was applied; meanwhile, Pearson Product Moment Correlation Coefficient (r) was applied for quantitative variables. The interpretation based on SirinithornSeachuw (2010) [11] was as follows:

\[ r > .71 - .90 \] means the relationship is at high level
\[ r > .31 - .70 \] means the relationship is at moderate level
\[ r < .30 \] means the relationship is at low level
\[ r = 0 \] means there is no relationship

2. Findings

A. The majority of 329 personnel at Suan Sunandha Rajabhat University were female; the average age was 34.42 years; marital status was single; educational level was bachelor’s degree; work position was temporary university official; average income was 18,400.22 THB/month; and time employed at the university was 7.30 years. The majority departments were Science and Technology and Management Science.

B. Overall, the work happiness level of personnel at Suan Sunandha Rajabhat University is at a high level in the areas of Positive attitude, Work satisfaction, Life satisfaction, and Negative attitude, respectively. The positive attitude was comprised of attentiveness towards work and sense of accomplishment in one’s work and having fun at work, respectively. The work satisfaction area was comprised of completing work (even if after working hours) and a good feeling about working, and suitability of work. Life satisfaction was comprised of success in life goals, necessary change in life, and satisfaction with current state in life, respectively. Negative attitude was comprised of time-consuming work, overly difficult work, wanting to change type work, and not wanting to work, respectively (TABLE I).

<table>
<thead>
<tr>
<th>TABLE I : THE MEAN AND STANDARD DEVIATION OF WORK HAPPINESS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Work Happiness</strong></td>
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<tr>
<td>Life satisfaction</td>
</tr>
</tbody>
</table>

\( \bar{x},\overline{\text{S.D.}} \)
### Work Happiness

<table>
<thead>
<tr>
<th>Work Happiness</th>
<th>Mean (x,ˉ)</th>
<th>S.D. (S.D.)</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Need of Changes for the Life Status</td>
<td>3.6</td>
<td>.739</td>
<td>high</td>
</tr>
<tr>
<td>3. Living Condition with ready Satisfaction</td>
<td>3.5</td>
<td>.784</td>
<td>high</td>
</tr>
<tr>
<td>4. Achievement or Success met with the Goal of Lift</td>
<td>3.6</td>
<td>.784</td>
<td>high</td>
</tr>
<tr>
<td>5. Being Proud of the Status Quo</td>
<td>3.6</td>
<td>.825</td>
<td>high</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3.6</strong></td>
<td><strong>.654</strong></td>
<td>high</td>
</tr>
</tbody>
</table>

### Work satisfaction

<table>
<thead>
<tr>
<th>Work satisfaction</th>
<th>Mean (x,ˉ)</th>
<th>S.D. (S.D.)</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. Assignment</td>
<td>3.7</td>
<td>.756</td>
<td>high</td>
</tr>
<tr>
<td>7. Assignment</td>
<td>3.6</td>
<td>.757</td>
<td>high</td>
</tr>
<tr>
<td>8. Relationship with and Willingness on Assignment</td>
<td>3.7</td>
<td>.759</td>
<td>high</td>
</tr>
<tr>
<td>9. Optimistic on Assignment</td>
<td>3.8</td>
<td>.778</td>
<td>high</td>
</tr>
<tr>
<td>10. Assignment over Time</td>
<td>3.8</td>
<td>.795</td>
<td>high</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3.7</strong></td>
<td><strong>.659</strong></td>
<td>high</td>
</tr>
</tbody>
</table>

### Positive attitude

<table>
<thead>
<tr>
<th>Positive attitude</th>
<th>Mean (x,ˉ)</th>
<th>S.D. (S.D.)</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>11. Work pride</td>
<td>3.8</td>
<td>.766</td>
<td>high</td>
</tr>
<tr>
<td>12. Self-value to Organization</td>
<td>3.8</td>
<td>.758</td>
<td>high</td>
</tr>
<tr>
<td>13. Work happiness</td>
<td>3.7</td>
<td>.781</td>
<td>high</td>
</tr>
<tr>
<td>14. Work enthusiasm</td>
<td>3.8</td>
<td>.754</td>
<td>high</td>
</tr>
<tr>
<td>15. Willingness</td>
<td>3.8</td>
<td>.751</td>
<td>high</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3.8</strong></td>
<td><strong>.673</strong></td>
<td>high</td>
</tr>
</tbody>
</table>

### Negative attitude

<table>
<thead>
<tr>
<th>Negative attitude</th>
<th>Mean (x,ˉ)</th>
<th>S.D. (S.D.)</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>16. Unwillingness to work</td>
<td>3.6</td>
<td>1.09</td>
<td>high</td>
</tr>
<tr>
<td>17. Feeling to Change Job</td>
<td>3.5</td>
<td>1.05</td>
<td>high</td>
</tr>
<tr>
<td>18. Desire to Change Job</td>
<td>3.6</td>
<td>1.07</td>
<td>high</td>
</tr>
<tr>
<td>19. More Time to Work</td>
<td>3.5</td>
<td>.936</td>
<td>high</td>
</tr>
<tr>
<td>20. Difficulty to Work</td>
<td>3.7</td>
<td>.967</td>
<td>high</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>3.5</strong></td>
<td><strong>.808</strong></td>
<td>high</td>
</tr>
<tr>
<td><strong>Overall</strong></td>
<td><strong>3.6</strong></td>
<td><strong>.719</strong></td>
<td>high</td>
</tr>
</tbody>
</table>
D. The opinion analysis on job factor was at high level. Specifically, aspects according to policy and administration were role and responsibility of individual job unit, the management efficiency, and policy of administrators, respectively; meanwhile, aspects according to welfare and compensation were achievement award ceremony, payment appropriateness, and health care promotion, respectively (TABLE III).

**TABLE III: THE MEAN AND STANDARD DEVIATION OF JOB FACTOR**

<table>
<thead>
<tr>
<th>JOB FACTOR</th>
<th>(x̅)</th>
<th>(S.D.)</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Policy and administration</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Job and responsibility identification</td>
<td>3.68</td>
<td>.847</td>
<td>high</td>
</tr>
<tr>
<td>2. Policy appropriateness</td>
<td>3.67</td>
<td>.812</td>
<td>high</td>
</tr>
<tr>
<td>3. Management efficiency</td>
<td>3.67</td>
<td>.789</td>
<td>high</td>
</tr>
<tr>
<td>4. Planning participation</td>
<td>3.62</td>
<td>.867</td>
<td>high</td>
</tr>
<tr>
<td>5. Good governance</td>
<td>3.65</td>
<td>.850</td>
<td>high</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>3.66</td>
<td>.738</td>
<td>high</td>
</tr>
<tr>
<td><strong>Welfare and payment</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Pension</td>
<td>3.36</td>
<td>1.154</td>
<td>moderate</td>
</tr>
<tr>
<td>7. Payment appropriateness</td>
<td>3.48</td>
<td>.962</td>
<td>high</td>
</tr>
<tr>
<td>8. Welfare accessibility</td>
<td>3.43</td>
<td>1.022</td>
<td>high</td>
</tr>
<tr>
<td>9. Achievement award ceremony</td>
<td>3.51</td>
<td>.985</td>
<td>high</td>
</tr>
<tr>
<td>10. Health care promotion</td>
<td>3.46</td>
<td>.984</td>
<td>high</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>3.45</td>
<td>.884</td>
<td>high</td>
</tr>
<tr>
<td><strong>Overall</strong></td>
<td>3.55</td>
<td>.764</td>
<td>high</td>
</tr>
</tbody>
</table>

E. The job environment overall was at a high level. Specifically, aspects according to human relations were friendship within the unit, problem sharing, and team working, respectively; aspects according to work condition were job model appropriateness, responsibility versus ability, and role and responsibility understanding, and work freedom, respectively; meanwhile, aspects according to job environment were safety in workplace, environment appropriateness, and environment satisfaction (TABLE III).  

**TABLE III: THE MEAN AND STANDARD DEVIATION OF JOB ENVIRONMENT**

<table>
<thead>
<tr>
<th>JOB ENVIRONMENT</th>
<th>(x̅)</th>
<th>(S.D.)</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Job condition</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Role and Responsibility Understanding</td>
<td>3.70</td>
<td>.757</td>
<td>high</td>
</tr>
<tr>
<td>2. Work freedom</td>
<td>3.70</td>
<td>.757</td>
<td>high</td>
</tr>
<tr>
<td>3. Responsibility versus Ability</td>
<td>3.71</td>
<td>.731</td>
<td>high</td>
</tr>
<tr>
<td>4. Job Model Appropriateness</td>
<td>3.73</td>
<td>.743</td>
<td>high</td>
</tr>
<tr>
<td>5. Job Allocation</td>
<td>3.56</td>
<td>.882</td>
<td>high</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>3.68</td>
<td>.652</td>
<td>High</td>
</tr>
<tr>
<td><strong>Human relations</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Clarification Opportunity</td>
<td>3.65</td>
<td>.867</td>
<td>High</td>
</tr>
<tr>
<td>7. Colleagues Assistance/ Support</td>
<td>3.76</td>
<td>.816</td>
<td>High</td>
</tr>
<tr>
<td>8. Team Working</td>
<td>3.76</td>
<td>.815</td>
<td>High</td>
</tr>
<tr>
<td>9. Friendship among Colleagues</td>
<td>3.88</td>
<td>.780</td>
<td>High</td>
</tr>
<tr>
<td>10. Problem Sharing</td>
<td>3.77</td>
<td>.806</td>
<td>High</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>3.77</td>
<td>.703</td>
<td>High</td>
</tr>
<tr>
<td><strong>Work environment</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. Space Sufficiency</td>
<td>3.63</td>
<td>.904</td>
<td>High</td>
</tr>
<tr>
<td>12. Workplace Safety</td>
<td>3.68</td>
<td>.854</td>
<td>High</td>
</tr>
<tr>
<td>13. Workplace Maintenance</td>
<td>3.64</td>
<td>.879</td>
<td>High</td>
</tr>
<tr>
<td>14. Environment Appropriateness</td>
<td>3.65</td>
<td>.817</td>
<td>High</td>
</tr>
<tr>
<td>15. Environment Satisfaction</td>
<td>3.64</td>
<td>.854</td>
<td>High</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>3.65</td>
<td>.797</td>
<td>High</td>
</tr>
<tr>
<td><strong>Overall</strong></td>
<td>3.70</td>
<td>.655</td>
<td>High</td>
</tr>
</tbody>
</table>

F. The relationships between demographic factors and work happiness were as follows:

- Educational background correlated with work happiness overall and on life satisfaction and work satisfaction at the level of 0.05 statistical significances.
- Marital status correlated with work happiness overall and on work satisfaction and positive attitude at the level of 0.05 statistical significances.
- Job position correlated with work happiness overall and on work satisfaction and positive attitude at the level of 0.05 statistical significances.
- Age correlated with work happiness overall and on life satisfaction, work satisfaction, positive and negative attitude at the low level of 0.05 statistical significances in the same direction.
- Monthly income correlated with work happiness overall and on life satisfaction, work satisfaction, and positive attitude at the low level of 0.05 statistical significances in the same direction.
- Experience correlated with work happiness overall and on life satisfaction, work satisfaction, and positive attitude at the low level of 0.05 statistical significances in the same direction.
- Environment correlated with work happiness overall and on life satisfaction, work satisfaction, positive attitude and negative attitude at the moderate level of 0.05 statistical significances in the same direction.
- Job correlated with work happiness overall and on life satisfaction, work satisfaction, and positive attitude at the moderate level of 0.05 statistical significances in the same direction.

G. The analysis results of the relationship among expectation, job, and work happiness were as follows:
- Expectation correlated with work happiness overall and on life satisfaction, work satisfaction, positive attitude and negative attitude at the moderate level of 0.05 statistical significances in the same direction.
- Job correlated with work happiness overall and on life satisfaction, work satisfaction, and positive attitude at the moderate level of 0.05 statistical significances in the same direction.
- Environment correlated with work happiness overall and life satisfaction, work satisfaction, positive attitude and negative attitude at the moderate level of 0.05 statistical significances in the same direction.

3. Discussion

1. From the findings, the level of happiness at workplace of personnel at Suan Sunandha Rajabhat University is at a high level in the areas of Positive attitude, Work satisfaction, Life satisfaction, and Negative attitude, respectively. This shows that roles of management identification and planning participation, interpersonal relations among department, congruency of responsibilities and work capabilities (including workplace atmosphere) are important to build work happiness, including sense of accomplishment, and general good feelings towards work. This corresponds to the work happiness concept of Ruamsiri Menabhothi (2007), being cited by Lalita Srisawakonthon (2011) [10] consists of 5 elements: motivational and supportive leadership; friendships; job inspiration to complete delegated tasks or determined goals; organization's shared values that are adhered to as common behavior and consistently followed until they become part of the workplace culture; and quality of life that is related to work environment, employee participation, and humanization of work. These factors are influential to an organization and personnel finding shared satisfaction so that workers may produce the highest level of work efficiency. This corresponds to Piyaon Liratempong (2009) [6] who conducted research on Work Happiness in Hospitals: Nursing, Surgery Science and Orthopedic Surgery at Siriraj Hospital. It was found that the work happiness of nurses, from greatest to least, included life satisfaction, work satisfaction and positive attitude. Jinda Luengta (2010) [3] studied Happiness with Work Duties and Organizational Commitment of Hotel Business Employees: Case Study on Affiliated Hotel in Pattaya, Cholburi Province and found that hotel employees had a high level of work happiness in every area, credibility and trust being the highest followed by work reliability, sense of accomplishment in success and positive attitude towards occupation, respectively. According to the concept of Terada Pinyo (2012) [4] found that Work to Happi-ness related Quality of Working Life.

2. The demographic factors correlated to work happiness: age correlated with all aspects; income and experience correlated with life satisfaction, work satisfaction and positive attitude; marital status and job position correlated with work satisfaction and positive attitude; and educational background correlated with life satisfaction and work satisfaction. As a result, demographic factors strongly correlate with work happiness. This is in line with Maslow’s Hierarchy of Needs, being cited by Kesorn Ruangkaew (2010) [2]; and Motivation and Leadership at Work of Steers, Porter and et.al; being cited by Apichat Phuphanich (2008). Both have mentioned that “…the basic needs for survival are safety, social needs, interpersonal, social acceptance and achievement, respectively…” Siwimon Kumnual has conducted a research entitled “The Correlation between Positive Worldview, Ability to Overcome Obstacles and happiness: Case Study on Employees of a Private Company” (2009) and revealed the results that the
positive thinking of personnel is at a high level; the ability to overcome the problem is at a moderate level, the happiness is at the moderate level. When considering demographic factors affecting positive thinking are age and length of service; meanwhile factors affecting business are gender and length of service. BantitaKhamhowm (2011) has found that factors correlate with work happiness are age, job nature and relations in workplace. [5]

3. Expectation and environment factors correlate with work happiness in all aspects; and job factor with life satisfaction and positive thinking. Obviously, work happiness correlates with personnel’s expectation and workplace environment; job factor correlates with life satisfaction and career advancement. Diener (2000) has also suggested that happiness or well-being is life satisfaction, satisfaction with important domains and positive effects.

4. Recommendations

There are three recommendations from this study. First, there should be an integration of performance management, career development system, and compensation plan. To make certain that the policy is clearly understood by all the staff in the organization. Second, there should be an open opportunity for all staff to participate in policy, objectives, goal creation and allow the good relationship between staff in every department. Third, there should be a strong loyalty value in the organization and promote the strong loyalty between staff and the organization.

5. Future Studies

Future studies should include the qualitative research technique by using an in-depth interview and focus group to gather the information which would help to obtain the insight information of what staff was really thinking about happiness at work and how were they thinking. Moreover, the future studies should create the model of happiness that happiness at the workplace would result in good quality of life and yield the higher productivity.

References


Francophone Identity Construction in Rwanda Before the Rwandan Genocide and its Impact on Rwanda’s Foreign Policy

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Abstract: 1994 Rwandan Genocide is the second biggest genocide in the world after the Jewish Holocaust. Approximately one million Tutsi were savagely slaughtered in a very short time of one hundred days in 1994. Rwandan Genocide targeting Tutsi people is a planned and systematic one based on ethnic identity construction. Many reasons as ethnic, political, sociological, psychological and economic ones underlie the Rwandan Genocide. Western Colonial Powers constructed ethnic identities for their own material interests during the colonial period. The aim of this article is to study how the ethnic identities constructed in Rwanda were transformed into a Francophone national identity and the impact of Francophone identity construction on pregenocide Rwandan foreign policy.

Introduction

African Continent has been the cradle of crimes against humanity, though it is widely accepted as the birthplace of humanity. The crimes committed against humanity in Africa and Sub-Saharan Africa in particular have been considered as tribal conflicts and usual and ordinary parts of chronic civil wars by the international community. Popular media also described the genocide in Rwanda in 1994 as a tribal conflict between different ethnic groups [1]. Next step taken by the international community was the silence and ignorance towards Rwandan Genocide. The genocide committed in Rwanda in such a short time as hundred days is the biggest organized genocide committed fifty years after the Holocaust in the Second World War. Approximately half a million people lost their lives during the genocide in Rwanda. From the start of the genocide on 6 April 1994 to 21 April 1994 nearly 250,000 Tutsi were killed within just fourteen days and this is the fastest genocide ever recorded in history [2].

Dividing African peoples into new ethnic groups and playing one against another by putting forward ethnic identities during colonial years and Cold War time were just rational methods for the Western powers to follow their own interests in the region. When the Cold War and its bipolar world order came to an end, ethnic conflicts which were once suppressed during Cold War started to appear instantly all around the world from the beginning of the 1990s. As Fukuyama puts it the world is divided into two as history and post-history and adds that conflict will go on existing among the states living the history and it is also possible for conflicts to exist between these states and the ones living post-history [3]. As there still exist unexpired tensions in some places of the world that live the post history it is possible for ethnic and nationalist violence to increase [4]. As Fukuyama described, Rwanda witnessed the increase in ethnic conflicts that had been suppressed more than 30 years and a gradual transformation from ethnic killings to genocides and finally the second biggest genocide of the world in 1994. Several reasons such as economic, political, social and international ones lie behind ethnic conflicts and genocide. However, one of the most important reasons behind the genocide is the deep influence of the Western colonial powers and of the identities constructed by them on Rwanda’s domestic and foreign political life.

Colonial powers enjoyed ‘divide and govern’ strategy for their interests as was always the case all around the globe. Western powers, former colonial powers like the UK and France in particular, enjoyed identity construction in Africa to expand their spheres of influence. France wanted to protect its interests in former Belgium colonies like Rwanda and Burundi as well as its interests in Francophone North Africa and West Africa. For this aim France tried to make use of Hutu identity, which was then the most powerful one among Hutu and Tutsi identities constructed by colonial Belgium and was representing the national identity, and tried to influence national identity and behaviours of leaders to keep Hutu leaders and presidents in line with Francophone foreign policy.

The main aim of this article is to analyze the impact of Francophone influence on national identity construction in Rwanda and Rwanda’s foreign policy. This study asserts that France influenced...
Rwanda’s foreign policy and managed to orient it in line with its interests in the region by influencing national identity in Rwanda. Since the national identity in Rwanda was constructed under Hutu power, the country’s interests are said to be so determined as to the Francophone influence. France’s efforts to influence the Francophone zone in eastern Africa seem to have started in 1970s and ended after Anglo-Saxon oriented RPF (Rwandan Patriotic Front) victory over the genocide. After its victory Rwandan foreign policy slid through Francophone sphere of influence to the Anglo-Saxon sphere of influence.

This study consists of two main parts. The first part deals with the identity construction in Rwanda in pre-colonial time and colonial time in a historical context. The second part deals with the Francophone influence that started to be active in post-colonial era and before the genocide with increased contacts with France and the changes in Rwanda’s national identity and its foreign policy.

1. Identity construction in Rwanda before the colonial period and during the colonial period

1.1. Pre-colonial period

The history of Rwanda before German explorers put their steps on its soil in the 19th century is not known very well [5]. Historians think that the first residents of Rwanda were hunter-gatherer pygmies, the ancestors of today’s Twas in Rwanda [6]. Farmer Hutus speaking Bantu language probably entered into Rwanda from the east and they began to live on the hills of Rwanda around 1000 A.D. [7]. Tutsi people that drew explorers’ attention as one of three ethnic groups most probably entered into Rwanda from the south of Ethiopia between the 11th and 15th centuries and till then Hutu people outnumbering Twas had been the dominant ethnic group [8]. Cattle breeder Tutsis came to Rwanda in successive migration waves from the north because of drought and famine [9]. Cattle herder Tutsis were more aggressive and organized in terms of military skills than Hutu farmers, so they dominated other ethnic groups in Rwanda even though their population was just 10 and/or 14% of total population of all ethnic groups [10]. Despite the domination of Tutsis over Hutus and Twas, Tutsis, Hutus and Twas lived together for a long time in Rwanda as different ethnic groups and they were so integrated that these groups started to speak the same language, believe in the same God and they share the same culture [11]. It is quite interesting that before the colonial era there were no ethnic-based conflict among these three groups apart from their worries for domination among them. These groups lived the common culture.

There was a strong kingdom in Rwanda before the German and Belgium colonial period in contradiction to most of the other countries in Africa [12]. This kingdom was a Tutsi kingdom dominating Hutus. Tutsis were superior to Hutus and Twas in military, political and economic terms. Tutsi king was a sacred identity as to the common religious faith and he was an absolute ruler [13]. Hutus lived freely in the north-western part of the country in small Hutu kingdoms till the end of the 19th century when they fell under Tutsi rule with the help of German colonizers and they were in fight with Tutsi kingdom [14]. As is mentioned above the main reason behind the conflicts among these three groups were nothing more than territorial interests between their kingdoms.

1.2. Colonial Period

1.2.1. German Colony 1894-1914

When compared with other African countries, missionaries and other colonial powers were so late to put their feet on Rwandan territory. Missionary activities are known to have started in the beginning of 20th century in Rwanda. The rise of colonialism in Rwanda (first with Germany and than with Belgium) caused great and important changes [15]. It seems that the Europeans brought their racism in the start of the 21st century that would deeply influence the people’s thoughts and practices in general in Rwanda [16].

German explorer Count von Götzen’s journey to Rwanda in 1894 is regarded as the first step to turn Rwanda into a German colony. Germany is the first country to colonize the territory including Rwanda and today’s Burundi under the name of Ruanda-Urundi [17]. Germany dominated Rwanda together with Burundi and the western part of today’s Tanzania as a part of German East Africa from 1894 till the First World War, but Germans preferred to keep Tutsi king and his chiefs in power to govern Rwanda in an indirect way [18]. Germany did not make any social and administrative changes in Rwanda during its domination till the WWI and only helped central government in Rwanda to reinforce its power [19].
1.2.2. Belgium Colony 1914-1945

German forces lost the WWI, which also caused her to lose her colonies in the eastern Africa, but the new owners kept the German style in governing the colony [20]. However, Linda Melvern states that the indirect style of administration commenced by the Germans was transformed into a direct style of administration by Belgian authorities and that the power of the king was worn down by them and it became compulsory for the king to have Belgium advisors in 1922 [21]. After the WWII the countries Rwanda and Burundi in German East Africa were given to Belgium as UN mandates [22]. Belgium conducted lots of agricultural and infrastructure projects (coffee cultivation, construction and maintenance of roads and railways etc.) to make a profit in Rwanda and also needed cheap and compulsory labour, so reorganized the compulsory labour system (corvée system) [23]. On contrary to Germany, Belgium had a deep impact on economy, architecture and social and political structure of the country [24]. Belgium leaving the indirect style of governing between the years of 1920 and 1930 adopted a direct style of governing its colonial territory.

Some practices of the Belgian colony such as identity cards showing ethnic roots of the citizens, compulsory labour and production mostly for Hutus, appointment of Tutsis to administrative and leading positions, privileged access for education and career opportunities for Tutsis increased the difference between Hutus and Tutsis that spoke the same language for the first time [25]. Buckley-Zistel asserts that even though Hutu, Tutsi and Twa ethnic groups had already existed long before the arrival of German and Belgian colonial authorities, these groups were transformed into ethnic identities and polarized in due time and their identities were politicized with the anthropological knowledge of Europeans [26]. As to Buckley-Zistel the separation of the Rwandan people into these ethnic identities has a long history and in fact ethnic realities and reconstruction of these ethnic identities by political authorities caused the struggle between Hutu and Tutsi people [27] since it was not so difficult for political authorities to reconstruct ethnic identities. The existence of identities relies on its relationship with the other [28]. When creating ethnic identities, Hutus and Tutsis were opposed to one another and marginalized one another. As ‘ethnic violence’ implies for awareness of ethnic categories [29] tendency for violence increased depending on the differentiation between ethnic identities during this period. Social construction of group identities implies for an individual’s self and a group to differentiate itself from the other one, therefore putting forward the possibility of having a violent and hostile relationship with the other [30]. According to what Fearon and Laitin cites from Prunier, Tutsi and Hutu terms in Rwanda point out a difference between classes and the meanings for these terms were created by racist Europeans and these terms are nothing but a historical fiction taken over by local policy makers looking for power and interest like Tutsi political authorities benefiting from colonial ideology as an instrument for economic development [31]. Therefore, this solid separation between Hutus and Tutsis seems to have been invented by the colonial authorities together with the Rwandan elite and to have been toughened as a consequence of political struggle in the country [32]. The identities in Rwanda were defined in a more definite way in modern times and ethnic and racial identities were hardened by the German colonial authorities gaining strength with the colonial practices of Belgium [33]. The social structure keeping people together in Rwanda started to collapse in the 1930s and since the big economic and social developments supported a new group of educated Hutu people Rwandan identity became polarized and Hutu and Tutsi identities were regarded as adverse identities instead of being a part of Rwanda’s integration [34]. During this period the national identity of Rwanda were defined on Tutsi identity and Hutu identity were regarded as the other.

The interventions of Belgian colonial authorities modernized, reinforced and inflamed ethnic concerns and finally succeeded in making political categories out of these three ethnic groups [35]. Belgian authorities started Tutsification process with the support of the Catholic Church in the 1920s using the Hamitic Hypothesis, which asserted nomadic cattle shepherds that came down from the Nile region and belonged to the Hami race had the ability to govern [36]. Tutsis were considered as superior rulers of Hami race in the light of this hypothesis that European anthropologists put forward [37]. Mamdani considers this Tutsification policy as an ideological and institutional process of colonial administration together with the church [38]. The colonial administration seems to have created institutions that paved the way for this racial ideology between the years of 1927 and 1936 [39].
Fascism and racism in Europe in the 1920s and 1930s influenced the colonies as well and the colonial administration measured the skulls of people to define their racial roots and they successfully supported the Hamitic Hypothesis in this way. The Belgian colonial administration conducted a census in 1933 and divided the population into three classifying them as Hutu, Tutsi and Twa. Moreover, the administration measured the length of people’s noses and recorded the shapes of their eyes [40]. After this census, the administration classified every Rwandans and handed them in identity cards [41]. Mukimbi defines these identity cards as the Rwandan version of “star of David” and these cards were seen as a way of revealing people’s identity and so taking a record of their ethnic roots [42].

The colonial administration gradually took a racist attitude towards the people in Rwanda during this period and even though Hutus and Twas traditionally appeared in political, administrative and judicial environments, all transactions were monopolized by Tutsis in accordance with Tutsification policy [43]. Hutus were given no political responsibility in the 1930s and the church also supported this policy of colonial administration, which finally revealed the thought that Hutus are faithful subjects [44]. Belgian administration supported Tutsis against Hutus more than the Germans did and they even replaced most of Hutu chiefs with Tutsi ones [45]. The elitist practices to regard Tutsis as superiors in Rwandan kingdom caused Tutsi ethnic group to transform into Tutsi ethnic identity with the effect of racism wave in the 1930s and this hence worsened the ethnic segregation between Hutus and Tutsis. Tutsis inspired by confusing myths and fallacious anthropology experienced the transition from elitism to fascism and drew the same line that Tutsification policy happened. The fallacious anthropology experienced the transition from elitism to fascism and drew the same line that.

Social structure, Belgian colonial administration and the church are asserted to have played an important role in racial segregation in Rwanda. The Belgian administration was a powerful and influential institution in Rwanda and the missionaries together with the colonial administration and the church practiced strict discriminatory policies and supported the Hamitic Hypothesis by the 1950s when they started to support Hutus against Tutsis [51]. Therefore, the churches in Rwanda also contributed into redefining process of ethnic identities [52]. Nevertheless, when self-determination right that became so popular just after the WWII started to influence the African countries, the White Fathers got a tendency towards supporting Hutu majority that was once suppressed [53].

2.2.3. Belgian UN Mandate 1945-1962

The United Nations (UN) promised independence, justice and protection for all living in colonial states right after the WWII in the UN Chart in 1945 and Rwanda became a UN Mandate [54]. The general demand for democracy during this time also started to change the Belgians’ mind [55]. The Belgian authority in Rwanda began to support Hutus that were once discriminated under ethnic segregation against Tutsis people to comply with the requirements of the international community such as independence and democracy and paved the way for Hutus to have a say in governing the country. The Catholic Church also changed its attitude towards Hutus and the church schools once supported only the Tutsi elite now opened their doors to Hutu students and encouraged democratic ideas [56].

The Tutsification policy went out of date and a new policy contrary to this one was put into effect so to reinforce Hutu identity. Belgian administration acted in a rational way considering the developments all around the world after the war and interfered in national identity construction in Rwanda by spreading the idea that Hutus are the real owners of Rwanda and revised its policies in its mandate.

Democracy wave and international pressure drove a wedge between Hutus and Tutsis and relations
between them much worsened after the Bahutu Manifest. Hutus supported by the mandate administration and church became politically much stronger and this political power paved the way for a revolution in 1959, which is a milestone in Rwandan history. This Social Revolution points out the end of privileged Tutsi elite [57]. After all the Tutsi King asked for permission of Belgium to reconstitute the order in Rwanda, but his demand was denied and the Belgians together with Hutus took action to topple the king [58]. Starting from the beginning of the 1960s the Belgian administration started to replace Tutsi chiefs with Hutu ones and Hutu chiefs started to discriminate against the Tutsis living on the hills of Rwanda [59]. The mandate administration established a convenient environment for racist parties in order to maintain its interests there [60]. Before the mandate period came to an end the discrimination against Tutsi people increased and they were also excluded in most parts of social and political life. Therefore, Tutsis were marginalized when Hutus took the power. The mandate administration so became one of the bodies supporting this exclusion and discrimination.

2. Identity construction in Rwanda before the genocide

Belgium and the church in Rwanda during colonial time encouraged ethnic awareness and segregation, which caused ethnic groups in Rwanda to gain ethnic identities. The foundations of national identity were laid down during the colonial era and national identity was constructed twice during this time. While the national identity was constructed on Tutsi identity during the Belgian mandate, it was constructed on Hutu identity during the UN mandate. In fact, national identity was constructed on two different ethnic elements, but what is important here is that it was constructed according to the interests of the colonial power. It seems that Belgium as the main body representing the state influenced national identity regarding its own interests in this small country. It is also impossible to deny the impact of Rwandan people on national identity construction, but here the most important factor defining national identity is the contribution into this identity-creating process by Belgium, which was following its own interests in the region. Unlike Germany, Belgium wanted to reap the fruits on Rwandan territory after investing so much for infrastructure of the country, so it preferred to create a Rwandan national identity that would look out for its interests. As Bozdağhoğlu puts forward states’ identities are not static and can easily change depending on domestic developments and interaction with other states and he adds that developments in domestic politics can influence identities in different ways [61]. As Iran’s national identity changed after the Islamic Revolution in Iran in 1979 [62] domestic political developments in Rwanda after the Social Revolution transformed Rwanda’s national identity and constructed it on Hutu identity regarding the interests of colonial administration.

2.1. The first republic

Rwanda had its first elections after it declared its independence in 1962. After the elections Kayibanda known for his strict policies towards Tutsis came to power as a president of the country. This period starting with independence and ending with the coup d’etat by Major General Habyarimana in 1973 is called the first republic era. During this time the ruling elite was Hutu people in contradiction to the colonial time. Rwanda under Kayibanda’s rule encountered violent actions stemming from various reasons in 1962, 1963 and 1973 [63] and Tutsis that left the country during the Social Revolution organized attacks on Hutus and in response Hutus killed Tutsi civilians. Rwanda also met political and economic problems at the start of 1970s and the military officers from the north of Rwanda, who claimed to have no roles in the country’s political life, prepared for a coup d’etat [64]. The military coup was followed by social incidents and ethnic hatred.

2.2. The second republic

The Rwandan army that was not satisfied with the chaos in the country benefited from this situation and gained the power under Juvenal Habyarimana on 5 July 1973. One of the most important developments after Habyarimana got the power is the importance given to economic development and growth. Rwanda encountered economic problems in 1962 like many African countries that had already gained their independence. Habyarimana established close relationships with France to overcome these problems and ensure economic development. He also started to receive assistance of some international organizations like International Monetary Fund (IMF) and World Bank, yet Rwanda turned out to be a single-party dictatorship under his rule and his party MRND (National Republican Movement for Democracy and Development) was almost sanctified [65].
It was at first stated that the discrimination against Tutsis would end when Habyarimana was in power [66], yet the conditions offered to Tutsis were not improved and they were not allowed to come back to their former positions or schools and a minimum number of Tutsis were allowed to have some particular jobs [67]. The identity cards that were first issued during the Belgian colonial administration did exist during this period [68]. The quota practice against Tutsis and identity cards revealing ethnic roots ensured ethnic segregation to continue in order for the government to have social control in Rwanda [69]. The discriminative policies taken against Tutsis by the government during the first republic under the pretext of ‘economic development’ were also continued.

Habyarimana became a leader accepted by the western powers such as France and Belgium for different reasons even though he implemented an authoritarian regime under a single-party rule in Rwanda. One of the reasons behind this attitude by the west is that Habyarimana revealed his Christian faith so openly and ostentatiously that he was easily approved in Brussels and Paris and gained political support of France [70]. As a matter of fact the only reason for this approval is not his Christian faith but his tendency to follow a Francophone oriented foreign policy and his role perception. Role perception is the result of a cultural structure of a nation and as policy makers belong to that culture where they were grown and create their own role perceptions [71] it is possible to assert that Habyarimana’s role perception was under Francophone influence because the country was ruled by Francophone Belgians during the colonial time. Therefore, Rwanda received support and assistance of France and French President Mitrand in particular in the 1970s and 1980s. Rwanda also established good relations depending on arms trade with Egypt that was under the influence of Francophone zone with the support of France. This Francophone influence even helped France to influence UN Secretary General Boutros-Ghali and to canalize the reaction given by the UN to the genocide in Rwanda according to its interests in the region [72].

2.3. Francophone Rwandan Foreign Policy

It is quite possible to claim that Belgium and France had important influences on Rwandan social structure. Ethnic groups had existed long before the colonial era, yet colonial powers and some factors encouraging ethnic nationalism and segregation like the Hamitic Myth created by the west deepened ethnic segregation. Myths do not have to be a fiction and their practical function is to create today’s national identities. In addition, they are one of the factors forming historical memory and they can keep it alive and they can give meaning to cultural structures in order to differ itself from others [73]. Therefore, Belgium that supported Tutsis till the Social Revolution and Hutus after the revolution and France that supported Hutus during Habyarimana’s rule seem to cause ethnic segregation to transform into violent hatred between two ethnic elements.

The most important reason behind the relations between France and Rwanda is France’s desire to have a Francophone zone of influence in Africa after the colonial era came to an end. France could create an exclusive zone of interest in Africa after the colonial era was over and so it could claim that it was still one of the big powers and it was the leader of Third World countries [74]. France starting from the 1960s asserted its own Monroe Doctrine stating that African countries were within its zone of interest [75]. In fact, France became a medium level power in French-speaking African countries within the international system thanks to its Francophone influence over these countries and could gain international recognition and self-confidence [77]. However, McNulty claims that the legitimate governments in Africa are the by-products of France and colonial era is not over in Francophone Sub-Saharan Africa. He also adds that there is a limited autonomy offered to the elites created by France and master-servant relationship was institutionalized in this way [78]. Therefore, it is quite natural for France to develop relations with even small African states like Rwanda. In addition, Rwanda, Zaire (today’s Democratic Republic of the Congo) and Burundi are former Belgian colonies and they are already within the Francophone zone. These countries were welcomed into France-Africa summit in the 1970s considering that these countries would rely on France as their security needs were met by France [79]. The other reason behind France’s paying a great importance to Rwanda is to block the Anglo-Saxon expansion coming through Uganda. France that was playing for the continental leadership in the European Union wanted to increase its influence over the African states to keep its former colonial power and to balance its interests against the UK and USA. But the main reason is the conflict between the USA and France
The main aim of France in benefiting from the Francophone zone of influence was to maintain its interest in the region and the status-quo of Francophone and Anglo-Saxon zones of influences that were dominant in the region during the Cold War. For this reason France’s intervention into identity construction processes in East Africa and Rwanda in particular was to maintain its national interests there. France was successful in maintaining its influence over its former colonies despite the end of the colonial era and France was able to expand its economic relations with French, Portuguese and English speaking African countries thanks to cooperation partnerships to protect the peace in the region [81]. France seemingly implemented realistic policies in order to keep its national interests and established commercial and military relations with Rwanda to expand its zone of influence in East Africa. What is more, social factors, social norms, thoughts, culture and identity influence a nation’s interests and behaviours [82].

Therefore, as Brezinski states cultural ambitions of France reveal itself in its efforts to continue a special role for security in Francophone African states [83]. Economic reasons together with France’s aim to have an international power in postcolonial Africa led France to tend towards African states. It is possible to count strategic resources like oil and uranium and a market for French products, French popular culture and ideas among these reasons [84].

France’s intervention into Great Lakes Region including Rwanda stems from its arms trade with Rwanda and military interactions like French military advisors in Rwandan arms [85]. Francophone Hutu identity constructed and reinforced during the second republic era had an important role in Rwanda’s foreign policy preferences and led Rwanda to have close relations with France, which caused Rwanda to get under Francophone zone of influence. National identity is constructed under the shadow of the most powerful groups [86], so Hutu identity constructed Rwanda’s national identity in this period and it was of great importance to intensify relations with France. Apart from Hutu identity Habyarimana’s role in implementing Francophone foreign policy is also of great importance.

Rwandan-French relationship started in 1975 with the agreement on military technical assistance [87]. This military agreement included sending out military equipment and arms worth of 4 million Franks from France to Rwanda and establishing Rwandan national police force by deploying French military men necessary for training the police force [88]. Habyarimana tried to find a way to get France’s assistance for his country as France had been already started to influence former Belgian colonies in Africa [89]. France that desired to have Rwanda among twenty-one African countries constituting Francophone African states provided Rwanda with 60mm, 81mm and 120mm howitzers and 105mm light artillery and sent to Rwanda four squadrons consisting of 680 troops together with seasonal military advisors [90]. The military operations in Rwanda called as Noroit, Amaryllis and Turquoise conducted by France between the years of 1990 and 1994 do not present a fair attitude and these operations caused Rwandan civil war to continue by 1993 and separatist regime to radicalize and militarize itself [91]. France physically entered into Rwanda with the operation Noroit (1990-1993) as to the bilateral cooperation agreement between France and Rwanda upon the official invitation by Rwandan state, but then French troops stayed in Kigali about three years for the purpose of evacuating French citizens living in Rwanda and during this period French troops assisted growing Rwandan army with trainings and deployed troops at the Rwandan checkpoints. It is also claimed that French troops even patrolled together with Rwandan troops and commanded artillery fires at the war front [92]. It seems that French army assisted Habyarimana’s regime that was trying to prevent an occupation by English-speaking Tutsis with the military operations Panda and Noroit [93].

France, Egypt and South Africa were among the main arms suppliers in 1993 and Rwandan authorities provided armed militia and other supporters with firearms months before the genocide was committed in 1994 [94]. French military men were also embedded to Rwandan army forces in 1994 [95]. France had 34 military interventions in Africa between the years of 1963 and 1997 to preserve pro-French regimes in Africa and the French army started to interfere with the struggle against pro-US guerrillas like RPF in the 1990s [96]. In contrary to France’s activities in Africa the USA supported pro-US Museveni regime in Uganda before 1994, so Uganda supported RPF against pro-French Rwandan regime in exchange with the permission
of the USA [97]. RPF moved its forces from the south of Uganda to the north of Rwanda, which increased French military assistance to the Rwandan government. Most of the members of RPF were brought up in Uganda starting from the 1960s, so it was an English-speaking organization as well as being under Francophone zone of influence [98]. In fact, Rwanda was of little importance for France, but Rwanda’s location on the frontier line between the English-speaking Africa and French-speaking Africa in East Africa gave Rwanda a strategic importance. Consequently, the reason for France’s intervention into Rwanda is the desire to maintain its Francophone cultural and lingual influence in an English-speaking region according to most of senior authorities and military officers in France [99].

The operation Turquoise conducted by France during the genocide not only protected Hutus from RPF forces, but also helped Hutu militia and Rwandan army to flee to Zaire with their arms [100]. The victory of RPF after the Rwandan genocide led to some speculations in Paris that Rwanda was lost and Francophone world was defeated by the Anglo-Saxon expansionism and Rwanda’s loss was considered as the start of a domino effect that would finally put Zaire and Burundi under Anglo-Saxon domination [101].

France did not terminate its relationships with Rwanda before and after the genocide in compliance with its African policy. As mentioned above France desired to maintain the status-quo in Rwanda and to influence the ruling authority in African states even they are so small countries like Rwanda in order to stop the Anglo-Saxon expansionism by establishing a Francophone African domination. France’s attitude in Africa helped Hutu government to strengthen its power and maintain its legitimacy in international theatre, which also helped Hutus to conceal the steps taken for a Tutsi genocide. In addition, Hutu identity representing the national identity adopted a Francophone oriented foreign policy. This Francophone oriented foreign policy led Hutus to pursue a balancing foreign policy that aimed to maintain the status quo in the face of RPF and Tutsis supported by the Anglo-Saxons. In reality Rwanda adopted a Francophone oriented foreign policy starting from the 1970s and this helped both for France and Rwanda to pursue a win-win policy. France could block the Anglo-Saxon expansion by 1994 since Rwanda came under Francophone zone of influence and could increase its trade capacity. After falling under the influence of France, Rwanda could systematically kill about one million Tutsis concealing everything from the international community with the support of France. Rwanda also increased its military power in the region with the help of military agreements signed with France and accelerated its economic development thanks to the support by the international organizations such as the IMF and the World Bank in the 1980s.

**Conclusion**

Ethnic segregation between Hutus and Tutsis during the colonial era yielded ethnic conflicts. Hutus that revolted against Tutsi supremacy gained the power after the Social Revolution with the support of Belgian colonial administration. The Belgian colonial administration that constructed Rwandan national identity on Tutsi identity by the end of 1950s changed its attitude considering its role on the emerging world system and supported democratic movements of Hutus against Tutsis. Radical Hutus that obtained enormous power started to influence the decisions of policy makers and the government. The military coup that introduced Habyarimana regime was in fact a revolt of radical Hutus against Hutus from the south and the power changed hands from Hutus of the south to the Hutus of the north. Similarly, Habyarimana who had been educated under French influence and had the Christian faith established relations with France to overcome economic problems that emerged in the 1970s thanks to his personal relations.

French language was the lingua franca when the Walloons were in power during the Belgian mandate and that helped Rwanda in the future to step into the Francophone world of states. France that came into conflict with the US interests in Africa as well as in Europe and at international level starting from the beginning of the 1960s determined to protect and increase its influence over African states after the colonial era was over. France also benefited from its relations with small African states like Rwanda so as to obtain its national interests in the region. France welcomed these states looking for security under its security umbrella. France benefiting also from the ethnic segregation in Rwanda starting from the 1970s supported Hutus against Tutsis and helped them to become politically stronger hence succeeding in reconstructing Hutu identity under the influence of Francophone impact. France that supported the practices of the Rwandan government emphasizing Hutu identity as the national identity ensured a
Francophone national identity in Rwanda. Therefore, Rwanda’s foreign policy tendencies became in line with the Francophone influence because cultural and social norms made that possible. Rwanda was in need of adopting a Francophone foreign policy towards the expansion of the Anglo-Saxons between 1970 and 1994 and towards the RPF. Rwanda also reinforced its Francophone ties with France and other Francophone African states joining the French-African summits.

References


[8] Ibid., p. 802.


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[27] Ibid., p. 103.


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Netherlands Overseas Territories in Comparative Perspective

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Abstract: The current political map of the world still shows many territories that did not free themselves during the decolonization and thus continue to be connected to their metropoles, often thousands of kilometres away. This study discusses one such example, the overseas territories of the Kingdom of the Netherlands. These constitute, thanks to the different development of their relation to the metropole manifested particularly in recent decades, a remarkable example of possible ways of genesis of administrative status of overseas territories. The study deals both with the three autonomous countries within the Kingdom of the Netherlands (Aruba, Curaçao, Saint Martin), as well as with the so-called Caribbean Netherlands (Caribisch Nederland) that is a part of the "European" country Netherlands (Bonaire, Saba, Saint Eustatius). The study aims to analyze the relation of those countries to The Hague, emphasizing the viewpoints of history, constitutional law and political science.

Introduction

Although the period of great colonial empires, when particular (especially European) realms stretched all across the globe, has probably already gone, there can still be found on the political map of the world many territories that during the decolonization process didn't become independent, and are thus loosely or tightly associated with their (often thousands of miles remote) metropole. One of such cases are also Netherlands overseas territories situated in the Caribbean, which thanks to its nature (similar historical development, the same distance from the center, different administrative status) provide an ideal space for a comparative analysis and whose selected specifics are discussed in this study.

The article deals with the Netherlands overseas territories in the dimension of political science, history and constitutional law. From the territorial point of view it focuses on the parts of the Kingdom of the Netherlands (Koninkrijk der Nederlanden) not situated on the European continent. This means on one hand so-called Caribbean Netherlands (Caribisch Nederland), which forms part of the country3 Netherlands and which consists of the islands of Bonaire, Saba and Saint Eustatius (Sint Eustatius), on the other hand (in terms of administrative division) three autonomous countries located in the Caribbean: Aruba, Curaçao and Saint Martin (Sint Maarten).

This article aims to analyze the status and functioning of the Netherlands overseas territories in the perspective of history, constitutional law and political science. Particular chapters of the article therefore combine a historical dimension, which provides an overview of the development of the studied areas, a constitutional dimension, in which the status of the Netherlands overseas territories (autonomy, ways of administration, relation to the metropole and the European Union with an emphasis on the period after WWII when these territories, despite general de-colonization tendencies, remained connected to the capital) is analyzed, and the dimension of political science, in which the article deals with the specifics of the new arrangement of the Netherlands overseas territories; attention is, among other things, paid to the role played by local political actors in the administration of local affairs and, conversely, to the extent of engagement of nationwide (Dutch) political parties. As regards regional political formations the paper focuses on whether they are of independentist character, or whether (on the contrary) they prefer to remain in one state with the mother country. Another examined aspect is the way how local actors from remote areas can participate in political life in the metropole and how their interests are represented.

Following detailed analysis of above phenomena, the study – using comparative method – attempts to answer crucial questions, i.e. why these territories did not free themselves, which factors led to differentiated statuses of particular territories after WWII and which development is to be expected in near future, with respect to the 2010 administrative

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3 The term "country" in this study is used to describe lower administrative units, which form part of the "state" (state entity, i.e. the Kingdom of the Netherlands).
reorganization. The study is complemented by many tables that clearly summarize the basic analysed facts.

1. Dutchmen in the Caribbean

After the wars for independence and victory over Spanish Habsburgs a new independent entity called the Republic of the Seven United Provinces (Republiek der Zeven Verenigde Nederlanden; by Spain recognized in 1609, independence officially confirmed by the Peace of Westphalia in 1648) was established. This state became during the seventeenth century one of the world's most important colonial powers.

The basis of the success were activities of specialized companies, which helped the Dutchmen (like the British) to seize new territories across the globe. In 1602 the Dutch East India Company (Verenigde Oost-Indische Compagnie, VOC) was founded, to which a business monopoly on the area located east of the Cape of Good Hope to the Strait of Magellan was guaranteed. The Dutch gradually dominated the territory known as the Dutch East Indies (Nederlands-Oost-Indië), situated in what is now Indonesia, which became the most important of all Dutch territories. This territory possessed very valuable commodities, especially spices. The area was originally administered by the private VOC, however, after its collapse in the late eighteenth century, the Dutch East Indies was nationalized by the government in The Hague in 1816. At some time the Dutch ruled also the island of Mauritius, the Maldives and the island of Ceylon; in South Africa they possessed the Cape Colony, originally established only as a coaling station.

Dutch territories in the Western Hemisphere were operated by the Dutch West India Company (Geen-troyerde West-Indische Compagnie, WIC), founded in 1621. The WIC was compared to the VOC much smaller company that didn't take part in the piratical expeditions, but rather focused its attention on the slave trade and export of products (especially sugar) grown in the Caribbean and on the South American coast [23]. In North America, the Dutch founded the colony of New Netherland (Nieuw-Nederland), which then fell to the British. In South America, the Dutch tried to initiate an anti-Portuguese expansion in the area of today's Brazil (colony of New Holland, Nieuw Holland), but without final success.

On the contrary, in the long term the Dutch managed to settle in the Caribbean and on the northern coast of South America, apart from only a few decades-long tenure of the island of Tobago and of the Dutch Virgin Islands (Nederlandse Maagdeneilanden), which in the second half of the seventeenth century came under British, respectively Danish administration. In 1667, the Dutch and the British made a barter trade, when the Dutch ceded to the British already mentioned territory on the east coast of North America, for which they got the Dutch Guiana (Nederlands-Guiana). This territory was divided after the Napoleonic wars between the United Kingdom and the Netherlands; the Dutchmen retained their Guiana, also called Suriname, until 1975.

The island of Curaçao was after being discovered in 1499 by Alonso de Ojeda during a research voyage occupied by the Spaniards. In 1634 it was seized by the Dutch, who at the same time occupied also the neighboring islands of the Leeward Antilles near the South American coast: Bonaire (1633) and Aruba (1636). During the Napoleonic Wars, the trio of islands temporarily found itself under the rule of the British Empire [11], but the Dutch regained them and until today the three islands form part of the Kingdom of the Netherlands. Similarly, during the Dutch Golden Age in the seventeenth century, the Dutch seized some of the Leeward Islands in the northern part of the Lesser Antilles, which, again with the exception of the Napoleonic period, they possess to the present. Specifically we are talking about the southern part of the island of Saint Martin (Sint Maarten), which was in accordance with the Treaty of Concordia (Verdrag van Concordia) in 1648 divided between the Netherlands and France, the island of Saba, which was obtained by the Dutch definitively in 1816 after disputes with the British and the French, and the island of Saint Eustatius (Sint Eustatius), which the Netherlands has held already since 1636.

The Dutch colonies in America were compared to their Asian possessions much less important. The only areas of certain strategic or economic importance for The Hague were perhaps Suriname and Curaçao (or Saint Martin thanks to its supplies of salt). For this reason, the capital did not pay special attention to the territories in the Americas and focused on the jewel of the empire, the Dutch East Indies. This was also reflected in the ways of management, which took in the western part of the empire multiple forms. Suriname was administered
by a semi-private Society of Suriname (Sociëteit van Suriname), which was owned by the city of Amsterdam, the WIC and initially also by the family of the first governor of the region. The Dutch state took over Suriname into its direct administration from this company only in the nineteenth century. Curaçao and the other Antillean islands were directly subordinated to the WIC, which was also obliged to enforce the legislation passed in The Hague in these areas. However, compared with other Caribbean possessions of different European empires, in the case of Dutch territories we can deduce that the metropole has left local elites relatively great freedom in the management of local affairs [17].

Regarding ethnic composition, the Dutch colonies in America were largely populated by immigrants, of whom the vast majority were African slaves and their descendants; the Europeans constituted the minority population. The original inhabitants of the islands were murdered or pushed to the periphery. Citizens of the prosperous Republic of the Seven United Provinces were not very active in the colonization of the Netherlands possessions in the Americas, the majority of white immigrants came from other parts of Europe [18]. Dutch became the official language in all the Caribbean islands, however, Aruba, Curaçao and Bonaire largely used Papiamento (a creole language based primarily on Portuguese), on Saint Martin, Saint Eustatius and Saba the most widely spoken language was English [4]. Similar language "balance of power" has remained till today.

In 1815, when the number of Dutch possessions in the Caribbean was stabilized, new administrative reorganization was launched. Dutch territory in the Americas was divided into three sections: 1. Colony of Curaçao and Dependencies (Kolonie Curaçao en onderhorigheden), including the islands of Curaçao, Bonaire and Aruba; 2. Colony of Saint Eustatius and Dependencies (Kolonie Sint Eustatius en onderhorigheden), comprising the islands of Saint Eustatius, Saba and Saint Martin; 3. Colony of Suriname (Kolonie Suriname). In order to achieve financial savings these areas were brought together in 1828 and managed from Paramaribo in Suriname. However, in 1845 a new reform took place and the territory was again divided into two units: 1. Colony of Curaçao and Dependencies (Curaçao, Bonaire, Aruba, Saint Eustatius, Saba and Saint Martin); 2. Colony of Suriname. This arrangement lasted almost until WWII. It is worth noting that in the new structure the island of Saint Eustatius (Leeward Islands, respectively) was degraded, because in comparison with the original arrangement of 1815 it was to be managed from Willemstad on Curaçao.

Until 1930s, the six islands were controlled by a governor, who was appointed by the Dutch government and who possessed all the executive power (local population did not participate in the local government at all). In 1936 (following the 1922 revision of the Constitution of the Netherlands) the first constitutional document for Curaçao and Dependencies was developed. All the references to the "colony" were deleted; former colony was now called the Territory of Curaçao (Gebiedsddeel Curaçao). A partial suffrage to the newly established Parliament was introduced, however, only a fraction of the population was eligible to participate in the elections. Universal suffrage was enacted only in 1948, the first free elections were held on 17th March 1949 [6]. About the possibility of active participation of Antillean people in politics we can therefore speak only from the 1940s.

2. Netherlands Antilles, or on the way to independence?

Like the other colonial powers, the Netherlands was also due to the changes in the global balance of power accelerated after WWII forced to reconsider its approach to overseas possessions. One of the first signals was a famous radio speech of Queen Wilhelmina of the Netherlands in December 1942, in which she announced that the Netherlands plans to revise its relations with its colonies so that "every territory would rely on its own strength and would also have a willingness to help other territories" (Steunend op eigen kracht, doch met de wil elkander bij te staan.) [10]. In her speech the Queen also outlined an idea of a four-member kingdom, which would include the Netherlands, Indonesia, Suriname and Curaçao. That meant that to the Caribbean islands, headed by Curaçao, would be for the first time granted a certain degree of autonomy. In July 1946, at the meeting between the delegation from the Caribbean, the delegation from Suriname and the Queen, it was agreed that the reform would be implemented as soon as possible [12]. However, the Dutch violated this unwritten agreement when, in November of the same year, signed the Linggadjati Agreement establishing the Netherlands-Indonesian Union (the position of Suriname and the Antilles wasn't mentioned in the
document), which was a convulsive effort to keep the key Dutch East Indies connected to The Hague in one state. The Dutch East Indies finally gained independence (were internationally recognized) in December 1949 as Indonesia (Union with the Netherlands de jure existed until 1956).

The position of the Netherlands as a colonial actor was after the loss of Indonesia, of course, considerably weakened. The Dutch began to gradually reorient themselves to active participation in the beginning process of European integration. They decided to grant to the rest of (in terms of size and population rather marginal) territories some autonomy (with the prospect of a potential gradual transition to independence), in order to avoid the repetition of Indonesian traumatic experience. In 1950s, apart from the territories in the Caribbean, the Dutch possessed only the Netherlands New Guinea (Nederlands-Nieuw-Guinea), which was in May 1963 handed over to Indonesia.

The first key document for the Dutch territories in the Americas was the Islands Regulation of the Netherlands Antilles (Eilandenregeling Nederlandse Antillen, ERNA), which was issued in the form of the royal decree in March 1951 and which remained valid in principle until the dissolution of the Netherlands Antilles in 2010. The Netherlands Antilles (renamed already in 1948; at least formally and symbolically was thus weakened the dominant position of Curaçao), comprising the islands of Aruba, Bonaire, Curaçao, Saint Martin, Saint Eustatius and Saba, thanks to this legislation received quite a considerable level of autonomy.

Readjustment of relations between the Netherlands, Suriname and the Antilles was defined in the Charter for the Kingdom of the Netherlands (Statuut voor het Koninkrijk der Nederlanden), which was signed by Queen Juliana of the Netherlands in December 1954. This regulation became a supra-constitutional document having higher legal force than the Constitution of the Netherlands [3]. According to the Charter, the three constitutive elements (countries) of the Kingdom of the Netherlands (Netherlands, Suriname and the Netherlands Antilles) were, at least in theory, equal. In practice, however, the Netherlands maintained its dominant position. By adopting the Charter, a compromise path between two extreme variants, i.e. complete independence and maintaining the colonial status, was found. This compromise was at the same time acceptable by all the involved actors [16].

The Charter was immediately followed by the Constitution of the Netherlands Antilles (Staatsregeling van de Nederlandse Antillen) issued in March 1955. The autonomy meant that the islands arranged in the form of federation (individual islands were administered by themselves, unless the matter fell within the competence of the central, Antillean government) were responsible for their internal affairs, while citizenship, foreign affairs, financial affairs and defense were left at the discretion of the Kingdom as a whole, thus de facto to be decided by the government in The Hague [1]. The Dutch monarch was in the Antilles represented by a governor, who headed the government (Council of Ministers); Parliament called the Estates of the Netherlands Antilles (Staten van de Nederlandse Antillen) comprising 22 members was elected for four years (its composition will be discussed in more detail in the penultimate chapter). The capital of the Netherlands Antilles and the seat of the central institutions became Willemstad on the largest and most populous island, Curaçao. The Netherlands Antilles were administratively divided into four units: Aruba, Bonaire, Curaçao and Leeeward Islands (Eilandsgebied de Bovenwindse Eilanden); in 1983 the Leeward Islands were also divided into three special island units, the number of administrative entities of the Netherlands Antilles thus increased to six.

In 1970s the Dutch government intensified its efforts leading to the possibility of the overseas territories to gradually gain independence. This approach was catalyzed, among others things, by the events of 1969 on Curaçao, where workers from the Shell refinery caused riots (Trinta di Mei) due to poor economic situation (high unemployment, low wages). These demonstrations had also significant political overtones, since the crisis mostly affected original residents who reflected it as a possibility to rise against the Dutch immigrants in leadership positions accusing them of neo-colonialism. The uprising also increased an interest in the language of Papiamento among the Curaçao people and helped to promote a sense of a specific Curaçao identity. Riots eventually had to be suppressed by the Dutch army, which in the Netherlands evoked unpleasant events of the Indonesian struggle for independence.

The Dutch government decided to negotiate first with the representatives of Suriname. Suriname was de facto forced to declare independence in 1975. Despite the significant financial support from The
Hague, this multi-ethnic country plunged into chaos and civil war, in which also "Negroes from the bush" (descendants of slaves called Maroons), who suddenly lost their territorial guarantees, were involved [19]. After the declaration of independence a huge exodus from Suriname occurred: around 250,000 people, or half of the then population, left for the Netherlands [22].

This very negative development on one hand warned Antillean leaders seeking independence of the difficulties of becoming an independent country, on the other hand also partly provided an argument for the opponents of independence among the Antilleans, because after this experience the Dutch during the negotiations had to reflect the unfortunate way they left Suriname.

Aruba, the second largest island of the Netherlands Antilles, expressed since 1940s opposition to the dominance of Curaçao. The Arubans demanded separashon, i.e. a specific arrangement of its relations with the Netherlands. Ethnic differences played also an important role in the reinforced antagonism between the two largest islands: while the Arubans have mostly Latin American roots, the inhabitants of Curaçao are of African origin [10]. In a referendum held in 1977 the majority of Aruban population voted in favor of separation from the Netherlands Antilles (the so-called status aparte). Dutch officials were reluctant to provide the Arubans with this special status, because they feared that then through a domino effect the Netherlands Antilles would disintegrate into individual parts, which was not in the interest of The Hague. The Dutch preferred Aruba to become independent instantly, but this was refused by Aruban representatives who were aware of the negative Surinamese experience. In 1986 it was finally agreed that Aruba would acquire status aparte and leave the Netherlands Antilles, but on condition that within ten years it would become completely independent [9]. This specific legislation was intended to dissuade other islands from requiring similar arrangement to separashon [5]. However, in the early 1990s Aruban public opinion showed that it is satisfied with status aparte: independence was supported by only around 10 % of the electorate. The Dutch were forced to reluctantly acknowledge the status quo and to postpone the question of independence of Aruba for an indefinite period.

3. Causes and Consequences of 10th October 2010

Very important role in the "reluctance" of Antillean population to gain independence was undoubtedly played also by economic reasons. Especially in 1980s, the economy of the two largest islands, Curaçao and Aruba, was in a critical situation. In 1990 Dutch Minister for Suriname and Netherlands Antilles Affairs Ernst Hirsch Ballin issued a new policy summarized in the so-called Draft of a Commonwealth Constitution (Schets van een Gemenebestconstitutie). This document significantly changed Dutch approach to its overseas territories. First, it cleared out that the independence of the Antilles or Aruba is not on the agenda, second, it stated that the division of the Netherlands Antilles in two or three countries is inevitable [10]. Schets further anchored basic principle of good governance (deugdelijk bestuur), whose application in the coming years contributed to the professionalization of state administration and to the streamlining of justice [8], all thanks to financial injections directed from The Hague to the Antilles. The Dutch thus proved that they are ready to listen to the demands of Antillean representation; works on the reform of the structure of the Kingdom of the Netherlands, which was completed in 2010, could be started.

"Conference on the future" (Toekomstconferentie), held in March 1993 in Willemstad, ended in failure. The Dutch delegation proposed to strengthen the autonomy of the islands of Bonaire and Saint Martin. This was however opposed by the representatives of Aruba and Curaçao, whose self-government would be weakened. Between 1993 and 1994, referendums were held on Curaçao, Bonaire and Saint Martin. In all of them, the majority of voters supported restructuring and preservation of the Netherlands Antilles (on Curaçao 75 % of voters, on Saint Martin 60 % of voters, on Bonaire 90 % of voters); the idea of formation of a separate country within the Kingdom of the Netherlands was contrary to expectations and the government's campaign refused by local population.

The reform discussions died down for a certain period. The situation changed thanks to another referendum held on Saint Martin in 2000, in which 70 % of the electorate voted in favor of creation of a separate country within the Kingdom of the Netherlands. In 2004 and 2005, there was another
round of referendums, which confirmed the trend initiated by Saint Martin. All the islands expressed its opinion that the Netherlands Antilles should be dissolved (on Curacao 67 % of voters for creation of an autonomous country; on Bonaire 60 % of voters for inclusion into the Netherlands; on Saba 86 % of voters for inclusion into the Netherlands); only Saint Eustatius wished to remain in the Netherlands Antilles (77 % of voters), but this did not prevent further talks and progress. Numbers of voters preferring complete independence were marginal [14]. In October 2006, it was agreed that Bonaire, Saba and Saint Eustatius would become part of the Netherlands as a municipality with a special status. In November, the two remaining and by area larger Antillean territories, Curacao and Saint Martin, signed a treaty with the Dutch government in which they were guaranteed the status of an autonomous country similar to Aruba [5]. As a part of the deal it was however agreed that a stricter oversight of The Hague on the economy and the rule of law in these two areas would be introduced; Curacao and Saint Martin thus paradoxically has temporarily lost some of their powers.

These agreements were ratified by the Netherlands and also by particular islands, however it is worth noticing the approval process in two territories. On Bonaire 87 % of voters in a referendum opposed the new status of the island, nevertheless the referendum results were nullified, because a minimum turnout was not reached (referendum was attended by 35 % of eligible voters, while the required turnout was at least 50 % of voters). Curacao firstly in November 2006 refused to accept the agreement, then decided to leave the decision to the population. In a referendum held in May 2009 a slim majority of 52 % of voters supported the autonomous status of the country. In accordance with Article 55 of the Charter for the Kingdom of the Netherlands the agreements had to be approved also by the Aruban Parliament, which managed to do so only at the second attempt, because at first vote it failed to reach the required two-thirds majority [7]. Aruba also stated that henceforth all laws “considered a threat to Aruban autonomy” must be submitted to a referendum.

On 10th October 2010 the Netherlands Antilles officially ceased to exist. Wishes of individual islands to be controlled directly from the remote Netherlands (The Hague) than from a relatively close Curacao (Willemstad) were thus fulfilled [2]. Curacao and Saint Martin became two autonomous countries within the Kingdom of the Netherlands, joining the Netherlands and Aruba. Bonaire, Saint Eustatius and Saba were converted into a direct part of the Netherlands (to distinguish them from the "European" part of the Netherlands they are sometimes named as Caribbean Netherlands, Cariibisch Nederland) as special municipalities (bijzondere gemeenten).

Following this administrative reform the Charter for the Kingdom of the Netherlands had to be significantly revised, particularly its introductory articles. The reform also affected the Constitution of the Netherlands (Grondwet voor het Koninkrijk der Nederlanden) and the Constitution of Aruba of 1987 (Staatsregeling van Aruba), which were supplemented by newly created constitutions of new countries [20]: the Constitution of Curacao (Staatsregeling van Curacao) and the Constitution of Saint Martin (Staatsregeling van Sint Maarten).

Dutch Constitution is largely applicable only in the European territory of the Netherlands and on the islands of Bonaire, Saint Eustatius and Saba. Nevertheless, it also contains provisions which are fully applicable throughout all the Kingdom of the Netherlands. Constitutions of four constituent countries (the Netherlands, Aruba, Curacao, Saint Martin) have lower legal force than the Charter for the Kingdom of the Netherlands, however they are also partly submitted to the constitution of only one of these countries, namely to the Constitution of the Netherlands. The Charter mainly describes the relationships between different parts of the Kingdom. It also states that each country is obliged to promote and protect human rights (although it does not contain any binding charter of the rights) and to honor the principles of good governance.

Kingdom of the Netherlands is under the existing regulations a federation, where the central government confers a considerable part of the autonomy to individual countries, which are connected by a person of the head of state, at present the King Willem-Alexander of the Netherlands. The Charter knows an institution of the joint executive body of the Kingdom (Council of Ministers of the Kingdom, Ministerraad van het Koninkrijk or Rijksministerraad), as well as the joint legislative body of the Kingdom. Rijksministerraad exercises the powers in matters of major importance (matters not included in this exhaustive list are left to the governments of individual countries). These include e.g. the maintenance of independence and the
defense of the Kingdom, foreign policy, citizenship, extradition, state symbols or regulation of vessels navigating under the Dutch flag. The Council of Ministers of the Kingdom, however, meets only on special occasions in such a way that to the ordinary members of the Dutch (continental) government (Council of Ministers, Ministerraad) are added one member of each other constitutive country appointed by the local government. These so-called Ministers Plenipotentiary (gevolmachtigd minister van Aruba, gevolmachtigd minister van Curaçao, gevolmachtigd minister van Sint Maarten) are designed to protect the interests of their islands in discussions on matters relating to the entire Kingdom. In reality, however, such matters (concerning Aruba, Curaçao and Saint Martin) are decided by the Dutch government, because its composition is practically identical to Ministerraad (the three "overseas" ministers are not capable of altering the decisions of the government currently numbering thirteen ministers and seven state secretaries).

One member of the Dutch government is intended as a "minister of Antillean affairs". Since 1998 the position has been held by the minister of the Interior and Kingdom Relations (minister van Binnenlandse Zaken en Koninkrijksrelaties); in the current second cabinet of Mark Rutte the post is served by Ronald Plasterk of the Labour Party. Although the Charter is fundamentally superior to the Constitution of the Netherlands, there is no legal mechanism by which this rule could be enforced. According to the opinion of the Supreme Court of the Netherlands (Hoge Raad der Nederlanden) it is prohibited for the judges (or doesn't belong to them) to assess the compliance of Dutch laws and regulations with the Charter for the Kingdom of the Netherlands. However, Ministerraad may any law enacted on Aruba, Curaçao and Saint Martin declare invalid due to its conflict with the Charter.

Asymmetrical arrangement of the Kingdom of the Netherlands demonstrated in preceding paragraphs and the fact that foreign affairs and defense are managed by the government of the Netherlands, acting as the government of the Kingdom of the Netherlands (Rijksministerraad), show that the Dutch model contains elements of a decentralized unitary state. The Charter can be changed only after approval by the parliaments of all four countries, its actual effect in the Dutch legal system and political life in comparison with the Constitution of the Netherlands is nevertheless negligible.

Regarding the relationship of the Netherlands overseas territories to the European Union, all six islands have the status of Overseas Countries and Territories (OCT). It means that they are not part of the EU and the EU acquis does not apply to them, however the residents of Aruba, Curaçao, Saint Martin, Bonaire, Saint Eustatius and Saba are citizens of the EU (thanks to their Dutch citizenship). If we look into history the Netherlands Antilles were originally excluded from any association with the European Economic Community. This changed with the entry into force of the Convention on the association of the Netherlands Antilles with the European Economic Community on 1st October 1964. The current arrangement is based on the text of the Treaty on the Functioning of the European Union (Articles 198 to 204, Annex II) and the Council's Overseas Association Decision (OAD) of November 2001 [21]. In the case of Aruba, Curaçao and Saint Martin the Dutch government leaves to the discretion of local authorities, whether these islands will in the future become outermost regions (OMR) of the EU. Regarding the islands of Bonaire, Saint Eustatius and Saba, current OCT status should be evaluated in 2015; it looks likely that thanks to the reform initiated by The Hague these territories could become OMR of the EU.

Autonomous countries Aruba, Curaçao and Saint Martin, as well as special municipalities Bonaire, Saint Eustatius and Saba, have a Joint Court of Justice (Gemeenschappelijk Hof van Justitie van Aruba, Curaçao, Sint Maarten en van Bonaire, Sint Eustatius en Saba), which decides on appeals against decisions of the courts in the first instance on individual islands. Against verdicts of Gemeenschappelijk Hof van Justitie one can appeal to a higher court, which is, however, already situated in the "European" part of the Netherlands.

As mentioned above, all residents of the six Netherlands Caribbean islands are citizens of the Kingdom of the Netherlands. Although the Kingdom consists of four countries, Dutch law recognizes only one category of citizenship, the Dutch citizenship (nederlandsche), which is defined in the Kingdom Act on the Netherlands Nationality (Rijkswet op het Nederlandsch hap). All citizens of the Kingdom of the Netherlands, whether residing in the European part or in the overseas parts of the Kingdom, can participate in elections to the
European Parliament. This follows, inter alia, the judgment of the Court of Justice of the European Union of September 2006 in case M. G. Eman and O. B. Sevinger v. College van burgemeester en wethouders van Den Haag, when the Court accepted objections of these two Arubans (who could not vote to the European Parliament in June 2004) and ruled that all citizens of the Kingdom of the Netherlands may participate in the elections to the European Parliament, even when they reside outside the EU.

4. Aruba, Curaçao, Saint Martin and the others

Let's return for a moment to the political system of the Netherlands Antilles. The highest representative there was the governor, who represented the Dutch monarch and headed the government. Governor was appointed by monarch for six-year period. The last governor of the Netherlands Antilles (2002 –2010) was Frits Goedgedrag, a native of Aruba. The executive power was exercised by the governor jointly with the prime minister and his eight-member cabinet (Council of Ministers), who were elected by the Antillean Parliament for a four-year period. The last heads of the government were Etienne Nestor Ys (2004–2006) and Emily Saiidy de Jongh-Elhage (2006–2010), both leaders of the Party for the Restructured Antilles. The government had to gain the confidence of Parliament called the Estates of the Netherlands Antilles (Staten van de Nederlandse Antillen), whose 22 members were elected for four years. Estates, as well as other central institutions were located in Willemstad on the island of Curaçao. Each of the six (later five) islands represented at the parliamentary elections one constituency. The number of seats allocated to the particular islands from 1954 was as follows: 12 seats for Curaçao, 8 seats for Aruba, 1 seat for Bonaire and 1 seat together for Saint Eustatius, Saba and Saint Martin [6]. After the separation of Aruba in 1986 there was a redistribution, which lasted until 2010: 14 seats for Curaçao, 3 seats for Bonaire, 3 seats for Saint Martin, 1 seat for Saba and 1 seat for Saint Eustatius. After Aruba obtained status aparte, Curaçao became clearly dominant element of the Netherlands Antilles, though, if we take into account the population, respectively the number of eligible voters, this island was in the Estates underrepresented, especially in comparison with the few inhabited islands of Saba and Saint Eustatius, which were conversely strongly overrepresented. Let's add, that matters which were not in the competence of The Hague or Willemstad, were decided by individual islands, i.e. by island councils (eilandsraad).

The election results and the conduct of the parties in the post-election negotiations show that the most determining factor was the origin of the party whose primary task (regardless of political orientation) was to defend the interests of “its” island in the Antillean Parliament. The Netherlands Antilles during their more than a half-century lasting existence did not find a common identity. As a consequence, there was no political party that would be able to address and catch voters across the islands. In the penultimate elections held on 27th January 2006, 14 seats on Curaçao were divided among following political formations: Party for the Restructured Antilles (Partido Antidio Restructurá, PAR, 5 seats), New Antilles Movement (Partido MAN, 3 seats), Party Workers' Liberation Front 30th of May (Partido Frente Obrero Liberashon 30 di Mei, FOL, 2 seats), National People's Party (Partido Nashonal di Pueblo, PNP, 2 seats) and Upwards Curaçao (Forsa Kòrsou, 2 seats). On Saint Martin the most successful were a coalition of Sint Maarten Patriotic Alliance and National Progressive Party (2 seats), as well as Democratic Party Sint Maarten (Democratische Partij Sint Maarten, 1 seat). On Bonaire the mandates were won by Bonaire Patriotic Union (Union Patriotiko Boneriano, 2 seats) and by a coalition of Bonaire Democratic Party (Partido Demokratiko Bone- riano) and Bonaire Social Party (Partido Bone- riano Sosial, together 1 seat). The only seat for the island of Saint Eustatius gained Democratic Party (Democratische Partij Sint Eustatius), for the island of Saba then Windward Islands People's Movement. In the last elections held on 22nd January 2010, on Curaçao PAR received 6 seats, a coalition called List of Change or Lista di Kambio (Partido MAN, Forsa Kòrsou) 5 seats, Sovereign People (Pueblo Soberano) 2 mandates and PNP 1 mandate. On Saint Martin all three seats were won by a coalition of Sint Maarten Patriotic Alliance and National Progressive Party, on the island of Bonaire the mandates were again divided between Bonaire Patriotic Union (2 seats) and Bonaire Democratic Party (1 seat). On the remaining two islands another success could be celebrated by Democratic Party of Saint Eustatius, respectively by Windward Islands People's Movement of Saba.

In the period of the Netherlands Antilles, only on Curaçao occurred political parties with a potential
all-Antillean overlap; this however can be attributed to the already mentioned dominance of the island, one cannot deduce that politicians on Curaçao would be so much interested in issues of 900 kilometers distant islands of Saba and Saint Eustatius. The privileged position of Curaçao was slightly challenged perhaps by Saint Martin, which experienced under the leadership of charismatic Claude Wathey (of the Democratic Party) a big boom, which resulted in a large increase in population, increasing also the number of seats in the Estates assigned to this island from one shared to three. In the early 1990s even thoughts of declaring independence on Saint Martin were discussed. Other islands, Bonaire, Saba and Saint Eustatius, were politically oriented to defend their own interests and focused on delimitation towards other, larger and more powerful partners in the Antillean Parliament.

In the following paragraphs we will briefly introduce the present political functioning of the Netherlands overseas territories. Aruba, situated approximately 30 kilometers off the coast of Venezuela, has an area of 180 km² and a population of around 105,000 inhabitants. Aruba was the first territory to receive autonomy thanks to status aparte in 1986 (followed by Curaçao and Saint Martin in 2010). The monarch is represented on Aruba by a governor, who formally heads the government of Aruba, while watching over the interests of the Kingdom of the Netherlands. He is appointed by the monarch for a six-year period. Currently, the office is held by Fredis Refunjol from Oranjestad. The executive power is also exercised by prime minister and his cabinet, who are elected by Aruban Parliament for four years. Aruba is governed alternately by social-democratically oriented People’s Electoral Movement (Movimiento Electoral di Pueblo, MEP, last prime minister Nelson Oduber) and by Christian democratic Aruban People’s Party (Arubaanse Volkspartij / Partido di Pueblo Arubano, AVP), whose current leader Mike Eman has also since 2009 served as the prime minister. AVP, respectively the Eman’s clan in its head (founder Henny Eman, his grandson and the first ever prime minister of Aruba Jan Hendrik Albert Eman, the current prime minister Mike Eman), played a decisive role in the negotiations with the Dutch representatives after which Aruba was granted special status, so we can consider it the "mother" of Aruban autonomy. The Parliament called Estates of Aruba (Staten van Aruba) has 21 members elected for four-year terms. According to the results of the last election (27th September 2013) two strongest political parties are represented there, i.e. AVP (13 seats) and MEP (7 seats), accompanied by Real Democracy Party (Partido Democracia Real) with the sole legislator.

The island of Curaçao, located east of Aruba and approximately 60 kilometers from the Venezuelan coast, is with an area of 440 km² and a population of more than 140,000 inhabitants the largest and most populous of the Netherlands overseas territories. With the reform of 2010, the same institutional arrangements as on Aruba were introduced. Curaçao could exaggeratedly be described as a "successor" of the Netherlands Antilles. As its first governor the last governor of the Netherlands Antilles, Frits Goedgedrag, was appointed; currently this position is held by Lucille Andrea George-Wout, a native of Curaçao. The political scene of Curaçao is very unstable and fragmented. Since the gain of autonomy in October 2010, there have been four different governments, current prime minister is Ivar Asjes, chairman of Pueblo Soberano. Present composition of 21-member Parliament called Estates of Curaçao (Staten van Curaçao), which was created by transformation from the island council, reflects the results of the most recent parliamentary elections held on 19th October 2012. The strongest party is leftist Sovereign People (Pueblo Soberano) with five seats. This political formation supports the complete independence of the island and disagreed with given autonomous status [5]. Until the last election the party was led by a charismatic leader Helmin Wiels, anti-corruption activist and main herald of ideas of independence. Wiels was, however, in May 2013, probably due to his anti-corruption activities, murdered. Pueblo Soberano’s victory in the election was close, because moderate Movement for the Future of Curaçao (Movememtu Futuro Kòrsou) also holds five seats. Four seats were won by Party for the Restructured Antilles (Partido Antí Restrutturá) as well as by Party for Social Development and Innovation (Partido pa Adelanto I Inovashon Soshal, PAIS). There are two more political parties that are now represented in the Estates: Partido MAN (2 seats) and National People’s Party (Partido Nasional di Pueblo, 1 seat). All the political parties, with the exception of Pueblo Soberano and Partido MAN, being satisfied with the current status of Curaçao, do not see as the actual political priority gaining full independence, however, they don’t exclude this possibility for the future.
Saint Martin is located about 900 kilometers northeast of the previous two territories, in the southern part of the island, whose northern part is occupied by a French overseas collectivity of Saint-Martin. With an area of 34 km² and a population of 35,000 inhabitants, it is the smallest and also the least populated country of the Kingdom of the Netherlands. The function of governor holds a native of Philipsburg Eugene Holiday, former director of the famous Princess Juliana International Airport. The last elections to 15-member Parliament called Estates of Saint Martin (Staten van Sint Maarten) took place on 29th August 2014. It was won by United People's Party with a gain of seven seats, the second was National Alliance formed by Patriotic Alliance and National Progressive Party with four seats; two seats received Democratic Party as well as the newly formed United St. Martin Party. The election results meant that Sarah Wescot-Williams of Democratic Party was in the post of prime minister replaced by Marcel Gumbs of United People's Party.

If we look collectively at all three autonomous countries, our attention will be certainly attracted by the fact that in the new administrative arrangement the traditional division of the Netherlands Antilles on ABC islands (Aruba, Bonaire, Curaçao), lying near the South American coast, and SSS islands (Saint Martin, Saint Eustatius, Saba), located about 900 kilometers to the northeast, was not "respected". Important role was undoubtedly, apart from public opinion on the future status of the island and the ability of elites to promote their interests in negotiations with The Hague, played by a factor in form of the amount of the population, since the country status was gained by the three most populated islands (the least populous country, Saint Martin, has 35,000 inhabitants, the most populous special municipality, Bonaire, has only 14,000 inhabitants). A factor of area was contrary to it downgraded. Bonaire is in fact with an area of 288 km² the second largest island after Curaçao, while Saint Martin possessing an autonomous status has an area of only 34 km².

The options of residents of Aruba, Curaçao and Saint Martin regarding the participation on what is happening in the capital are minimal. Given the constitutionally defined strict separation of the four countries forming the Kingdom of the Netherlands, above mentioned residents cannot vote to the Tweede Kamer nor to the Eerste Kamer, because this right is already "consumed" by their participation in the island's Parliament (Estates) elections. Their interests in the metropole during the discussions on matters affecting the entire Kingdom are defended by the so-called Ministers Plenipotentiary (for Aruba Alfonso Boekhoudt of AVP, for Curaçao Marvelyne Wiels of Pueblo Soberano, for Saint Martin newly Josianne Fleming-Artsen of United People's Party). It is understandable that the people of these three countries cannot vote in local or provincial elections in the "European" part of the Netherlands, as they do not meet the permanent residence requirement. As citizens of the European Union, the voters of Aruba, Curaçao and Saint Martin can at least participate in the elections to the European Parliament, although paradoxically their territories are not part of the Union. The official currency of Aruba is since 1986 Aruban florin; Curaçao and Saint Martin still use Netherlands Antillean guilder, however, it should be soon replaced by a new currency, the Caribbean guilder.

Special municipalities (bijzondere gemeenten) Bonaire, Saint Eustatius and Saba, sometimes referred to as the BES islands or the Caribbean Netherlands, form an integral part of the country Netherlands. In fact, according to Dutch law, they are not municipalities, but “public bodies” (openbare lichamen). Executive power is entrusted to the lieutenant governor (gezaghebber) as a representative of the monarch and to the so-called governing council, which is responsible to the island council (eilandsraad) elected by the people. Eilandsraad is therefore a basic legislative body of each municipality. Bijzondere gemeenten do not form part of any province, the provincial powers are thus divided by law between the island and the central authorities.

The island of Bonaire, located near the Venezuelan coast east of Curaçao, is with an area of 288 km² and a population of 14,000 inhabitants by far the largest and most populous of the BES islands. Lieutenant governor is a native of Aruba, Lydia Emerencia. The island council has nine members, namely four representatives of Bonaire Patriotic Union (Union Patriotiko Boneriano), three representatives of Bonaire Democratic Party (Partido Demokratiko Boneriano), one representative of the Movementu Boneiru Liber as well as one member of Partido pro Hustisa & Union.

The other two municipalities, located between the Saint Martin and Saint Kitts islands in the northern part of the Caribbean Sea, are in terms of size and
population marginal. Saint Eustatius has an area of 21 km² and a population of 3,800 inhabitants. Lieutenant governor is Gerald Berkel. The island council has five members. The only major political force acting on the island is Democratic Party (Democratische Partij Sint Eustatius). Saba has an area of 13 km² with 1,900 inhabitants. Lieutenant governor is Jonathan Johnson. The island council has five members, four of them represent the main Saba political party, the Windward Islands People's Movement.

Of the three special municipalities clearly thanks to its size, population and geographic location stands out Bonaire, which was still in 1950s third most important island, but gradually handed this position over to progressive Saint Martin. During the negotiations at the turn of the millennium there was not a strong enough or rather stable and persistent demand for the change of its status and granting greater autonomy on the island of Bonaire, so it found itself in the company of Saint Eustatius and Saba.

Elections to the island councils are by the Dutch law considered municipal elections, residents of special municipalities cannot therefore logically participate in local elections in the "European" part of the Netherlands. Neither can they participate in the provincial elections as they do not meet the permanent residence requirement; in this context they are also excluded from influencing the composition of the Eerste Kamer. Residents of Bonaire, Saint Eustatius and Saba may, however, from 2010 vote in elections to the Tweede Kamer; in this case these three islands form one special constituency. In the most recent Netherlands parliamentary elections held on 12th September 2012, the turnout on the BES islands was only 23.8 % of eligible voters (average turnout in the Netherlands was 74.6 %). No local political organization participated in the elections, only parties from the "European" part of the Netherlands were present. 3,067 voters from the Caribbean Netherlands, who came to the polls, preferred Labour Party (24.0 %), followed by People's Party for Freedom and Democracy (18.2 %), Democrats 66 (16.8 %), Christian Democratic Appeal (16.3 %) and Socialist Party (7.5 %). Residents of the BES islands, moreover, can participate in elections to the European Parliament. The official currency on this trio of islands has been since 2011 a US dollar.

Conclusion

The Dutch administration in The Hague never showed special interest in the overseas possessions in the Caribbean, conversely, most of the attention was devoted to the Dutch East Indies. When the Dutch after WWII lost this key colony, it forced them to newly reflect their relationship with Caribbean territories, that had been until then somewhat forgotten. In that moment, however, the Dutch encountered a problem that had not expected. Although the Antilleans welcomed the reform of 1954, which granted them for the first time a certain degree of autonomy, their approach to the idea of complete independence was very reserved. In addition to the reasons I will outline later, one of the causes could be the fact that the islands practically lacked indigenous population. As illustrated by the examples of the United States or Australia, this would still not be an obstacle to find own identity and to aspire for independence. The Netherlands territories in the Antilles are, however, situated on a large area in two regions (the ABC islands, respectively the SSS islands), remote from each other approximately 900 kilometers. The ethnic composition of the population of these territories has been very diverse, there have existed considerable linguistic or religious differences between the populations of particular islands. The concept of a single "Antillean nation" implanted from The Hague was thus in advance doomed to failure.

Independence was finally "voluntarily" declared by Suriname, which is however different in many aspects from the Netherlands Antilles. Subsequent "fate" of this state has served for Antillean residents and politicians as a sufficient proof that full independence is not really an ideal way. In the early 1990s The Hague therefore decided to change existing policies (when the Antilleans were given only the choice between two extreme solutions: independence and close connection to the Netherlands) and offered a compromise variant of strengthening autonomy, the result of which is the reform of 2010 and the current arrangement of the Kingdom of the Netherlands. The first signal in this respect was granting (albeit conditional) of status aparte to Aruba in 1986.

Another aspect that we must take into account is the high degree of rivalry between the islands, especially among long-term dominant Curaçao,
which during the colonial times housed all the Antillean institutions, dissatisfied neighboring Aruba and since 1980s also rapidly growing Saint Martin. For these territories it was more important to separate from each other so that no one could manage the others than to gain independence from the Netherlands [5]. The Netherlands Antilles, as already mentioned, never formed a coherent political and cultural unit. According to one saying: "the Netherlands Antilles existed only in the Netherlands" [7]. The Hague's decision to carry out the reorganization, that the Dutch so long refused because they did not want to establish a separate bilateral relationships with each island, was in fact the only possible solution and a logical outcome of a situation that had never been perfect.

But we cannot forget perhaps the most important factor affecting relations between the overseas territories and the metropole, which is the economic and social factor. Approximately 14 % of the total Caribbean population (4.5 million people) live in dependent territories: these people, according to statistics, enjoy a higher standard of living, their rights are better protected and they live in a stable political environment in comparison with (and in contrast with) 30 million inhabitants of the Caribbean, who are citizens of independent states. The guarantee of a trustworthy metropole has also a positive effect on the decisions of foreign investors [10].

Last but not least, being part of the Kingdom provides all the residents of the Netherlands overseas territories with a Dutch citizenship, Dutch passport, and thus with a free access to EU countries. Around 132,000 inhabitants of the former Netherlands Antilles have so far traveled (or permanently emigrated) to the Netherlands for a better standard of living, work or study, which in comparison with a population that continues to live on the six islands (around 300,000 inhabitants) is an alarming number. Rather as an exodus could be described a particular case of Curaçao, where approximately 140,000 inhabitants live on the island, while 100,000 inhabitants seek happiness in the Netherlands [15].

Regarding the interaction of the political scene in the "European" part of the Netherlands, in the Caribbean Netherlands, on Aruba, Curaçao and Saint Martin, mutual contacts and opportunities to participate are minimal. Residents of Aruba, Curaçao and Saint Martin are completely excluded from influencing the composition of the Tweede Kamer, which is on one side logical (it is a legislative body of another country of the Kingdom), on the other side we must realize that the Dutch parliament often decides on matters of major importance concerning the whole federation. Institute of the so-called Ministers Plenipotentiary in these matters can hardly replace voices of Arubans and others in elections. Conversely, residents of special municipalities do participate in these elections (proportionally to the population), so in the last elections in September 2012 they could learn more about candidates lists and programs of "European" Netherlands parties, which until then had not been involved in the political life of the Caribbean. Of course, with regard to the "size" of electorate on the islands of Bonaire, Saint Eustatius and Saba, the effect of participation of Dutch parties in the overseas territories for the final elections results was rather symbolic and formal.

Until 2010, the political parties in the Netherlands Caribbean (except Aruba) focused primarily on interests of their island during the negotiations in the Antillean Parliament. Now, however, especially on Curaçao and Saint Martin, the door has been open to a deeper fragmentation of the political scene, including the question of the future status of the island. In the past, the most important autonomist parties were Aruban People's Party and Democratic Party Sint Maarten. Their demands were met by gaining the autonomous status, so independence is not currently their goal (in the case of Democratic Party the political course was changed also due to resignation of a charismatic leader Claude Wathey). Today the most active independentist political formation can be found on Curaçao. It is Pueblo Soberano (followed by Partido MAN), which is the strongest party on the island, but currently does not possess a sufficient mandate to begin negotiations on the change of status. Its electoral result, however, indicates many things about current trends in Curaçao's society.

Although the Kingdom of the Netherlands is formally a federation of four countries, in fact, the most important issues are decided by The Hague (located about 7,000 kilometers from the SSS islands and 8,000 kilometers from the ABC islands), the legitimacy of the representation of the interests of Aruba, Curaçao and Saint Martin is therefore questionable. Representatives of these three countries have achieved in recent decades major concessions from the Netherlands (separate
relations), the matter is whether and how long they will be satisfied with these achievements in the future. Asymmetry and (to some extent) "injustice" of the current federal arrangement would suggest the contrary, i.e. the requirement of independence, on the other hand, however, we must realize that this "toleration" of the privileged position of the Netherlands (compared to other countries) is amply compensated by the financial support of The Hague, by the Dutch nationality and maybe even by higher prestige. It is probable that the islands of Aruba, Curaçao and Saint Martin may in the future consider the idea of complete independence, it is also likely that on the island of Bonaire voices calling for granting the status of a country will appear. Today it is probably too early to make premature conclusions, it is necessary to wait how the current, still relatively fresh arrangements between the Netherlands and its Caribbean overseas territories, proves in practice.

References


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4 Tendencies requiring granting the status of the country have been recently noticeable on the Saint Eustatius, where a referendum was held on 17th December 2014. According to the results, 66.5% of voters support the autonomy (status of a country), while 32.8% of voters prefer status quo (for complete independence voted marginal 0.4% of voters). The results of the referendum, however, did not become binding because voter turnout did not exceed the mandatory 60%, as in fact it was a mere 45.4% of eligible voters.


Annexes

Table 1. Basic facts

<table>
<thead>
<tr>
<th>Territory</th>
<th>Status</th>
<th>Area</th>
<th>Population</th>
<th>Distance to the metropole</th>
<th>Distance to the ABC islands</th>
<th>Distance to the SSS islands</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aruba</td>
<td>autonomous country</td>
<td>180 km²</td>
<td>110 000</td>
<td>8 000 km</td>
<td>---</td>
<td>900 km</td>
</tr>
<tr>
<td>Curaçao</td>
<td>autonomous country</td>
<td>440 km²</td>
<td>145 000</td>
<td>8 000 km</td>
<td>---</td>
<td>900 km</td>
</tr>
<tr>
<td>Saint Martin</td>
<td>autonomous country</td>
<td>34 km²</td>
<td>40 000</td>
<td>7 000 km</td>
<td>900 km</td>
<td>---</td>
</tr>
<tr>
<td>Bonaire</td>
<td>special municipality</td>
<td>288 km²</td>
<td>14 000</td>
<td>8 000 km</td>
<td>---</td>
<td>900 km</td>
</tr>
<tr>
<td>Saint Eustatius</td>
<td>special municipality</td>
<td>21 km²</td>
<td>3 800</td>
<td>7 000 km</td>
<td>900 km</td>
<td>---</td>
</tr>
<tr>
<td>“European”</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td>autonomous country</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kingdom of the</td>
<td>---</td>
<td>42 500 km²</td>
<td>17 200 000</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Netherlands</td>
<td>---</td>
<td></td>
<td></td>
<td>---</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Resources: Centraal Bureau voor de Statistiek; CIA World Factbook; own research

Table 2. Staten van de Nederlandse Antillen

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Mandates</td>
<td>Population</td>
<td>Mandates</td>
<td>Population</td>
</tr>
<tr>
<td>Aruba</td>
<td>8</td>
<td>40 000</td>
<td>8</td>
</tr>
<tr>
<td>Curaçao</td>
<td>8</td>
<td>101 000</td>
<td>12</td>
</tr>
<tr>
<td>Bonaire</td>
<td>2</td>
<td>7 000</td>
<td>1</td>
</tr>
<tr>
<td>Leeward Islands</td>
<td>3</td>
<td>4 000</td>
<td>1</td>
</tr>
<tr>
<td>Saint Martin</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Saint Eustatius</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Saba</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>21</strong></td>
<td><strong>152 000</strong></td>
<td><strong>22</strong></td>
</tr>
</tbody>
</table>

Resources: [6]; Centraal Bureau voor de Statistiek; www.cbs.aw; unctadstat.unctad.org; own research
<table>
<thead>
<tr>
<th>Territory</th>
<th>Political party</th>
<th>Votes [date of elections]</th>
<th>Mandates</th>
<th>Ideology</th>
<th>Relation to the metropole</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aruba</td>
<td>Aruban People's Party (AVP)</td>
<td>57,28 % [27-09-2013]</td>
<td>13</td>
<td>Christian democracy</td>
<td>satisfaction with the status quo</td>
</tr>
<tr>
<td></td>
<td>Arubaanse Volkspartij</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Partido di Pueblo Arubano</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>People's Electoral Movement (MEP)</td>
<td>30,54 % [27-09-2013]</td>
<td>7</td>
<td>Social democracy</td>
<td>loyalty, while respecting the autonomy</td>
</tr>
<tr>
<td></td>
<td>Movimiento Electoral di Pueblo</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Real Democracy Party (PDR)</td>
<td>7,82 % [27-09-2013]</td>
<td>1</td>
<td>Centrism, populism</td>
<td>loyalty, while respecting the autonomy</td>
</tr>
<tr>
<td></td>
<td>Partido Democratia Real</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong>: 21</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Curaçao</td>
<td>Sovereign People (PS)</td>
<td>22,6 % [19-10-2012]</td>
<td>5</td>
<td>Centrism</td>
<td>Independence as a goal</td>
</tr>
<tr>
<td></td>
<td>Pueblo Soberano</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Movement for the Future of Curaçao (MFK)</td>
<td>21,2 % [19-10-2012]</td>
<td>5</td>
<td>Centrism</td>
<td>Satisfaction with the status quo</td>
</tr>
<tr>
<td></td>
<td>Movementu Futuro Kòrsou</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Party for the Restructured Antilles (PAR)</td>
<td>19,7 % [19-10-2012]</td>
<td>4</td>
<td>Liberalism</td>
<td>Satisfaction with the status quo</td>
</tr>
<tr>
<td></td>
<td>Partido Antí Restrukturá</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong>: 21</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Party for Social Development and Innovation (PAIS)</td>
<td>17,7 % [19-10-2012]</td>
<td>4</td>
<td>Social liberalism</td>
<td>Loyalty, while respecting the autonomy</td>
</tr>
<tr>
<td></td>
<td>Partido pa Adelanto I Inovashon Soshal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Partido MAN</strong>: 9</td>
<td></td>
<td>2</td>
<td>Social democracy</td>
<td>Independence as a goal</td>
</tr>
<tr>
<td></td>
<td>National People's Party (PNP)</td>
<td>5,9 % [29-08-2014]</td>
<td>1</td>
<td>Christian democracy</td>
<td>Satisfaction with the status quo</td>
</tr>
<tr>
<td></td>
<td>Partido Nashonal di Pueblo</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong>: 15</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saint Martin</td>
<td>United People’s Party (UP)</td>
<td>42,67 % [29-08-2014]</td>
<td>7</td>
<td>Christian democracy</td>
<td>Efforts to extend the autonomy</td>
</tr>
<tr>
<td></td>
<td>Patriotic Alliance</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>National Alliance (NA)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>National Progressive Party</td>
<td>27,86 % [29-08-2014]</td>
<td>4</td>
<td>Centrism, populism</td>
<td>Satisfaction with the status quo</td>
</tr>
<tr>
<td></td>
<td>Democratic Party (DP)</td>
<td>16,09 % [29-08-2014]</td>
<td>2</td>
<td>Centrism</td>
<td>Satisfaction with the status quo</td>
</tr>
<tr>
<td></td>
<td>United Sint Maarten Party (US)</td>
<td>11,31 % [29-08-2014]</td>
<td>2</td>
<td>Centrism</td>
<td>No reference</td>
</tr>
<tr>
<td>Bonaire</td>
<td><strong>Total</strong>: 9</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Political party

<table>
<thead>
<tr>
<th>Political party (rank)</th>
<th>Votes in the Netherlands (rank)</th>
<th>Votes on the BES islands (rank)</th>
</tr>
</thead>
<tbody>
<tr>
<td>People’s Party for Freedom and Democracy (VVD) Volkspartij voor Vrijheid en Democratie</td>
<td>26,58 % 1.</td>
<td>18,23 % 2.</td>
</tr>
<tr>
<td>Labour Party (PvdA) Partij van de Arbeid</td>
<td>24,84 % 2.</td>
<td>24,00 % 1.</td>
</tr>
<tr>
<td>Party for Freedom (PVV) Partij voor de Vrijheid</td>
<td>10,08 % 3.</td>
<td>2,85 % 7.</td>
</tr>
<tr>
<td>Socialist Party (SP) Socialistische Partij</td>
<td>9,65 % 4.</td>
<td>7,52 % 5.</td>
</tr>
<tr>
<td>Christian Democratic Appeal (CDA) Christen-Democratisch Appèl</td>
<td>8,51 % 5.</td>
<td>16,26 % 4.</td>
</tr>
<tr>
<td>Democrats 66 (D66) Democraten 66</td>
<td>8,03 % 6.</td>
<td>16,75 % 3.</td>
</tr>
<tr>
<td>ChristianUnion (CU) ChristenUnie</td>
<td>3,13 % 7.</td>
<td>4,44 % 6.</td>
</tr>
</tbody>
</table>

Resources: Centraal Bureau voor de Statistiek; www.electionguide.org; Kiesraad Databank Verkiezingsuitslagen; electoral programs of political parties; own research

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**Table 4. Netherlands parliamentary elections, 2012**
<table>
<thead>
<tr>
<th>Party</th>
<th>%</th>
<th>Rank</th>
<th>%</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>GreenLeft (GL)</td>
<td>2.33%</td>
<td>8</td>
<td>2.58%</td>
<td>8</td>
</tr>
<tr>
<td>GroenLinks</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reformed Political Party (SGP)</td>
<td>2.09%</td>
<td>9</td>
<td>0.42%</td>
<td>13</td>
</tr>
<tr>
<td>Staatkundig Gereformeerde Partij</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Party for the Animals (PvdD)</td>
<td>1.93%</td>
<td>10</td>
<td>2.43%</td>
<td>9</td>
</tr>
<tr>
<td>Partij voor de Dieren</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>50PLUS</td>
<td>1.88%</td>
<td>11</td>
<td>2.01%</td>
<td>10</td>
</tr>
<tr>
<td>turnout</td>
<td>74.57%</td>
<td></td>
<td>23.78%</td>
<td></td>
</tr>
</tbody>
</table>

Resources: Kiesraad Databank Verkiezingsuitslagen
Systems Analysis in Study of the Political Élite

Nadezhda Ponomarenko
The Russian Presidential Academy of National Economy
and Public Administration, Russian Federation
p-nadezda@mail.ru

Abstract: The main topic of the research is applying of systems approach in studying of political élite. This approach was applied in the analysis of Russia’s regional power élite (1991 – 2010). The élite was studied as a complex self-reference system oriented at its own environment not only in an adaptive way, but first and foremost in structure. The systems approach specifies the following conceptual frame-work of the study: self-reference, system boundaries, interaction between the political élite and the surrounding world.

Introduction

The power élite is one of the most important factor in the political process. Changing of the élite structure, its role and significance in the public system requires applying new methods of analysis, since the former approaches were not always functional for solving newly emerging problems.

Application of the systems analysis to studying the political élite enabled us to analyze the structure and functions of the élite, create a model of éliteogenesis. Studying the political élite as a system but not merely a social group allowed to substantially broaden the scope for analyzing it.

Analyzing the élites from the viewpoint of the systems theory made it possible to consider the object under study as a complex system existing in the conditions of transformation thereby determining the conceptual framework of the study.

1. The structure of political élite system

Political élite is the self-reference system. Self-reference assumes a principle that is designated as the principle of a compound constitution which declines the former idea that the system as a whole the system of political élite in particular consist only of elements and connections between them. No element can be determined irrespective of the system [1; 63-70]. So, the system of political élite considers its elements as such and it qualifies them in connection with this. As a result, the system of political élite can be constituted and changed only by means of the relations of its elements, but not by means of disintegration and reorganization. The system as a unity that cannot be decomposed any further is each time the element [1; 72].

The realization of intra-élite connections in consequence of the integrity calls for selection but not mere inclusion of new elements in the system structure. The fact that rather unlike élite systems are formed out of the initial stratum of fairly similar unities may be accounted for by the necessity of selection and by the fact of conditioning by the selection acts. It should be noted that the self-reference, at the level of elements, reproduction of the élite is to secure elements of those kinds that are stipulated by the existing system of relations, thereby ensuring reproduction, which results in setting the boundaries of variations of transformation of the élite structure.

The process of reproduction of the system of political élite can be applied only internally. In other words, the élite structures, unless they are willing to relinquish the foundation of their existence, have to secure the capacity for attaching reproduction, which limits the range of feasible changes within the framework of the system.

The system of political élite that has at its disposal its own structures and processes is capable of subordinating to these forms of strengthening of selectivity all the elements that are produced and reproduced by it. As a result it will be able to regulate its ownautopoiesis [1; 60,73]. However, in the conditions of the surrounding world this consideration of the whole aggregate of possible elements by means of the forms of strengthening

\[ \text{The system is characterized as a self-reference one if the elements of which the given system is comprised are organized by the system itself as functional unities, and in all the relations between these elements the system provides reference to such self-constitution, thereby continuously reproducing it.} \]
selectivity cannot still have any exclusive applicability. This works merely as the procedure of differentiation, consequently, in analyzing the élite structures one should take into account the events of deviation, while in respect of intra-élite processes account should be taken of possible and unrealizable ones.

Political élite structures leave open a limited set of choice possibilities. By means of this selection the structures can direct further acts of selection, each time reducing the possibilities to visible situations. The processes are realized due to the fact that particular acts of choice are arranged in time relative to each other, are joined together with each other, and, consequently, the previous selection acts, and respectively, its expected acts, are built in a separate selection act as its prerequisites [1; 79-80].

It is noteworthy that in the framework of new conceptions of the theory of systems, the structure does not act as such, but is part of the experience of differences [1; 33, 49]. Thus, the élite system creates its own past as its own causal foundation that allows it to distance from the causal pressure of the surrounding world. As a result the modus operandi of self-reference élite systems passes on to such forms of causality which to a large degree take the system away from the safe external control.

Élite systems that create their own causality, in that case are no longer subject to “causal explanation” (unless in the procedure of the observer’s reduction); and the reason lies not only in the lack of transparency of their integrity, but due to logical foundations. They assume themselves as the product of self-reproduction [1; 63-70]. The system of political élite may perceive any external influence or external stimulus first and foremost as information, i.e. an experience of difference; and in that form fixes it in itself.

The integrity of political élite is reproduced as an inevitable trait at each of the higher levels of formation of the given system. An integrated system of political élite must adapt not only to its surrounding world, but also to its own integrated nature. The system should be able to cope with its internal crises and “challenges”, evolve mechanisms, say, that could reduce any deviated behavior, which becomes possible only due to the fact that there exist dominant basic structures [1; 62]. Consequently, élite, as a self-reference system has to be self-adaptable, namely, to be able to adapt to its own integrity. This fact explains why élite systems cannot continuously follow changes in its surrounding world even in the conditions of transformation of the regime.

It should be pointed out that the degree of integration of political élite may be different. In the systems theory, systems of higher (emergent) order may possess lower integrity than systems of lower order, since they themselves determine the integrity and the number of elements of which they consist; i.e., in the integrity they are independent of their real foundation [1; 49-50]. It also means that the necessary and, respectively, sufficient integrity of the political élite system is not determined by the “material” used by the system, but can be determined anew for each system formation level either in conformity with the relevant surrounding world, or with respective political regime.

2. System boundaries

The most important requirement for isolation of the systems, along with the constitution of their own elements is determination of the boundaries. The boundaries may be considered determined enough, if they allow to process problems of behavior of the borderline, that remained open, or attribute the events either inside or outside, by the system’s own means [1; 58-61].

In a general sense the boundaries of political elite possess a dual function of separation and joining the system and the surrounding world. If the boundaries are determined accurately, the elements may be attached either to the system, or to its surrounding world. On the contrary, relations may exist both between the system and the surrounding world. The boundary separates the elements, but not necessarily the relations; it separates the events, but allows causal actions to be realized [1; 58]. This feature distinguishes the notion of system from the notion of structure.

This, in itself old and indisputable notion of the boundary is a prerequisite for the latest development of the theory of systems, in which the distinction between open and confidential systems is already perceived not as antipodes of the types, but as a manifestation of strengthening [1; 58-59]. With the help of the boundaries, the systems may at the same time close and open, thereby separating the internal interdependences from interdependences.
system/surrounding world, and connect them with each other. In this respect, the boundaries are predominantly an acquisition of evolution. Any higher development of the system, first and foremost, its development of the systems of internally-closed self-reference assumes the presence of boundaries [1; 59, 267].

In the perspective of the dynamics of development, the boundaries act as a factor of amplification. In the System theory this aspect is designated as the derivative of systems differentiation. Formation of the boundaries interrupts the discontinuity of processes connecting the system with the surrounding world [1; 42, 61]. The discontinuities produced in the process may be fairly regular, allowing the system an opportunity to estimate its contacts with the surrounding world.

The boundaries of the system always cut off the surrounding world; yet, the requirements presented here are changed if the system in its own surrounding world has to discern other systems (and their surrounding worlds) and determine its boundaries in accordance with that distinction. The relation in which the boundaries are determined under pressure of the necessity of their input, consequently, the relationship that requires a more accurate determination of their boundaries and their preservation, follows from the above distinction between the aggregate surrounding world and the systems in the surrounding world of the system [1; 43].

The notion of a boundary implies that the processes crossing them (for instance, information exchange), proceed in the transition of the system in different conditions (for example, in the conditions of fragmentation or consensus of the ruling élite). One should take into account that the boundaries do not signify any rupture of the connections. In this respect, preserving the boundaries is a condition for retaining the system of ruling élite, since the distinction is a functional prerequisite of self-reference operations.

3. Interaction between the political élite and the surrounding world

In this connection we would like to dwell in greater detail on the difference between the system of political élite and the surrounding world which has deep consequences for understanding the causality within the framework of the system of political élite. The ruling élite as a system is oriented at its own surrounding world not only in an adaptive sort of way, but first and foremost in structure. The political élite systems are constituted and preserved by means of creating and preserving the difference with the surrounding world.

For their part, the systems in the surrounding world of some system are oriented at their surrounding worlds. However, no system can totally control someone else’s relations system/surrounding world, if only by way of destruction. Therefore, every system has its surrounding world in the form of an involved complex structure of mutual relations of the system and the surrounding world, and at the same time as a unity constituted by the system itself that requires only selective watching [1; 44].

The fact that it is important to differentiate the surrounding world of the system and the system in the surrounding world of the given system is one of the most important consequences of the paradigm system/surrounding world [1; 43]. So, first and foremost one should draw a hard and fast line between the relations of dependence between the surrounding world and the system from the relations of dependence between the systems. This distinction undermines the former themes of domination/subordination. Whether the relations in which one system dominates over the other can and how far they can develop not in the last place depend on the situation of dependence of both systems and the system of their relations on the respective surrounding world [1; 44-46].

The line of separation between the system and the surrounding world should not be perceived as isolation and integration of the most important causes in the system; for it, to a much greater degree, slits the causal relationships. Hence, as a result of evolution, a complex of “productive reasons” can be formed, and being once formed, supplement appropriate reasons from the surrounding world [1; 47].

Conclusions

The systems approach enabled us to work out a more flexible and effective theoretical basis for studying political élites. In the framework of systems approach “the political élite” concept has been determined, and some functional set of instruments for the solution of scientific problems in terms of élitology has been created.
In the course of the conducted investigation, some limitations of the systems approach have been established. For one thing, the present approach is characterized by a certain degree of reduction. Thus, in creating a model of Russia’s élitogenesis, we faced the necessity of considerable schematization of the processes under study, as well as some “depersonalization” of the élite. Nevertheless, the efficiency of the systems approach in the study of the political élite is sufficiently high, though the application of the present approach needs further working out as well as discussing in the professional sphere.

References


Satisfaction in the Standard of Quality in the Thai Restaurant Business

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Abstract: The purposes of this research were to study the level of satisfaction with the standard of quality in the Thai restaurant business and to recommend guidelines to enhance the quality in Thai restaurants in order to compete with other ethnic restaurants. This study was a mixed research of qualitative and quantitative methods. There were 12 key informants from various experts in the Thai restaurant industry. In addition, there were a total of 400 samples which were determined by Taro Yamane for the quantitative research. SPSS program was utilized to obtain statistical descriptions. The findings revealed that there were five categories of standard from high to low level of satisfaction as follows: 1) Thai restaurant business must be unique and delicious, 2) Thai restaurant business must have a combination of food and cultural heritage, 3) Thai restaurant business must offer food & beverages that are clean and hygienic, 4) Thai restaurant business must offer reasonable prices, and 5) Thai restaurant business must offer a good atmosphere.

Introduction

In the modern age of tourism and hospitality of Thailand, the industry is rapidly growing every day and there are always two important parties in the business which sellers and buyers. The buyers here refer to the majority of 20 million of international tourists who visit Thailand every year. These international tourists are always concerned with their satisfaction for the standard of the quality of service. Kotler and Armstrong (2001) stated that satisfaction of service quality could provide a conceptual framework that was useful in understanding of what the customers really wanted and what were the internal factors and external factors that could shape their thinking [1]. Customer satisfaction is the result of the correlation between a customer’s expectation and a customer’s real experience of service. Therefore, satisfaction is the gap between expectation and real experience. The bigger of the gap means the low level of satisfaction, the smaller of the gap means the high level of satisfaction [2]. Customer satisfaction may also rely on many factors or many dimensions such as assurance, reliability, responsiveness, empathy, and quality. The research paper aimed to focus the study on the topic of satisfaction in standard of quality in the Thai restaurant business in order to find out what could be the main factor that enhanced the level of satisfaction of the international tourists who are visiting Thailand during the year of 2014.

1. Literature Review

The factor of satisfaction helps the international tourists to communicate their needs about the quality of services in Thai restaurants. The factor of satisfaction is very important because it helps to evaluate the Thai restaurants’ strengths and weaknesses which, in turn, help the Thai restaurants to make progress. In general, all businesses have been established with the objective of maximizing its profit and the level of customer’s satisfaction is the key to link between the performance of the business and the profit. The high level of satisfaction means customers will come back and repurchase the goods and services again and again in the near future. The business can make a steady profit from these satisfied customers. Therefore, it is imperative for any business to have the main responsibility to create the high level of customer’s satisfaction. Moreover, customer’s satisfaction can help to increase the sales, to reduce production costs, and to increase the marketing exposure. This is because if the customers really have a high level of satisfaction with the goods and services provided by the business organization, they refer the positive information to their friends and relatives. Thus, this positive word of mouth advertising is free and very effective to draw new customers. In addition, high level of customer’s satisfaction helps to promote the goodwill of the business organization.

Service quality is as important as the delicious foods in the restaurants business. Service quality can be identified as one of the most effective means of creating competitive position and improving the performance of the business organization. If the customer is not happy with the quality of the service, he or she will complain and may not be back to buy the goods and service again. This is because the service quality does not match with his or her demand. It is common for customers to complaint about low quality service. On the other hands, it is also common for customers to appreciate about the high
quality service (Barlow & Muller, 2008). When customers pay for the goods and services, it is assumed that the goods and services will function properly or that the service taken is as guaranteed or high quality of service. If the service of the restaurant is highly satisfied, they will be no complaints. If there is something wrong and the customers complain about the service, then the restaurants business should respond immediately to the complaint and clear up whatever is customer’s complaint. Of course, there are many benefits of customer’ satisfaction, for instance, there are more business with the regular satisfied customers and attract new customers.

2. Methodology

The author chose to do the research of customer satisfaction in Thai restaurants in Bangkok, Thailand. These Thai restaurants were selected to be the main study because there were many international tourist customers. The data was gathered through customer satisfaction survey. The questions were structured interview questions in which the same question were asked to international tourist customers. The aims of this research were to study the level of satisfaction with the standard of quality in the Thai restaurant businesses in Bangkok, Thailand and to recommend guidelines to enhance the quality in Thai restaurants in order to compete with other ethnic restaurants and be more competitive in the business [4]. This study was a mixed research of qualitative and quantitative methods. There were 12 key informants from various experts in the Thai restaurant industry and they were agreed to the in-depth interview. The population of the quantitative research included all international tourists who entered the Thai restaurants in Bangkok, Thailand. In addition, there were a total of 400 samples which were randomly chosen in Thai restaurants. The samples were all international tourists which were determined by Taro Yamane for the quantitative research. SPSS program was utilized to obtain statistical descriptions [5].

3. Findings

From the qualitative research, the findings revealed the important strengths and weaknesses of the Thai restaurants in the area of Bangkok, Thailand. The SWOT analysis was performed. There were five strengths, five weaknesses, five opportunities, and five threats that were agreed with all the informants from in-depth interview.

**TABLE I. Strengths of Thai Restaurants**

<table>
<thead>
<tr>
<th>Rank</th>
<th>Strengths</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The Thai restaurant is neat and clean.</td>
</tr>
<tr>
<td>2</td>
<td>The prices are reasonable and proper with the food and services.</td>
</tr>
<tr>
<td>3</td>
<td>The Thai restaurant has a good atmosphere.</td>
</tr>
<tr>
<td>4</td>
<td>The staff were well-trained and co-operative to the customers</td>
</tr>
<tr>
<td>5</td>
<td>The Thai restaurant offered the good service.</td>
</tr>
</tbody>
</table>

The strengths of Thai restaurants can be ranked from high to low according to the information obtain from the in-depth interview as follows: 1) The Thai restaurant is neat and clean, 2) The prices are reasonable and proper with the food and services, 3) The Thai restaurant has a good atmosphere, 4) The staff was well-trained and co-operative to the customers, and 5) The Thai restaurant offered the good service.

**TABLE II. Weaknesses of Thai Restaurants**

<table>
<thead>
<tr>
<th>Rank</th>
<th>Weaknesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The Thai restaurant staff was unable to communicate English well.</td>
</tr>
<tr>
<td>2</td>
<td>The Thai restaurant was unable to build the brand image.</td>
</tr>
<tr>
<td>3</td>
<td>The Thai restaurant was too slow in their service.</td>
</tr>
<tr>
<td>4</td>
<td>The restroom was not enough.</td>
</tr>
<tr>
<td>5</td>
<td>The kitchen of Thai restaurant was not very clean.</td>
</tr>
</tbody>
</table>

The weaknesses of Thai restaurants can be ranked from high to low according to the information obtain from the in-depth interview as follows: 1) The Thai restaurant staff was unable to communicate English well, 2) The Thai restaurant was unable to build the brand image, 3) The Thai restaurant was too slow in their service, 4) The restroom was not enough, and 5) The kitchen of Thai restaurant was not very clean.
brand image, 3) The Thai restaurant was too slow in their service, 4) The restroom was not enough, and 5) The kitchen of Thai restaurant was not very clean.

### TABLE III. Opportunities of Thai Restaurants

<table>
<thead>
<tr>
<th>Opportunities</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The Thai restaurant is in the good location.</td>
<td>1</td>
</tr>
<tr>
<td>2. There are growing numbers of international tourists.</td>
<td>2</td>
</tr>
<tr>
<td>3. The Thai restaurant has an international good reputation.</td>
<td>3</td>
</tr>
<tr>
<td>4. The cultural shows and events help to increase market share.</td>
<td>4</td>
</tr>
<tr>
<td>5. The ASEAN integration helps to increase customers.</td>
<td>5</td>
</tr>
</tbody>
</table>

The opportunities of Thai restaurants can be ranked from high to low according to the information obtained from the in-depth interview as follows: 1) The Thai restaurant is in the good location, 2) There are growing numbers of international tourists, 3) The Thai restaurant has an international good reputation, 4) The cultural shows and events help to increase market share, and 5) The ASEAN integration helps to increase customers.

### TABLE IV. Threats of Thai Restaurants

<table>
<thead>
<tr>
<th>Threats</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The Thai recession may affect the restaurants business.</td>
<td>1</td>
</tr>
<tr>
<td>2. There is a growing of other ethnic restaurants in Bangkok such as Japanese restaurants.</td>
<td>2</td>
</tr>
<tr>
<td>3. There are many kinds of Thai restaurants that cause confusion.</td>
<td>3</td>
</tr>
<tr>
<td>4. There are many new competitors from ASEAN nations.</td>
<td>4</td>
</tr>
<tr>
<td>5. Some Thai restaurants overcharges the foreign tourists</td>
<td>5</td>
</tr>
</tbody>
</table>

The threats of Thai restaurants can be ranked from high to low according to the information obtained from the in-depth interview as follows: 1) The Thai recession may affect the restaurants business, 2) There is a growing of other ethnic restaurants in Bangkok such as Japanese restaurants, 3) There are many kinds of Thai restaurants that cause confusion, 4) There are many new competitors from ASEAN nations, and 5) Some Thai restaurants overcharges the foreign tourists. However, the findings from the quantitative research show another picture of the Thai restaurants.

### TABLE V. Satisfaction of Service Quality

<table>
<thead>
<tr>
<th>Factors</th>
<th>Mean</th>
<th>S.D.</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Thai Restaurant business must be unique and delicious.</td>
<td>4.75</td>
<td>0.95</td>
<td>1</td>
</tr>
<tr>
<td>2. Thai restaurant business must have a combination of food and cultural heritage.</td>
<td>4.63</td>
<td>0.81</td>
<td>2</td>
</tr>
<tr>
<td>3. Thai restaurant business must offer food &amp; beverages that are clean and hygienic.</td>
<td>4.57</td>
<td>0.89</td>
<td>3</td>
</tr>
<tr>
<td>4. Thai restaurant business must offer reasonable prices.</td>
<td>4.51</td>
<td>0.69</td>
<td>4</td>
</tr>
<tr>
<td>5. Thai restaurant business must offer a good atmosphere.</td>
<td>4.50</td>
<td>0.88</td>
<td>5</td>
</tr>
</tbody>
</table>

The findings from table 5 revealed five different levels of importance from the perspectives of international tourists as follows: 1) the respondents rated “Thai Restaurant business must be unique and delicious.” as the number one indicator of satisfaction with a mean of 4.75 and 0.95 SD. 2) the respondents rated “Thai restaurant business must have a combination of food and cultural heritage.” as the number two indicator of satisfaction with a mean of 4.63 and 0.81 SD. 3) the respondents rated “Thai restaurant business must offer food & beverages that are clean and hygienic.” as the number three indica-
tor of satisfaction with a mean of 4.57 and 0.89 SD. 4) the respondents rated “Thai restaurant business must offer reasonable prices.” as the number four indicator of satisfaction with a mean of 4.50 and 0.69 SD. The overall mean was 4.51 with 0.69 SD. And 5) the respondents rated “Thai restaurant business must offer a good atmosphere.” as the number five indicator of satisfaction with a mean of 4.59 and 0.84 SD. Hence, it is important to note that the overall level of satisfaction was 4.59 and 0.84 SD.

4. Acknowledgement

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Pushes and pulls - or how to succeed in innovative leadership

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Abstract: An entrepreneur who is committed to innovation encourages creative behavior, not only by emphasizing the importance of innovation in words, but also by setting examples through his own actions. As a rule, the entrepreneur has considerable influence on the innovative ability of an SME. First of all, there is management responsibility for formulating the mission and the strategy. The influence of the entrepreneur on the capacity for innovation extends further. Management is among the most important factors affecting business culture suitable for innovation. They may not talk openly about the “pushes”, but if we listen carefully, we can get a good sense of what they might be. We will also want to find out what is pulling them toward our company. These “pulls” are often intangible things such as a desire for intellectual stimulation, opportunities for personal growth, a bigger ocean or smaller pond to swim in, and so forth.

Introduction

An innovation is the development and successful implementation of a new or improved product, service, technology, work process or market condition, aimed at gaining a competitive advantage. Innovative ability is a necessary condition for an organization to maintain a permanent flow of innovations. It is the ability of the entrepreneur and his employees to generate ideas and develop and successfully implement these ideas into new or improved products, services, technologies, work processes or market conditions.

Looking for constitutive elements of entrepreneurship, various prominent scholars argue that innovation is the key distinguishing attribute vis-à-vis business administration and other disciplines (e.g., Schumpeter, 1982 and Davidsson, 2004). Moreover, substantial practitioner-oriented literature suggests that in order to survive and thrive in increasingly hyper-competitive markets, innovation is the only solution (e.g., Kim and Maubourgne, 2005). Not surprisingly, the quest for the big idea that promises entrepreneurial success is characterized by the identification of a radically innovative offering, production process, and/or business model. This venturing approach reflects the widespread assumption that in order to be successful, the entrepreneur or small business manager needs to have an innovative edge to compete against bigger, well-established incumbents.

Managers focusing only on creating innovative offerings miss important dimensions which are essential for realizing the value that innovation can provide to their firms. Second, when comparing the performance implications of dedicating more resources to innovation process inputs (e.g., R&D spending) with innovation process outcomes, we find that the innovation process outcomes lead to a greater increase in SME performance. This finding underlines the importance for entrepreneurs and SMEs to manage the innovation process diligently. Being aware of the importance of innovation and subsequently dedicated substantial resources to the innovation task might not be sufficient, as the expected performance implication might not substantiate. Third, innovation has a stronger impact in younger firms than in more established SMEs. This finding suggests that the often cited liability of newness of younger firms can also be an asset for new firms.

Fourth, we find that internal innovation projects increase the performance substantially while innovation projects that involve external collaborations have no significant effect on performance.

Fifth, our findings illustrate that the cultural context in which the firms operate impacts the innovation–performance relationship. Yet, the identified relationship contradicts popular assumptions. We find that innovation has the strongest positive impact in cultural environments characterized by collectivism such as those found in many Asian countries. In contrast, in more individualistic cultures such as the U.S., the relationship between innovation and performance is weaker. We interpret the different findings and discuss implications for academia and practitioners and also identify gaps that can be addressed in future research.

Smaller organizations can profit by adjusting to environmental changes faster than bigger organi-
zation due to their nimbleness, missing hierarchies, and quick decision-making (Nooteboom, 1994 and Vossen, 1998). Moreover, the general public attributes greater promise to smaller firms investing heavily in innovations than larger organizations (Lee and Chen, 2009). In consequence, an entrepreneur or small business manager is likely to conclude that innovation benefits new and small firm development irrespective of the circumstances.

From our literature research we conclude that an entrepreneur will generate more ideas for new or improved products when it has several of the following characteristics:

- **People characteristics**: willingness to take risks, commitment to innovation, internal entrepreneurial activities, the presence of internal capabilities and skills in the organization

- **Strategy**: the presence of innovation in the mission statement, innovation objectives in the strategy

- **Culture**: loose control, people orientation, openness, result orientation, professionalism, spread of information

- **Structure**: de-standardization, vertical integration, create multi-functional teams, co-operation with and between departments, challenging task assignment and expansion, use job rotation, autonomy, and a reward structure that stimulates innovation

- **Availability of means**: freedom to experiment, financial resources, education and training, use of creative techniques

- **Network activities**: external orientation, customer orientation, cooperation with other companies, buying technological knowledge and information.

- **Company characteristics**: high technological competence, high diversification plan, high range of activities along the production line, export activities, location of the company in urban areas, high complexity of product design, low lead time in the introduction of the novelty.

We have also found some environmental characteristics that stimulate the innovative ability:

- **Innovation infrastructure**: high level of general technological activity and basic knowledge, the existence of patents in the organization, the existence of tax reductions, the existence of R&D subsidies

- **Market characteristics**: open economy, a mid-degree of competition, high intensity of non-price competition, low intensity of price competition, short length of the product life cycle, high degree of demand-pull, low price elasticity, heterogeneous demand, high uncertainty of demand.

Many companies work in an environment of changing consumer preferences, increasing competition and changes in technology. To be able to achieve business goals like profit, return and growth in this environment, it is necessary to have a regular stream of successful innovations. Buijs (1988) states that innovations are a necessary condition for an organization to stay in the market. The strategic position of a company is dependent on the ability to offer high-quality products and services that fit the needs of the market. A permanent stream of innovations is, therefore, of significant importance.

There is a strong positive relationship between the number of innovations and company performance and that innovative ability is very important for the continuity of a company and management ability.

### 2. People characteristics

For define the entrepreneur innovative ability we start with people characteristics. As mentioned before, the entrepreneur and the employees of an SME are at the heart of the innovation process. Below, we discuss the influence on the innovative ability of:

- the willingness to take risks
- the entrepreneur’s commitment
- internal entrepreneurial activities
- the presence of internal capabilities, skills and competencies.

#### 1. Willingness to take risks

The willingness to take risks could mean several things. In our opinion, it means that the manager accept ambiguities and uncertainties. People feel at ease in uncertain situations and there are higher tolerance levels for mistakes.

Cooper [8] stresses that the importance of a company’s willingness to take risks affects innovative ability. The only way to avoid mistakes is by not taking any risks at all. However, this will be the deathblow to any form of creativity. The traditional mentality of avoiding mistakes and structuring and correcting deviations from rules and procedures is important for a stable process, but clearly not for a company’s capacity for innovation. The conception of innovative ideas will not benefit from standardization and stability.
Rothwell [9] also mentions the willingness to take risks as a major component of an innovative organizational culture. Innovation is a high-risk activity. The only assurance a company has is that there will be failures. Furthermore, Rothwell stresses the entrepreneur’s willingness to take risks. When one innovation project fails, the entrepreneur should suppress any tendency to abandon other innovative efforts. On the contrary, he should effort to analyze and learn from the mistakes. Finally, Gaspersz [10] mentions ‘tolerance for failures’ as a crucial factor in the capacity for innovation. Employees should feel free to
Propose and further develop their ideas, however impractical they may seem at first sight. When ideas fail this should not be seen as failures but as a postponement of success and a learning curve. In this regard, Kanter [11] points out the importance of job security in a company. When employees are dismissed immediately following a failed innovation, the organization’s willingness to take risks will diminish drastically.

2.2 The entrepreneur’s commitment

An entrepreneur who is committed to innovation encourages creative behavior, not only by emphasizing the importance of innovation in words, but also by setting examples through his own actions. As a rule, the entrepreneur has considerable influence on the innovative ability of an SME. First of all, there is management responsibility for formulating the mission and the strategy.

However, the influence of the entrepreneur on the capacity for innovation extends further. Hofstede [12] says that management is among the most important factors affecting business culture. Therefore, the entrepreneur can encourage a business culture suitable for innovation.

Gosselink [13], McGourthy et al. [14] and Rothwell [9] conclude that the entrepreneur’s commitment to innovation is essential for a company’s innovative ability. Gosselink [13] argues that the entrepreneur should pay particular attention to individual innovative efforts. Ultimately, the employees in an organization are the ones who generate new ideas and carry them out.

To generate new ideas it is important that the employees display creative behavior. According to McGourthy et al. [14], it is important that the entrepreneur constantly encourages such creative behavior.

Suppose for example that a manager incorporates innovation objectives in the company’s strategy, but then does not have the time or patience during daily activities to listen to ideas from employees and does not make funds available for working out these ideas.

Rothwell [9] says that the transparent commitment of the entrepreneur is an essential condition to initiate innovation and to retain it in the long term. He points out that each employee must understand the importance of innovation. It is the manager’s task to bring this about, first by clarifying its strategic importance and then by showing a commitment to innovation in his or her actions.

Besides the manager’s commitment, another factor is the confidence that a manager radiates in respect of innovation. Zien and Buckler [15] discuss this confidence as a determinant of the innovative ability.

The struggle for innovation means that employees should show risk-taking behavior and not be afraid to make mistakes. That also means that there will be a constant state of uncertainty, since existing products and processes will disappear or be adapted. Such uncertainty could have a paralyzing effect on employees, providing an obstacle to innovative action. Management fulfills a key role in doing away with uncertainty, not only by showing high-level commitment to innovation, but also by having a high degree of confidence in the employees, not blaming them for every mistake or wrong decision.

Van de Ven [16] refers to the role played by the entrepreneur in creating a culture designed to encourage innovation. An innovative organization demands a special kind of supportive leadership. The entrepreneur, according to van de Ven [16], should focus on a culture in which innovation can flourish. Showing confidence in the employees plays a major role. If the entrepreneur neglects this, then it is possible that several values and norms will come into being that are counter-productive to company objectives, including innovation.

2.3 Internal entrepreneurial activities

Entrepreneurial activities are carried for one’s own account and risk. By internal entrepreneurial active-
ties we mean situations in which the employees develop activities on their own initiatives, can develop opinions about which markets are interesting, what customers in the various markets need and can indicate the direction their company should take. Dealing with uncertainties and risks, being commercially minded and market-orientated are also characteristics of internal entrepreneurial activities. And, certainly not least important, entrepreneurial activities also involve the ability within a company to fight for a promising idea and “to win the battle”.

Gosselink [13] calls the presence of internal entrepreneurial activities in an SME a condition for innovative ability. Actually, this determinant serves as a summary of many other determinants discussed in this study, such as autonomy, the willingness of all employees to take risks, acceptance of uncertainty, customer orientation and the freedom to experiment. According to Gosselink, entrepreneurial activities should be present in each job and department of an organization. Each employee should have the freedom to experiment and to test new ideas as to their commercial value and feasibility in practice. Such internal entrepreneurial activities will produce ideas at every level: ideas which could affect an organization’s development in a number of ways.

In this regard, Shane [17] mentions the presence of “innovation champions”, which enlarge a company’s innovative ability. An “innovation champion” is someone who takes a personal risk to ensure the success of an idea, to overcome obstacles and opposition relating to that idea. Shane [17] mentions four characteristics of “innovation champions” that favorably affect the innovative ability. Again, our conclusion is that this determinant summarizes several previously discussed determinants of the capacity for innovation:

- Innovation champions dare to deviate from existing norms, rules and procedures. This enlarges creativity and problem-solving potential.

- Innovation champions seek out and gather support for innovations within their organizations. They do so by promoting co-operation among various employees. This usually takes place informally, providing a stimulus to idea generation.

- Innovation champions use a loose-control mechanism to guide their activities. This promotes the creative use of organizational resources by employees.

- Innovation champions use decision-making methods that apply equally to all employees. As a result, anyone is free to propose his or her opinions and ideas.

Shane [17] also states that innovation champions could be brought to the forefront due to imperfections within existing organizations. To start with, there are the existing norms, rules and procedures. If these are solely geared towards maximum efficiency of the organization’s activities, they often result in maintaining the status quo. This is devastating for successful innovation. One example is the procedure for allocating funds and other resources to an innovation project. If this takes place in accordance with the rules, it may take too long, thus endangering the innovation project. Another example is the hierarchy within an organization, which could prevent interdepartmental communication, even though it is essential for the formation of ideas. At such times, according to Shane [17], there is a big chance that an innovation champion will emerge, who will break through the existing rules and procedures.

2.4 The presence of internal capabilities, skills and competencies

In this context, internal capabilities, skills and competencies refer to having flexible, inventive employees with the right education in the right places. Their capabilities, skills and competencies play an important role to generate ideas for companies.

Having flexible employees is important, because in a bureaucratic and rigid company many steps have to be taken before a new idea is accepted. Furthermore, the gaps between inventors and management in an inflexible company are wide, which could cause the excitement of creating new ideas to be negligible. In this situation, the incentive to generate ideas is missing [18].

Employees’ skills and competencies help companies to be innovative.

According to Beije [19] and Leiponen [20] it is not only an advantage to generate new ideas, but the company will also be an attractive partner in
collaborative arrangements and can benefit fully from transfer technology, and the „absorptive capacity” will be high.

3. Strategy

Mission statement and strategy provide guidelines for the activities that a company will develop in the future.

3.1 Innovation in the mission statement

The mission is often seen as the starting point of a company’s strategic management. According to Bunt et al. [21], the mission states what and why of a company’s reason for being. A mission statement must provide answers to fundamental questions such as ‘why do we exist’? „what do we want to achieve?” The difference between a mission and traditional business goals lies in the fact that a mission lacks quantitative and time-related elements. A mission statement allows for the expression of emotions and underlying values. Many smaller companies do not devote any explicit attention to their missions, but they can usually define their reasons for being in the market place and what they wish to achieve in general terms.

The company’s innovative ability expands when the mission statement incorporates the notion of innovation and when the company communicates this mission statement to its employees in a clear and forceful way. We recommend first defining the desired (innovative) behavior and then incorporating it into the mission statement.

3.2 Innovation objectives in the strategy

A strategy provides direction for a company in its environment and, according to Bunt et al. [21], serves as a guideline for the allocation of resources and efforts. In various areas an organization makes strategic choices, for example concerning growth, supply of products, market segments, technologies used and distribution. The relation to the mission is that strategy is a more specific elaboration of a mission.

Despite the fact that a strategy is more specific than a mission, strategic decisions are fundamental choices with long-term effects. Although many smaller companies pay little attention to strategy explicitly, the entrepreneur is often able to indicate the activities he wishes to develop in the long term, including his (financial) objectives.

When innovation is incorporated in the strategy, the employees become aware of its strategic importance and it mobilizes them to make active contributions which result in an increase of innovation capacity. In this connection, Gosselink [13] mentions that innovation strategy, regardless of whether it is explicitly formulated, is a major directional and motivating instrument for developing innovative decisiveness. The entrepreneur also uses it to communicate his own innovation commitment to his employees.

4. Culture

Hofstede [12] defines a business culture as the collective mental programming of the members of an organization. Business culture is at the heart of an organization’s informal structure. A strong culture means a system of informal rules that spells out how people are to behave. By knowing what is expected of them, employees will waste little time deciding how to act in a given situation. This means that through culture, employees can be motivated and directed towards creative behavior without strong pecuniary incentives/disincentives and the exercise of authority.

Culture-related determinants of innovative ability a:

- **lose control** - Innovative companies generally have many non-standardized activities. Loose control is best suitable for managing such activities. Since the entrepreneur does not know which activities will result in successful innovations, they cannot provide tight control over them. On the contrary, tight control would result in a situation in which only existing rules and procedures would be observed. Employees would generate fewer ideas and there would be a slow-down of innovative activities. There appear to be several negative effects of slack controls; for example, not paying attention to costs at all could threaten the continuity of a company. However, according to Sanders and Neuijen [22] loose and tight controls should be seen as two extremes. In reality these extremes will rarely occur. White [23] also mentions lose control as a determinant of the innovative ability. According to White, the technical employees of an organization are behind most product innovations. In larger companies, technical employees are part of the R&D department. In SMEs, we often find only a few
technically trained employees. Loose controls are necessary to increase the number of product innovations by these employees. Compared to other employees, technicians have a different way of thinking, working and communicating. White mentions that they have strong inner motivations to make technological advances. With loose control, they have more creative freedom and a greater opportunity to develop their inner drives in the form of new or improved technologies. This will have an effect on new product success as well.

- **People orientation** – In taking decisions, the entrepreneur regularly consults his employees. On the contrary, in a work-orientated culture people feel pressured to get their work done and the company worries only about the work performed by the employees. In this culture, individual persons take the decisions. Sanders and Neuijen [22] recommend a people-orientated culture to enlarge the innovative ability. This type of culture gives employees a greater voice in decision-making, increasing their commitment to the work, so that they will feel more free to present ideas for new or improved products. On the other hand, in work-orientated cultures employees will focus mainly on doing their existing work and will not take many initiatives for change. The capacity for innovation increases when all employees offer ideas and are able to implement these ideas. This is contrary to the classical view of innovation, in which the R&D department is the only one allowed to carry out innovative actions. We must note that, especially in SMEs, R&D departments are lacking and ideas are yielded by (all) employees. In Shane’s view, a culture must be designed in which each employee is involved in the innovation process. The entrepreneur should treat all staff contributions equally, irrespective of man employee’s position or job title. This could be done, for example, by introducing „management by consensus“.

- **Openness** - In a company with an open culture, new employees and outsiders feel quickly at home. Nearly every new employee will fit in such an organization. New employees need only limited time to settle into their jobs. The opposite holds true for closed cultures, in which the employees do not have a very close relation with the entrepreneur and colleagues. In such organizations, newcomers need more time to adjust. It should be noted that open and closed cultures are two extremes that seldom occur. In reality, mixed forms are quite common. Mutual trust and respect are common here, and since the employees feel at home more quickly in open cultures, the sooner they will come up with new ideas for (product) innovations. Gaspersz [10] notes that organizations that succeed in creating innovative climates, virtually without exception, have open cultures. By an open culture, Gaspersz[10] means organizations open to new ideas and changes suggested by employees, along with maintaining intensive contacts with groups that offer new points of view. This results in a rich breeding ground for product innovations. The intensive contacts can involve both the external environment (customers, suppliers and scientists) and the internal working environment (the employees).

- **Result orientation** - Result-orientated cultures have few rules and procedures for carrying out the work and solving problems. There are many people at work who feel at ease in unknown, high-risk situations. The opposite of this is a process-orientated culture in which the emphasis follows the rules and procedures for doing the work. In general, employees avoid risk taking. In order to be innovative, it is important that the employee feels at ease in unknown, high-risk situations. Result-orientated companies give their employees greater freedom of action. Everything is focused on the final results. The employees are free to do their work as they see it. When people are able to decide about their own work processes, this acts as an incentive to creativity by advancing their intrinsic motivation and giving people a greater sense of participation. Moreover, they can tackle problems in ways that take full advantage of their own expertise. If the entrepreneur sets clear, well-specified objectives, this will often help to further creativity. Also, the entrepreneur should not change the objectives too frequently. There is nothing so destructive to creativity as poorly defined or frequently changed objectives. Although the employees are free to do their jobs, they have no sense of direction. The entrepreneur should tell his staff which mountain they have to climb, but leave them free to climb it the way they want.

- **Professionalism** - In a professional culture the employees focus mainly on their job. The opposite is the organizational culture in which the employee focuses mainly on the company instead of his job. People in an organizational culture generally think that they are hired for a job because of their personality, social class and background. Besides, people in an organizational culture are less educated and do not think about the future very much. In a profe-
essional culture the employees are more involved with their job and will be more open to information from outside the company. In addition, they have had a lot of training and education and frequently think about the company’s future. These are all factors that will improve idea generation in the company. Organizational cultures tend to have more traditional technologies. In our opinion, it is not hard to imagine that a high-tech environment is a better basis for product innovations.

➢ Spread of information - There are various ways for companies to spread information among their employees. Burns and Stalker [24] state that the organization can be organized as a network. This enables employees to communicate with anyone who could offer help in solving problems. The availability of a large diversity of information for the employees affects the idea-generating ability of a company. In this context, Damanpour [25] points to the positive effect of internal communication on innovative ability. Good internal communications facilitates the dissemination of ideas within a company, contributing to a culture. There are various ways of promoting the dissemination of information in a company:

✓ The use of multimedia and ICT.
✓ The presence of ‘technological gatekeepers’. Technological gatekeepers are staff members who gather information from various sources and circulate it to people who can make the best use of it.
✓ The effective resolution of conflicts. Nothing is as destructive for good communications than conflicts among employees.
✓ Having employees co-operate in multi-functional teams.
✓ Job rotation. Having employees regularly rotate jobs gives them a broad perspective of the organization’s problems, creating a continual flow of innovative ideas.

5. Structure

There are various structural characteristics that have a stimulating effect on the innovative ability:

➢ de-standardization - companies create numerous rules and procedures to standardize work processes and reduce uncertainty in the business operations as much as possible. The most extreme form of de-standardization is the total absence of rules and procedures, while the most extreme form of standardization results in establishing all company work processes in detail. Burns and Stalker [24] assume that there is a negative relationship between the presence of substantial formal rules and the number of successful product innovations. Formal rules and procedures impede a company’s flexibility. The innovation process, according to Burns and Stalker [24], does not benefit from this. Damanpour [25] mentions the relationship between standardization and innovation success. He concludes that the relation between de-standardization and innovative ability depends on the phase of the innovation process. There are indications that during the search phase of the innovative process there is a negative relationship between de-standardization and the innovation process. Employees’ creativity and flexibility, which are very important during the search phase, will be impeded by rules and procedures. However, during the implementation phase, there seems to be no link between de-standardization and innovation success. His explanation is that the implementation of the innovation process can be managed very strictly.

Shane [17] also concludes that an organization’s capacity for innovation derives no benefit from a multitude of rules and procedures. Rules and procedures, for example, determine who reports to whom, through which channels information should be disseminated and who will supervise and assess the work of individual employees. Such rules ensure that the activities of an organization are coordinated in an efficient manner. However, innovation is per definition an uncertain process.

➢ vertical integration - we define vertical integration as the presence of few hierarchical levels. The number of management layers is limited, leaving short lines of communication between employees and the entrepreneur. In hierarchical structures, it is more difficult to exchange innovative ideas. This tends to discourage employees from coming up with ideas for new products or services. In this context, Feringa, Piest and Ritsema [26] point out that it is important that employees have direct lines of communication with the entrepreneur so they can get rapid feedback on their ideas and clearly see how such ideas progress. It should be noted that horizontal integration is not particularly relevant in very small companies. These companies already operate implicitly as vertically integrated organizations. The medium-sized companies in particular can benefit from vertical integration.

➢ multi-functional teams - To improve the innovative ability of a company, interdisciplinary activities are of extreme importance. Interdisciplinary activities mean that people with different backgrounds (functions, education) work together.
An interdisciplinary approach results in being confronted with a variety of information, which becomes available from the various backgrounds. This causes the employees of the company to look at problems from different perspectives and generate new ideas (of course, ideas for new products will be among them). The interdisciplinary backgrounds of the team means that people can look at problems from different perspectives. This improves their ability to generate ideas for product innovations. In this context, Cozijnsen [27] mentions the multi-functional team as a characteristic of the innovative organization structure. In this structure the work is executed in projects, during which multi-functional teams are responsible for carrying out the project. As the opposite of a multi-functional team, Amabile [28] mentions the homogenous team. In practice, the building of a homogenous team can be very attractive, because homogenous teams do not have many conflicts and tend to achieve quick solutions. In this kind of teams, the members usually state that they like each other. However, homogenous teams are not suitable for improving the innovative ability, because each team member makes a similar contribution. Below, we shall discuss the best way to form a multi-functional team. Brown and Eisenhardt [29] state that it is important that the team members have some experience together and already know each other. When a team is completely new there is a risk that the way in which the team members share information and co-operate is no effective. In this case, the most important advantage of a multi-functional team (the confrontation of information from different backgrounds) is lost. Each employee has a specific set of capabilities and will therefore fulfil a specific role in a team. One person is of particular importance for the search phase of the innovation process. Buijs [30] calls this person the „dreamer”. A dreamer is an employee who has a very concrete level of thought. In addition, a dreamer has wide interests and is full of emotions. His most important strength is his fantasy and imagination. Therefore, a dreamer is able to look at problems from many different points of view and can generate a lot of ideas for new products and product improvements. However, the most important weakness of a dreamer is his indecisiveness, because he keeps thinking of new ideas all the time. In very small companies, the possibility of multi-functional teams is less relevant. In a small company, the number of employees is often too small to put different teams together.

- **co-operation between departments** - co-operation is not relevant for very small businesses, since these companies normally do not have any departments. It will be particularly the mediumsized enterprises (>50 employees) who can use co-operation between departments to improve their innovation success. Dhondt [31] recommend intensive co-operation of research and development and sales and production departments. If the R&D department co-operates with the sales department, they can take into account customer needs and preferences when developing new products.

- **If the R&D department co-operates with the production department, they can take into account the costs and internal changes that an innovation will cause.** Rothwell [9] concludes that in successful innovative companies the start for new product development is made by several departments together. He states that it is of minor importance which department starts the innovation, but that it is very important that all departments co-operate and share information.

- **task assignment and expansion** - The decisive factor here is the challenge represented by the work. The challenge should not be such that people become bored, nor be so great that they lose control of feel threatened. A task should require all the skills and talents of the employee concerned, but not the skills and talents that such an employee lacks. When employees face challenges in doing their work they will display more innovative behavior. To bring about proper links between people and tasks, the entrepreneur must gain extensive information about the skills and talents of his employees. In reality, entrepreneurs do not often try to obtain such information, so that ideal links between people and tasks are lacking. This results in suppressing employee creativity. Kanter [11] mentions the possibility of task expansion as a means of promoting innovative ability. Employees face maximum challenges when tasks are broadly formulated and overlap with tasks of other employees. This increases co-operation among the employees. Maira and Thomas [32] mean that employees should have an opportunity to develop or pursue new skills, if the working environment makes such demands. Otherwise, a company could not produce the desired product innovations and adaptations.

- **job rotation** - we define job rotation as frequently exchanging tasks and jobs among employees. Job rotation (as with task expansion) is a method for broadening the employee’s point of
view. According to Prakken [33], job rotation makes the departments and employees in an organization familiar with each other work. The employees will find it easier to place problems in a wider context. Job rotation gives employees more empathy with their colleagues’ work. Work experience in different job areas enhances creative potential since the broad experience gained by employees will more quickly enable them to suggest ideas for improving existing products. Van de Ven [16] considers job rotation as a means of increasing awareness of the total organization’s objectives. After all, job rotation provides greater variation in the work and increases employee commitment to the job and the company. In this way, employees can look beyond their own limited areas of responsibility and view their activities in a wider context.

- **autonomy** - The responsibilities in an autonomous organization are at a low hierarchical level. The management tasks are decentralized as much as possible. According to Prakken [33], autonomy contributes to innovation capacity because autonomous employees have extensive competencies, increasing their job involvement. This promotes the creativity and generation of new ideas. Dougherty and Hardy [34] also argue in favor of substantial autonomy for employees. According to them, centralized structures and processes are geared towards maintaining the status quo. This is in opposition to innovation, because it creates a hostile climate in respect of creativity. Oden [35] points out the fact that decentralized decision-making places the creativity and knowledge of all employees at the service of the organization. Autonomous employees will take extensive initiatives (including ideas for new products or improvement of existing ones), but also share knowledge with their colleagues. The ultimate aim of all this is self-management. This means that employees assume responsibilities and monitor the progress of their own work. In such an ideal situation, management’s only role is that of a teacher and facilitator. The autonomous task force has sufficient freedom of action to resolve problems independently. This increases employee commitment to the job and, consequently, the generation of ideas.

- **reward structure** - Many entrepreneurs employ a reward system that aims to improve the effectiveness and efficiency of the existing work processes. Some examples of the reward criteria in these systems are: the number of years of service (it is assumed that an employee with more experience performs more effectively/efficiently), the realization of some predefined targets (as a standard for effectiveness) or the elimination of mistakes (as a standard for efficiency). With such a reward system, improvement means “doing a job better”. However, such a reward system is not very suitable for an innovative organization. The main objection is that a traditional reward system implies upholding the company rules and procedures. In an innovative organization there must be possibilities for constant change. Therefore, a reward structure which motivates employees to innovative behavior is required. The employees must be challenged to be creative and criticize the existing rules and procedures.

The reward system can be made dependent on:

- team performances. This certainly stimulates the co-operation in teams, and this co-operation stimulates the creativity of the employees.
- the innovative efforts of employees. For instance, the reward could be based on the number of generated ideas or the amount of financial resources an employee asks for to work out an idea.
- the innovation results. For instance, the reward could be based on the number of patents or the cash flow from new products.
- the company’s results. The advantage is that employees are stimulated to co-operate with their colleagues and with other departments. This certainly improves creativity, because the employees will obtain a broader view of the company’s problems and learn how to deal with problems from various perspectives. In this context, Ayas [36] notes that the reward system in an innovative organization should not focus on individual performance. Instead, team performances should be the guideline for the reward system. In order to improve their innovative ability, people should co-operate and share their information. The importance of this cooperation and sharing will be emphasized and encouraged if the reward system is based on team performance. To be able to reward team performances, these performances must be made measurable. Ayas [36] therefore argues for a reward system that is based on innovative efforts or results. According to Amabile [28], the possibilities to improve the innovative ability by means of the financial reward system are limited. The innovative ability can be improved much more by intrinsic motivators. To realize this, it is important that the entrepreneur allocates the workload corresponding to the skills, talents and needs of his employees. Furthermore, the attitude of
the entrepreneur is another important intrinsic motivator (by complimenting innovative efforts).

6. Availability of means

The availability of means seems to be a necessary condition for innovation success. Most product innovations require time, money and knowledge. Creativity is also essential to produce ideas to start the innovation process. We shall discuss the influence of the following on the innovative ability:

- **the freedom to experiment** - Companies with great freedom to experiment give their employees the time to try out their ideas (for example, to test new model, new idea, etc.), and management takes the results of such experiments seriously. Turbulent internal and external working environments in which many companies operate today make constant change necessary. In such environments, an increasing number of companies encounter the process of change. As a result, their willingness to change through experiments will increase. If the entrepreneur wants to organize the innovation process as efficiently as possible, he reduces the possibility of accidental discoveries. On the contrary, it is important that the entrepreneur encourages initiative, creativity and experiments. Gaspersz (1998) discusses some possibilities to improve the freedom to experiment:
  - A low workload - With a high workload, employees can’t take any distance from their daily work and routines. It is important that the employee has the opportunity to walk around or read professional literature. For instance, employees do not have to account for 15 percent of their time.
  - Rooms for silence and meditation. This helps the employees to take some distance from their daily work.
  - Tools that encourage creativity, like software for brainstorming.

- **financial resources** - In order to be innovative, an entrepreneur must be prepared to make investments. Although some product innovations occur quite spontaneously, most product innovations are rather expensive, and the return on the investments is not clear in advance. So to be innovative an entrepreneur need to allocate money. In this context, the creditworthiness of the company on the capital market is relevant as well. The capital market can be defined as the market on which long-term financial contracts between different partners are made. To some extent, companies will be dependent on the availability of money and their borrowing capacity on this capital market to finance their investments. According to Nijsse [37] the amount of financial resources required strongly depends on the innovation strategy of the company. The amount of resources is a result of the strategic intention that the company expresses. Nijsse [37] concludes that a company can make a choice out of four roles where the issue of innovation is concerned:
  - **Prospector.** These companies are continuously looking for new chances in the market place. They show a very active attitude toward new product development. In many markets, prospectors are the cause of changes.
  - **Defender.** Defenders spend less time looking for possibilities to develop new products. The focus of their activities is mainly on improving their productivity and efficiency. Defenders are usually dedicated to serving a niche market.
  - **Analyzer.** The strategy of these companies is somewhere between the prospector and the defender. An analyzer has some characteristics of both types. In a stable market, the analyzer will behave like a defender (focusing on productivity and efficiency). In a dynamic market, the analyzer will behave like a prospector and be more innovative (focusing on change and new products).
  - **Reactor.** Reactors are companies without a consistent strategy. They just react to changes in their environment when they are forced to do so.

- **education and training** – It is a connection between investments in the education and training of employees and the number of successful innovations. Their explanation is that a company’s capacity to produce new products depends to a large extent on the knowledge and capabilities of those who provide ideas and develop innovations. In this regard entrepreneurs/managers need to allocate time and money for the professional training of employees.

- **use of creative techniques** - Creativity is the first step along the road to successful innovation. Creativity is the capacity to re-combine knowledge and experience in a new way, which could then provide unexpected solutions to previously unsolved problems. This will generate ideas for new. To promote the capacity for innovation, it is not necessary for the entrepreneur to have a thorough command of these techniques, but the entrepreneur must be aware of the pitfalls in using such techniques, so they can be deployed in a responsible manner. Creative
techniques contribute directly to the capacity of employees to generate solutions and ideas. This will generate ideas for new or improved products as well. Buijs [38] describes the three most important creative techniques at group level:
1. brainstorming
2. morphology
3. synectics.
These are innovative management techniques currently.

7. Network activities

Interdisciplinary activities mean that people with different backgrounds work together. An entrepreneur /manager could realize this by employing network activities:

- **external orientation** - Companies that have a strong external orientation have frequent, intensive contacts with their environment. Such companies and managers identify opportunities and threats from their working environments and use them to create or improve products. Companies/entrepreneurs can poorly appropriate all returns from R&D and innovations and it can hardly be protected from competitors. The spill-overs of knowledge creation from companies enhance the opportunities for product innovations at other companies. This occurs because companies/entrepreneurs learn from the knowledge entrenched in goods, activities or organizations [39]. When an entrepreneur is open to these signals, this increases the innovative ability of the organization.

- **customer orientation** - An entrepreneur/manager with strong external orientation will also maintain intensive contacts with its customers. Such companies pick up information about customers’ experience with their products, using this to improve organizations products and services. When an entrepreneur/manager is sensitive to signals from organization clients the company will expand its innovative ability. Using customer information have more successful product innovations. The customer information seems to be a valuable source for ideas. It is of significant importance that the company uses their customers’ opinions in every stage of the product development process. A pragmatic culture is heavily customer-orientated. The emphasis is on satisfying the „customers needs”. In a pragmatic culture, results are more important than following the right procedures.

- **co-operation with other companies** - Technological co-operation define as developing a new product or work process together, or exchanging knowledge. Both can be realized with various participants, like competitors, customers, universities and research institutes. Gosselink [13] mentions technological co-operation with parties from the external environment as a determinant of innovative ability. Each participant brings in his own knowledge and skills. Again, this will cause an increase in the variety of the information that becomes available during work. With this information entrepreneur/managers can look at problems more thoroughly and will generate more creative ideas and solutions. This will have an effect on the number of ideas generated for new products, or improvements to existing products.

- **transfer of technology and information** - Companies can acquire new product ideas from technological knowledge or information outside the company. The transfer of technological knowledge and information improve the opportunity to innovate, because of the increased knowledge companies obtain. Recently, national and European authorities have given strong emphasis to this manner of innovation policy. Therefore, it will be interesting to see the results regarding technology transfer (Horizont 2020). From Brouwer’s [40] study it appears that expenditure on product innovation increases when a company acquires external knowledge. Brouwer states that a part of this increase in total innovation expenditure is explained by the cost of acquiring external technological knowledge made by company management.

8. Company characteristics

The innovative ability of an manager can be influenced by some of its own enterprise characteristics. We mention that company characteristics are not as manageable for the manager/entrepreneur as the determinants that we discussed. These are the following:

- **technological competence** - specific knowledge, skills and affinity with its products and work processes. When a company does not have any modern technology, in many cases it will be impossible to generate useful ideas for new products that can actually be produced. Therefore, technical competence is also relevant for the search phase of the innovation process; a lack of technical competence will frustrate idea generation.
Company size - Company size is determined by the number of employees a company has. A small company size is better suited for idea generation than a medium size. In theory the influence of the company size on the generation of ideas is ambiguous. On the one hand larger companies are reasonned to have more innovative ability because there are many employees, which increases the possibilities of interdisciplinary activities and because the risk for the company as a whole is less. Smaller companies tend to be more flexible than larger companies. This encourages the generation of ideas as well.

High diversification scheme - The diversification scheme of a company is the scope to which a company’s line of business extends. A high diversification scheme refers to a wide range of business activities. It could be argued that companies having high diversification schemes are more likely to be innovative for various reasons.

High range of activities along the production line – Companies performing many activities along the production line can be expected to be more innovative. The reasoning behind this is that companies which perform more activities internally have more opportunities for interdisciplinary activities and can therefore generate more ideas (have more product innovations).

Export activities - The incentive to export is greater for companies with more innovation success since they have more intangible resources to sustain growth.

Location of the company in urban areas - In an urban area the information density, positive externalities from knowledge centers (for instance universities) and other innovative companies are more agglomerated than in rural areas. It can be argued that the location of a company has a positive influence on the innovative ability of a company. Companies in urban areas can benefit from the information density, which has a positive effect on the number of ideas generated. For this reason managers working in urban areas must be open to cooperation with all the factors that can generate progress.

High complexity of product design - A highly complex product design is a way to protect a company’s knowledge. If a product design is highly complex it is more difficult for competitors to copy the product. If the product design is highly complicated it is easier to keep the design secret and to reap more benefits from an idea. This determinant encourages companies to innovate highly complex products, because these are easier to keep inside the company. These companies tend to have more innovation success, which encourages even more idea generation.

Low lead time in the introduction of the novelty - The lead time in the introduction of the novelty is the time which is needed to introduce a new product. If this lead time is quite low it is easier for a company to appropriate the returns from the investments in knowledge development. In this context, companies operating in branches in which the lead time of the introduction of products is rather short are more likely to appropriate returns from innovative activities and are more likely to perform innovative activities. Managers should be aware that a low lead time has a positive effect on the number of product innovations.

9. Innovation infrastructure

It is likely that the innovative ability of an SME depends on a country’s general innovation structure. It is often argued that governments should intervene to stimulate innovations because of the many market imperfections. Knowledge creation, as we have seen, can have great spill-overs by which companies are not able to acquire all the benefits of product innovations. This may be reason for governments to intervene in the market by stimulating the innovation infrastructure.

For that managers should haveregard:

General technological activity and basic knowledge - Idea generation and eventually product innovations can originate from general technological activities or basic knowledge, i.e. the scientific infrastructure. In this context we mean opportunities created by general technological activity; the availability and quality of education; private and public technical services such as test laboratories, standardization institutes, as well as research institutes all favoring innovation. The government can strongly stimulate the scientific infrastructure.

If the general technological activities are greater it can be expected that a company’s innovative ability is greater, because the companies can both hire...
better educated people and make more use of the availability of various services. The scientific infrastructure is indeed a significant determinant for innovation. Not only for process but also for product innovations. The scientific infrastructure is especially important for ‘new-to-the-sector’ innovations and less important for ‘new-to-the-company’ innovations.

- **the existence of patents** - Patent a legal mechanism that grants companies monopoly power for a period of time in order to allow them to obtain returns from their innovative efforts. It is an attempt to use the legal system to influence the degree to which the owner of an idea can charge a fee for its use. Obtaining patents and so the possibility of knowledge protection increases the innovative ability of a company, because the availability of patents will improve the innovation success. This will cause the entrepreneur to stimulate his employees to generate new ideas.

- **the existence of tax reductions** - One way in which the government can stimulate innovative activities is by imposing tax reductions on R&D and other innovative activities. In this way performing R&D becomes less expensive and, therefore, it will become more attractive for companies to innovate. Tax reductions stimulate innovative activities and therefore idea generation. Using the same amount of money to directly subsidize R&D would have a far greater effect on innovative activity.

- **the existence of R&D subsidies** - Another way in which the government can stimulate product-innovation activity is by providing subsidies for R&D activities. Through the existence of subsidies, R&D activities will become less expensive and, as is the case with tax reductions, innovating becomes more attractive. In this way the generation of ideas is stimulated. Managers must act through employers’ associations, creating a trend that generate such facilities.

10. **Market characteristics**

The innovative ability of a company is influenced by several market conditions. These conditions are not manageable by the entrepreneur/managers himself. We discuss the following:

- **open economy** - An open economy is an economy which has many trade- and capital flows to and from the outside world. In this regard, we should distinguish two separate parts in the country’s innovation system. One part of the system consists of institutions that direct the way in which knowledge is created and distributed around the economy. In an open economy, it is likely that these institutions are influenced by institutions in other countries. The other part of the system is made up of companies which innovate. This innovation system can be influenced by foreign countries through export activities, foreign investments or other interactions between parties in the countries. Exporting or importing companies in open economies benefit from the knowledge and innovative activities of neighboring countries or companies performance, but also from companies which operate purely domestically. The rationale behind this would be that companies operating in competitive markets need to innovate to maintain their market share.

- **a mid-degree of competition** - The competition in a market is low if only few or no competitors are present. In such a case a company possesses market power. A higher market concentration has no significant influence on innovation because companies in this situation are not investing more in R&D.

- **high intensity of non-price competition in the product market** - It is obvious that non-price competition gives rise to new or improved products, because companies have to generate new ideas constantly to compete for the best products. Non-price competition has a positive impact also on the generation of new ideas concerning products as well.

- **low intensity of price competition in the product market** - A market in which production should be as cheap as possible, so products can be sold at a price as cheap as possible. Managers expect a negative influence of the intensity of price competition on product innovations, because there is no money left to work out ideas. There is no significant difference between sectors with low and high price competition.

- **a short length of the product life cycle** - The product life cycle can be defined as the average lifetime of a product. For some markets the lifetime of products is quite long. For other markets the lifetime of the products is very short, and products are continuously replaced by others. It could be argued that the average length of the product life cycle has an effect on the innovative efforts of a company. Products with a short life-cycle will necessitate companies renewing their products more frequently.
Consequently, employees will be stimulated by the entrepreneur to be creative and continuously generate new ideas.

- **high degree of demand-pull** - A high degree of demand-pull is characterized by a high degree of demand growth. A rise in the demand for a product will stimulate the innovative ability of companies. When the economy is booming and demand is high, companies are more likely to innovate than when the economy is in a recession. In small and medium-sized companies in particular the demand-pull effect is important. Managers need to appreciate correctly the economic situation and adapt to the given conditions.

- **low price elasticity** - The price elasticity of a product is the extent to which consumer demand for a specific product changes in response to an alteration in the product’s price. A high price elasticity means that consumer demand changes more than proportionally in response to a marginal change in the product’s price, and a low price elasticity means that consumer demand changes only slightly to meet such a marginal change. A low price elasticity is likely to stimulate product innovations because the cost of product innovations can be financed by an increased price without causing an enormous drop in demand. Consequently, when the price elasticity of a product is low employees are stimulated to renew the product and so the possibility to generate new ideas is high. When the price elasticity of the product is low the generation of new product ideas is stimulated and managers should take advantage of this opportunity.

- **more heterogeneous demand** - The demand for a product is heterogeneous when consumer demand is differentiated: various consumers demand only slightly different products. Heterogeneous demand can be expected to encourage the innovative ability of a company. In the context of a heterogeneous demand it seems to pay off to generate new ideas in order to differentiate the product better.

- **high uncertainty of demand** - Companies are never certain of the characteristics of demand: they have no clear notion of consumers’ wishes and their behavior. In the context of an uncertain demand product innovations can be expected to be encouraged. When a company initiates activities to discover the characteristics of demand and the needs of their customers, new ideas may emerge. For this reason, entrepreneurs/managers must have accurate information as the market fluctuation.

The determinants covered by people characteristics, strategy, culture and structure are mainly taken from the organizational tradition. Those of company characteristics, innovation infrastructure and market characteristics are generated by the general economic tradition. Finally, both traditions pay attention to network activities and availability of means.

The presented, represent factors influencing innovative capacity, or how entrepreneurs/managers and employees of a company can generate new or improved products. The influencing factors must prevail management activity, so to represent how entrepreneurs/managers generate/stimulate innovative activity within the company.

**11. Conclusion - or best candidate**

In conclusion we can show that there are 7 categories of factors that can be managed by a manager in order to push and pull the innovative capacity of the business organizations, said additional innovative capacity:

- **people characteristics**
- **strategy**
- **culture**
- **structure**
- **availability of means**
- **network activities**
- **company characteristics**, And some environmental characteristics that stimulate the innovative ability of an organization:

- **innovation infrastructure**
- **market characteristics**.

To recruit the ideal candidate is required to take into consideration besides those listed a number of factors relating to the candidate’s personality and problems.

Every candidate will have a number of things they’re dissatisfied with at their current job that are pushing them away, as well as things they find attractive about the new job. They may or may not talk openly about the pushes, but if we listen carefully, we can get a good sense of what they might be. We will also want to find out what is pulling them toward our company. These “pulls” are often intangible things such as a desire for intellectual stimulation, opportunities for personal growth, a bigger ocean or smaller pond to swim in, and so forth.
Regardless of the pushes and pulls, when a candidate thinks about joining company, they are confronting uncharted territory which comes with a whole slew of questions, doubts, and uncertainties. For these we need to uncover and resolve these questions throughout the recruiting process -- way before the offer is made.

We say that a very desirable candidate is mulling over a number of issues. Some are personal questions involving relocation, spousal employment, children and family. Others are business-related concerns about role clarity, team dynamics, and the historical and future market performance of the new company.

Of course these are delicate processes/conversations and each candidate requires a unique approach. But, by following a disciplined process, we can avoid the mistake of making the offer before we know the candidate will accept it.

The best candidates are typically situated in attractive positions with strong and compelling incentives to stay. Why should they even consider your offer? The answer will always be a combination of “pushes” and “pulls”.

It’s important to make sure that your executive candidate has a chance to visit and resolve each of their concerns. This process will unfold over several weeks in a series of face-to-face conversations. For example, most people thinking about joining a start-up will have concerns about the market performance of the new company. A skillful recruiter will surface these concerns as soon as possible. Having frank discussions with the candidate about the historical and future market performance of the company will enable the candidate to make a decision from a point of strength. People are often more willing to take a risk when they understand precisely what the risk is. These are delicate processes/conversations and each often requires a unique approach. But, by following a disciplined process, you can avoid the mistake of making the offer before you know the candidate will accept it.

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The Management of Quality of Working Life: A Case of Small Bus Drivers

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Abstract: The purposes of this research were 1) to search for the management of quality of working life: a case of the bus drivers in SamutSongkhram Province, 2) to study ways to enhance the quality of working life components of the bus drivers and 3) to compare life working quality of bus drivers who had different profiles. The sample utilized in this research included 348 bus drivers in SamutSongkhram Province. The research tool was a questionnaire which had an acceptable content validity and reliability. Statistic description and analysis included frequency, percentage, means, standard deviation, exploratory factor analysis, t-test, one-way analysis of variance, and multiple comparisons. The findings revealed that the quality of working life components of the bus drivers composed of five components. Social acceptance ($\bar{x}=3.97$) and safety during work ($\bar{x}=4.22$) had high impacts on the quality of working life components of bus drivers; while, standard of living ($\bar{x}=4.13$), balance between work and private life ($\bar{x}=3.86$) opportunity to improve personal ability ($\bar{x}=3.62$) had medium impacts on life working quality of bus drivers. Each component can be explained the variance of all variables. The 40 variables can be explained up to 72.63 percent with the weight of components between 0.50-0.75. Moreover, differences of gender, age, married status, family numbers, responsibility, and experience resulted in no significant difference in the quality of working life components. However, differences in education, income, hours of bus driving resulted in a difference in the quality of working life components at a 0.05 level of significance.

Introduction

Quality of working life is one of influential factors in work-related experience of individuals and organizations, as it is apparently relevant factor of intrinsic job motivation, job satisfaction and hard working with willingness [1]. Quality of working life is the term that has been used to describe a quality of life in work-related environment, widely known in many English-spoken industrialized countries. It has also been termed as humanization of work in some other countries, which has a similar meaning. Quality of working life depends on job security, job discipline and financial status of individual workers [2].

This paper examined and compared a quality of working life of small bus drivers in Samut Songkhram Province in Central Thailand. The findings were aimed to suggest improving guideline for the management of the entrepreneurs of the small bus drivers in the province. Concerned public organizations also are motivated to utilize the research findings for any future policy-level development plans.

1. Literature Review

Samut Songkhram is the smallest province located in the central plain of Thailand, covering an area of approximately 416.7 square kilometers, with the second least populous province of Thailand. The province has a diversity of natural resources due to its location along the coast of the Gulf of Thailand. As a very small province, mostly the public transportation within the area has not been conveniently operated for the locals and tourists’ service; most are small-scaled local buses that travel between the province’s central district (Muang District) to other districts such as Ampawa and Bang Khonthee District. A concession of public transport service was opened to allow entrepreneurs to operate the bus service sufficiently, for different routes. Each entrepreneur has been permitted to operate different amount of buses, with a minimum amount of buses indicated for each route. With insufficiency of the service, local entrepreneurs started subsidy by adding the service of small bus service with many drivers. This leads to different form of service, under different administration, and as a result, to different level of quality of life of drivers.

Wongleedee [3] identified benefits of good quality of working life, that it affected individuals’ work performance in various dimensions, for instance
self-contentment and positive attitude towards the job. To small bus drivers as the case study of this research, capability and condition during work is very important; the job requires physical and mental healthiness to ensure no accident or mistake occurs. A previous study emphasized a necessity of quality of working life bus drivers should have, in accordance with the basic 4 factors of living [4]. Physical healthiness and pleasant work environment can promote mental healthiness of bus drivers.

This study examined components of quality of working life; investigated level of quality of working life; and compared quality of working life based on personal factors, using the case of small bus drivers in SamutSongkhram Province. Similar comparative studies found that personal factors of bus drivers such as gender, age and work experience, revealed no relationship with the attitude towards good quality of working life [5] [6]. Different marital status was also found neutral to quality of life; most were commonly taking path of their life plan [7]. Education and time spent on driving per day, contrarily, indicated a relationship with quality of life; this meant that those spent an average driving hours of less than 5 per day were reported having higher quality of life, especially in terms of standard of living, work-life balance and opportunities to learn and grow [8].

2. Methodology

This paper examined and compared a quality of working life of small bus drivers in Samut Songkhram Province in Central Thailand. The population was 730 local buses permitted to operate service within the area [9]. The sample size was therefore 348 buses; this meant 348 bus drivers, according to Krejcie and Morgan [10]. The research applied quota sampling technique based on the proportion of buses served in each area: 212 samples from Muang District; 101 samples from Ampawa District; 36 samples from Bangkhonthee District. The independent variable was personal factors of bus drivers, whereas the dependent variable was the components of quality of working life.

Questionnaire was utilized as a tool in collecting the data. The questions in the questionnaire were developed from the idea of Walton [11]. Eight items to measure good quality of working life: (1) sufficient payment with fairness; (2) safe work environment that promotes health; (3) job security and opportunity for advancement; (4) opportunity to learn and grow; (5) work cooperative atmosphere and interrelationship; (6) democracy in organization and right; (7) work-life balance; and (8) job with social responsibility [12]. These elements were used in designing the questionnaire. Before the actual data collection, the questionnaire was measured for its content validity [13]. After that, 30 questionnaires were tried out with 30 bus drivers as the pilot test samples. The Cronbach’s Alpha Coefficient was reported 0.89 as higher than 0.6, proving its reliability. To examine the components of quality of working life, Barlett’s test of Sphericity and Kaiser-Meyer-Olkin Measure of Sampling Adequacy were used, followed by the Principal Components Analysis by use of Eigen Value. Descriptive analysis including percentage, frequency, mean, and standard deviation was also used. A comparative analysis was run by the One-Way ANOVA, with Multiple Comparison.

3. Findings

The findings were reported in four parts: (1) the demographic finding of the small bus drivers; (2) the components of quality of working life; (3) the level of quality of working life; and (4) the comparison of quality of working life against different personal factors.

3.1. The demographic finding

The majority of the respondents were male, 89.90 percent. The age was between 40-44 years old, or 25.30 percent, married making 68.40 percent, with primary school as the highest level of education, making 35.10 percent. Most of them, 67.00 percent, had an average income per month between 10,001-15,000 Baht. It was also found that most had the family members of between 3-5 persons, or 52.00 percent. In term of driving experience, they had lower than 5 years of driving experience as the public service, or 36.2 percent, and an average time spent on driving per day was between 5-9 hours, or 85.6 percent.

3.2. The components of quality of working life

The analysis found that there were 40 components which were categorized in 5 main groups; each received Eigen Value of more than 1, describing the variance of 65.48 percent. Each variables had a factor loading between 0.05-0.75.
3.3. The level of quality of working life

The most relative components to the quality of working life were social acceptance (M = 3.97) and security at work (M = 4.22). These were found at the high level. Standard of living, work-life balance, and opportunity to learn and grow were reported a medium level related with the quality of working life, with M = 4.13, M = 3.86, M = 3.62, respectively.

3.4. The comparison of quality of working life against different personal factors

The finding unveiled that gender, age, marital status, family members and driving experience for public transport service had no relationship with quality of life. Contrarily, education was found to relate at a significance of 0.05. The Multiple Comparison found that within the component of social acceptance (F = 2.917, Sig. = 0.014), the bus drivers with no education were revealed to have better quality of life than those who gained primary school level and Mattayom 3 Secondary School. Furthermore, within the component of standard of living, (F = 4.376, Sig. = 0.001), the bus drivers with no education were revealed to have better quality of life than those who gained primary school level, Mattayom 3 and 6 Secondary School/ or vocational school. Within the component of work-life balance (F = 5.359, Sig. = 0.000) and opportunity to learn and grow (F = 6.104, Sig. = 0.000), the bus drivers with no education were revealed to have better quality of life than those who gained primary school level, Mattayom 3 and 6 Secondary School, or vocational school.

Different income was also related with the different quality of life at the significance of 0.05 in all components: in social acceptance component (F = 9.524, Sig. = 0.000), safe work environment (F = 9.830, Sig. = 0.000), work-life balance (F = 7.213, Sig. = 0.000), and opportunity to learn and grow (F = 5.431, Sig. = 0.001). The analysis found that the bus drivers with lower income than 20,000 Baht had better quality of life than those who had income higher than 20,000 Baht. Lastly, time spent on driving for service per day showed a relationship with the quality of life at the significance of 0.05. Within the components of standard of living (F = 10.569, Sig. = 0.000), work-life balance (F = 10.017, Sig. = 0.000), and opportunity to learn and grow (F = 8.331, Sig. = 0.000), it found out that the bus drivers who spent time on driving for service at an average of less than 5 hours per day had better quality of life than those with 5-9 hours and more than 10 hours per day. Social acceptance and safe work environment showed no relationship.

4. Recommendation

The comparative finding of demographic and personal factors, and the quality of life coincided with the previous studies which confirmed that gender, age, marital status, family members, work experience had no relationship with the overall quality of life of employees [5] [6] [7]. In contrast, different education, income and time spent per day on driving for service resulted in different quality of life significantly. This agreed with a previous study [8], as it found that different level of education and time spent per day of less than 5 hours on driving for service made to different quality of life, especially in the component of standard of living, work-life balance and opportunity to learn and grow.

Related public organizations, entrepreneurs or concession owners were suggested to give more importance on the quality of life of their bus drivers. The level of their quality of life is very significant to how much they provide the quality and safe public service to both locals and tourist passengers. Quality of life-related policy should be raised, along with appropriate payment.

Further research should investigate on similar issues by use of qualitative approach. Studies of bus drivers’ quality of life only of concession companies in the same area or a comparison between areas should also be of interest.

5. Acknowledgement

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References


An Investigation of Customers’ Satisfaction of the ASEAN English Camp

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Abstract: This research paper was aimed to investigate the level of satisfaction of the respondents who participated in the ASEAN English camp in order to find ways to suggest ways to enhance the quality of the camp. This study was a mix of qualitative and quantitative approach. The quantitative technique included a survey Likert Scale questionnaire and the qualitative technique included focus group and in-depth interview. A total of 90 participants included all the faculty and staff members who participated in the activities of the ASEAN camp during October to December, 2014. A questionnaire was developed to interview these participants, and the data was analyzed by using SPSS program. Mean and Standard Deviation were utilized in analyzing the data. Also, the information was also collected based on 10 faculty and staff members who participated in an in-depth interview. The findings revealed that the overall satisfaction of the camp was very high with the average mean of satisfaction was 4.57, and standard deviation was 0.9831. Moreover, the mean average can be used to rank the level of satisfaction from each of the following factors: Useful Knowledge, Proper Activities, Training Techniques, Proper Learning Materials, Quality of Document, Time of Activities, Staff Service, and Facilities.

Introduction

ASEAN Economic Community (AEC) was planned to achieve the single market or the full economic community which aims to provide the benefits all ten ASEAN nation. The ASEAN nations included Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. What could be the benefits of the single market of ASEAN? The benefits is the power which comes from the size of the ASEAN market include the power to negotiate with many large GDP and powerful nations as well as a group of nations such as the United States of America, China, Japan, and the European Union, the power also include the ability to have the edge in the export competition in world markets, and to get rid of many barriers of import and export among ASEAN member countries [1]. Every important step toward the ASEAN Economic Community provides both opportunity and threats. The opportunities must be outweighed the threats. The opportunities include all the benefits mentioned earlier. The threats include the possible of failure to achieve the objective due to the weak cooperation from the ASEAN members. Other threats, for instance, higher educational institutions of Thailand are very concerned that people of Thailand will not be able to fully take advantages of this important single market economic opportunity [3]. For the AEC to be accomplished before the end of year 2015 there are four objectives that must be implemented. First objective is to be a single market economy as well as the production base which allow all ASEAN members to be able to freely move goods, services, investments, technology, information, and labor. Second objective is to create a competitive edge to enter world economic by strengthening the ASEAN cooperation to reduce the barriers such as taxes and tariffs. The third objective is to create an equitable economic development to allow the fast growth of small business enterprises (SME). Finally, the fourth objective is to develop a plan for the integration of ASEAN economic to be ready to enter a global economics [4].

In order to study the customers’ satisfaction of the ASEAN English club, there is a need to understand a variety of customers in many fields who are working for higher educational institutions including professors, lecturers, students, and staff. These people are important human resources that must be trained first in order to for them to train general publics. From the shocking study of Prachchatturakit online 2013, an important finding was revealed that Thai primary education quality was ranked number sixth in the ASEAN community, lower than Singapore, Malaysia, Brunei, Indonesia, and Vietnam. In addition, the same study revealed that in terms of students’ ability to use English, Thailand was ranked as low as number 53 among the Asia countries. This implies that Thailand has a very low English proficiency [5].

From the findings of many studies, it is imperative that Thailand needs to improve both the quality of
education and the ability of their students to communicate in English to catch up with ASEAN nations. Therefore, there is a need to set up many ASEAN camps to train human resources in the field of education. The improvement and development of knowledge, skill, and English will be transferred from these academic human resources into Thai labor sooner or later. Since the Centre for ASEAN Studies and Training set up many ASEAN camps to train both faculty and staff members to gain knowledge about the future of ASEAN and to be able to take advantage of the AEC market in the near future. This paper was aimed to investigate the level of customers’ satisfaction of activities set up by Centre of ASEAN Studies and Training in order to use the findings to enhance future customers’ satisfaction.

1. Literature Review

Satisfaction is a basis of individuals’ perception from their own experience, in which individuals have behavioral responses depending on their perceptions towards the services. All satisfaction involves signals in the nervous system, which consequently result from physical or chemical stimulation of the sense organs such as happy. Satisfaction is shaped by many factors such as learning, memory, expectation and attitude. This means that individuals’ satisfaction occur in responding to the real service and expectation of service. Therefore, Satisfaction composes of the three factors: 1) real experience; 2) expectation; and 3) the gap between the real experience and expectation.

There are three important factors for ASEAN to be successful: Political, Economic, and Social factor. ASEAN Political-Security Community has a focus on how to ensure that ASEAN nations live in peace with one another and with the world in a democratic, freedom, liberty, and harmony with the environment. The relationship among ASEAN nations must be fostering regional relationships that have a focal point in creating and maintaining peace, prosperity, and stability. In addition, it is important to have prevention of disasters and terrorism. Other agreements among the ASEAN nations include the Signing of Peace Zone, Freedom and Neutrality, the Treaty on the Southeast Asian Nuclear Weapon-Free.

The second factor is economic factor. The fast pace of changes in the global economics and Uruguay’s Free Trade Zones and the global market segmentation by regions. These changes have direct effect on ASEAN community to assemble for higher economic development and growth, bargaining power, and production capability. ASEAN Free Trade Area or AFTA was established to support and promote free regional trade in Southeast Asia as well as to lower the ASEAN production cost and attract more foreign direct investments. The tariff and tax barriers was aimed to reduce between 0-5% for goods has been practiced since 2002, with the policy to have 0% tariff at the end of 2015 for all goods and service.

The third factor is social factor. Social factors refer to ASEAN social cooperation without the effects of political and economic factors. In other words, social factor involves the process enhancing the harmonious society, modern sciences and technology, safe and clean environment, and cultural and historical sites preservation. Each process has been managed and controlled by proper groups of experts in order to assure achievement. The social policies were created with the aims to promote the well-being of the ASEAN Nations and its citizens, The development of ASEAN social integration and cooperation within the ASEAN culture and heritage has been developed in the ASEAN framework.

ASEAN economic community is one of the most important aspect of social dimensions which is set up to be as a community that assists each nation members and try to become a sharing and caring society in the future. The involvement of ASEAN nations in this aspect is an important step in steering and encouraging the ASEAN Economic Community to be more open and provide the economic and social opportunities for the all ASEAN members, especially in the areas of transnational laborers, to have access of ASEAN identity and prosperity. ASEAN community must be prepared to equitable access to gain the vital opportunities for both economics and society regardless of their gender, race, belief, religion, language, or social class and cultural background.

2. Methodology

This research study was aimed to investigate the overall level of satisfaction of the respondents who participated in the ASEAN English camp in Thailand in order to search to suggest ways to enhance quality of the ASEAN camp. This research utilized both research techniques or it was a mix of qualitative and quantitative approach. The quantitative technique included the use of a survey in form of Likert Scale questionnaire and the qualitative technique included the use of a focus group and an in-depth interview. A
total of 90 participants included all the faculty and staff members who participated in the activities of the ASEAN camp during October to December, 2014. An English questionnaire was developed to inquire information and opinions from these participants, and the data was analyzed by using SPSS statistic program. Mean, frequency, and Standard Deviation were utilized in analyzing the quantitative data. In addition, the information for qualitative technique was also collected based on 10 informants. Since the aim of this study was to investigate the level of satisfaction of faculty members about the benefits of the training they received from enrolling and participating in the ASEAN camp, the interview questions should be focused on both satisfaction and quality of the Camp. The population of this study was all faculty members who participated in the ASEAN camps in Thailand during October to December of 2014. The ASEAN camp at Bangkok was selected as a main area of research study because it provided many ASEAN training activities and knowledge. The sample size of 400 respondents was determined by Taro Yamane table with a 0.05 level of significance [6]. Since there were limited numbers of respondents, the number 90 was chosen from one of ASEAN camps. The data collation was performed via an English questionnaire to elicit respondents’ opinion about the benefits of the ASEAN camps. There are three parts to the English questionnaire. The first part was the inquiry about the demographic information. The second part was the inquiry about level of satisfaction in the benefits of the ASEAN camps and the third part was about comments. The validity of the questionnaire was tested using Item-Objective Congruency or IOC index [6]. Also, 10 respondents were pretested as a pilot study in order to search for ways to improve and make a change in each question and to obtain an acceptable Cronbach Alpha Coefficient of more than 0.70.

### 3. Findings

The aims of this finding section in this research paper were to explain and report the demographic data and the main results of the data analysis from the interview questions as well as the level of satisfaction from participating in the ASEAN camp. The sample group was 90 respondents. A demographic profile indicated that more male than female respondents were sampled with a ratio of 65:45. The staff group made up 55 percent of the sample and the faculty group made up 40 percent, whereas, the management group was only 5 percent.

<table>
<thead>
<tr>
<th>TABLE I. Satisfaction from ASEAN Camp</th>
<th>Mean</th>
<th>S.D.</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Activities</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. ASEAN Camp provides a useful knowledge that can be used in the future.</td>
<td>4.87</td>
<td>0.8970</td>
<td>1</td>
</tr>
<tr>
<td>2. ASEAN Camp provides proper activities that can be useful in the future.</td>
<td>4.84</td>
<td>0.9916</td>
<td>2</td>
</tr>
<tr>
<td>3. ASEAN Camp provides good training techniques that can be useful in the future.</td>
<td>4.76</td>
<td>0.9987</td>
<td>3</td>
</tr>
<tr>
<td>4. ASEAN Camp provides proper learning material that can be used in the future.</td>
<td>4.52</td>
<td>0.8469</td>
<td>4</td>
</tr>
<tr>
<td>5. ASEAN Camp provides good quality of document that can be used in the future.</td>
<td>4.49</td>
<td>0.7388</td>
<td>5</td>
</tr>
<tr>
<td>6. ASEAN Camp provides proper time of activities that can be useful during the camp.</td>
<td>4.44</td>
<td>0.9770</td>
<td>6</td>
</tr>
<tr>
<td>7. ASEAN Camp provides useful staff services that can be useful during the camp.</td>
<td>4.39</td>
<td>0.9194</td>
<td>7</td>
</tr>
<tr>
<td>8. ASEAN Camp provides useful facilities that can be useful during the camp.</td>
<td>4.25</td>
<td>0.9626</td>
<td>8</td>
</tr>
<tr>
<td><strong>Overall</strong></td>
<td>4.57</td>
<td>0.9831</td>
<td></td>
</tr>
</tbody>
</table>

From TABLE I, the mean score can be used to rank the highest to the lowest concerns as follows: 1. ASEAN Camp provides a useful knowledge that can be used in the future, with a mean of 4.87.
2. ASEAN Camp provides proper activities that can be useful in the future, with a mean of 4.84.
3. ASEAN Camp provides good training techniques that can be useful in the future, with a mean of 4.76.
4. ASEAN Camp provides proper learning material that can be used in the future, with a mean of 4.52.
5. ASEAN Camp provides good quality of document that can be used in the future, with a mean of 4.49.
6. ASEAN Camp provides proper time of activities that can be useful during the camp, with a mean of 4.44.
7. ASEAN Camp provides useful staff services that can be useful during the camp with a mean of 4.39.
8. ASEAN Camp provides useful facilities that can be useful during the camp, with a mean of 4.25.

Also, the mean score of all categories is 4.57 with standard deviation of 0.9831 which indicated that the average level of satisfaction is high and the ASEAN camp can be considered a success. However, two lowest scores indicated that more can be done in regards to the facilities of the ASEAN camps.

4. Future Studies

The main limitation of this paper came from sampling only 90 respondents of faculty, staff, and management members in one ASEAN camp which may not represent all the other participants in the other ASEAN camps. Therefore, the findings form this paper may not be proper to generalize. Hence, future researches should use at least 400 respondents with a random sampling technique and proportion sampling technique to obtain a more variety of people from all ASEAN camps. Also, future studies should cover not only the level of satisfaction in the benefits from the ASEAN camp but also the reasons that participants were either satisfied or unsatisfied as well as the reasons that participants want to have for participating the ASEAN camp. In other words, there is important to find the gap between their expectations and their real knowledge and experience that actually received.

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References


Influencing Factors to Consumers’ loyalty: A Case of Inbound Tourists

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Abstract: The purpose of this study was to examine influencing factors to consumers’ loyalty: a case study of inbound tourists who traveled in various tourist destinations in Thailand. The influencing factors included quality of service, tourist image, value for money, and satisfaction. A total of 400 samples were determined by Taro Yamane with a 95 percent level of confidence and 0.05 significant level. Statistic description included mean, standard deviation, and testing the relationship of factors at the 0.05 level of significance by using Lisrel program. The findings revealed that male and female respondents were in the similar proportion. They preferred to travel in small groups with no children. Pleasure was the main purpose for their traveling which was about 62.50 percent of the respondents. All factors had a positive influence to consumers’ loyalty but value for money factor showed the highest influence towards consumers’ loyalty whereas the quality of service and satisfaction factors showed the second and third highest influence towards consumer’ loyalty. The factor of loyalty was rated with a mean of 4.18 and the sub factor of recommend other about the tourist destinations was rated with a mean of 4.27. However, when compare with other factors which had an influence to loyalty factor, it was found that value for money factor showed the highest mean which was 4.21.

Introduction

What is definition of consumers’ loyalty in tourism industry? Frequent travels to the same tourist destination as well as positive attitude to the particular tourist destinations are the simple definition of tourists’ destination loyalty. Tourism in Thailand now faces with high international competitive; therefore, it is imperative to search the factors that can enhance their consumers’ loyalty. Consumers’ loyalty is one of the most important marketing topics frequently studied by many scholars and researchers. There are many marketing topics that are related to consumers; loyalty such as consumers’ satisfaction, consumers’ perception, consumers’ expectation and so forth. Many marketing studies reported that there is a positive connection between high customers’ satisfaction and customers’ loyalty [1]. Certainly, there are many benefits of consumers’ loyalty such as a sustainable demand, a steady of income, a positive image from satisfied consumers, and a new group of consumers. Chen and Gursoy (2001) pointed out in their study that consumers’ loyalty in tourism can be measured by three important indicators: consumers were continue to visit the same tourist destination, consumers had an intention to visit more of the particular tourist destination, and consumers had a willingness to recommend friends and family members to visit the particular tourist destination [2]. Wongleedee who studies many inbound tourists in Thailand stated the key to measure consumers’ loyalty was an overall level of satisfaction [3]. In addition, Chen (1998), who studied the international tourists and their decision making, found that the experience of the previous trip often directly and indirectly influence the future decision if they wanted to revisit a particular tourist destination or not [4]. However, the level of satisfaction from previous trip affected the decision to travel in the future. In other words, the high tourist satisfaction from the previous trip is the major influence factor to revisit a particular tourist destination. Despite the fact that after international tourists visited major tourist destinations in Thailand, they often showed their positive attitudes towards the major tourist destinations in almost every major tourism elements [5]. The more international tourists were satisfied, the more international tourist wanted to be back again and again. Therefore, tourism activities and tourist destinations should be improved their standard quality of service in order to gain its reputation and overall level of satisfaction. For instance, a marketing strategy aimed to improve the standard quality of service should be considered and created the image of quality.

It was imperative to obtain information by conducting a survey of international tourists who visit Thailand in order to examine if there were any sign of destination loyalty. Therefore, the focus of this study is about level of satisfaction in each factor of inbound tourists consider as important factor to visit Bangkok, Thailand in order to find the best way to develop the best marketing to increase tourists’ satisfaction in the long run.
Because there is not enough research study in this topic, this study is aimed to investigate the consumers’ loyalty from the experience and perspective of international tourists in the Bangkok, Thailand in order to offer the best guidelines to understand what international tourists feel about Bangkok as a major tourist destination and to provide a recommendation to create a positive attitude and positive image.

1. Literature Review

The study of consumers’ loyalty, a case study of international tourists in Thailand, was based on an adaptation on products and services of business loyalty theory. Philip Kotler (2000) the marketing guru, coined the definition of loyalty as a positive feedback from consumers, a willingness to purchase and to repurchase, and a willingness of current consumers to recommend the product or service to future consumers [6].

*It is therefore imperative to understand that what satisfy international tourists to select the same tourist destination again and again. When international tourists keep revisiting the same tourist destination, they are the loyal international tourists. Next question, how to enumerate the benefits of having international loyal consumers or loyal international tourists? The answer can be found from the study of Shoemaker and Lewis (1999) who stated that international loyal tourists lead to steady revenues for tourist destinations, gain free positive word of mouth advertising, and crate local employment [7]. While many research studies stated that and overall high level of satisfaction led to an increase in consumers’ loyalty. In other words, satisfaction is a necessary condition for an organization to gain loyalty. Some scholars provided the techniques that can be used to elicit consumers’ loyalty information from international tourists; these include an interview with international tourists directly, a use of English questionnaires with target international tourists, and an observation of international tourists on sites [8]. In terms of the definition of consumers’ loyalty, some researchers have provided the definition that “the intent to repurchase” is the proper indicator of consumers’ loyalty while other researchers stated that “the positive recommendation to other tourists” is also the most important keyword of loyalty. In conclusion, many researchers have suggested three important key indicators to measure consumers’ loyalty: to purchase or repurchase the products and service of a particular tourist destination within three years, to provide a positive recommendation to purchase products and services of this particular tourist destination to other, to refer information of a purchase of products and services of a particular tourist destination to other, and finally to say positive things about the purchase products and services of this particular tourist destination to others.*

2. Methodology

The aims of this study were to investigate the importance of influencing factors to consumers’ loyalty: a case study of international tourists who traveled in major tourist destinations in Thailand. The influencing factors that can connect to consumers’ loyalty included quality of service, tourist image, value for money, and satisfaction. A total of 400 samples were determined by Taro Yamane with a 95 percent level of confidence and 0.05 significant level [9]. Statistic description included mean, standard deviation, and testing the relationship of factors at the 0.05 level of significance by using Lisrel program. Likert five-scale questions were developed to measure the importance of these influencing factors. Bangkok was chosen as a major area of study and to collect information. The target population was inbound tourists who visit Bangkok during 2014. The Sample size for this study was 400 respondents with a total time of collection duration of three months. The random sampling and quota sampling method were utilized to obtain 400 samples. An English questionnaire was utilized as the research tool for collecting data. The independent variables of this study included gender, age, level of education, occupation, and income. The total of 30 pilot samples was tested to achieve a Cronbach Alpha value of at least 0.75.

3. Findings

The findings of this research revealed an important demographics information, male and female respondents were collected in almost the same proportion, or 50:50 respectively. The majority had the age between 40-60 years old. About 45 percent of the respondents were single, 30 percent were married, and the remaining of 25 percent were either divorced or widowed. Up to 78 percent of the
respondents had a high school diploma. The majority of respondents or about 77 percent would be considered to be a good middle class with an average of yearly income between 35,000-50,000 US dollars. The majority of respondents were from EU countries especially Russia, Asia especially China, and ASEAN especially Malaysia. They preferred to travel in small groups with no children. Pleasure was chosen as the main purpose for their traveling which was about 62.50 percent of the respondents. In terms of their motivation to travel in Thailand, the finding showed that the majority of respondents reported that a special vacation in a different place was their major reason. All influencing factors indicated a positive influence to consumers’ loyalty where value for money factor showed the highest influence towards consumers’ loyalty and the quality of service and satisfaction factors showed the second and third highest influence towards consumer’ loyalty. The factor of loyalty was rated with a mean of 4.18 and the sub factor of recommend other about the tourist destinations was rated with a mean of 4.27. However, when compare with other factors which had an influence to loyalty factor, it was found that value for money factor showed the highest mean which was 4.21.

TABLE I. Consumers’ Loyalty Indicators

<table>
<thead>
<tr>
<th>Indicators</th>
<th>Mean</th>
<th>S.D.</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>- To revisit the same tourist destination in three years</td>
<td>4.41</td>
<td>0.857</td>
<td>1</td>
</tr>
<tr>
<td>- To recommend others about tourist destination</td>
<td>4.32</td>
<td>0.905</td>
<td>2</td>
</tr>
<tr>
<td>- To refer positive information</td>
<td>4.29</td>
<td>0.567</td>
<td>3</td>
</tr>
<tr>
<td>- To say positive things about tourist destination</td>
<td>4.27</td>
<td>0.959</td>
<td>4</td>
</tr>
<tr>
<td>- To plan to visit the same tourist destination regularly</td>
<td>4.24</td>
<td>0.898</td>
<td>5</td>
</tr>
<tr>
<td>Overall</td>
<td>4.30</td>
<td>0.837</td>
<td></td>
</tr>
</tbody>
</table>

The findings from TABLE I revealed five different levels of importance from the perspectives of international tourists as follows: 1) the respondents rated “To revisit the same tourist destination in three years,” as the number one indicator of loyalty with a mean of 4.41 and 0.857 SD. 2) the respondents rated “To recommend others about tourist destination” as the number two indicator of loyalty with a mean of 4.32 and 0.905 SD. 3) the respondents rated “To refer positive information” as the number three indicator of loyalty with a mean of 4.29 and 0.567 SD. 4) the respondents rated “To say positive things about tourist destination” as the number four indicator of loyalty with a mean of 4.27 and 0.959 SD. 5) the respondents rated the ability “To plan to visit the same tourist destination in Thailand regularly” as the number five indicator of loyalty with a mean of 4.24 and 0.898 SD. The overall mean was 4.30 with 0.837 SD.

4. Discussion

From the findings, it can be concluded that the majority of international tourists had rated the overall importance of the five factors at a high level of importance but not the very high since the overall mean is 4.30 which is less than 4.5. To revisit within three years, was rated with the highest ranking level of importance. Even though the service quality received good level of positive attitude, there is still a room for improvement. There is a need for hospitality and tourism industry of Thailand to provide a new and better control quality standard of products and services in order to compete with ASEAN nations in terms of quality. Some practices can be managed easily, for example Thai food quality standard can help to increase level of satisfaction. Moreover, public facilities for international tourists can be improved in terms of the availability and cleanliness such as clean public toilets around major tourist destinations, and sufficient provision of clean foods and drinks on the streets, and the punctuality of public transportation. These ongoing problems should be solved by many Thai tourism organizations. Moreover, there should be brainstorming between public and private organization of Thai tourism and service entrepreneurs for practical measurements in order to manage major tourist destinations in Thailand. Why? This is because standard and excellent services will lead to the increase of international tourists’ satisfaction and revisit.
5. Conclusion

Since hospitality and tourism industry is one of the most important revenue generations of many ASEAN countries. Hospitality and tourism industry can generate huge tourists’ revenues and foreign currencies as well as many related jobs. In the past, Thailand had an edge over other ASEAN countries in terms of low price, ample supply of tourism resources, friendly service, unique culture, and relaxing environment. Nowadays, many other ASEAN countries aim to compete with Thailand directly and indirectly as well as have a national policy to promote hospitality and tourism industry to earn more foreign money. In order for Thai hospitality and tourism industry to be highly competitive again, Thailand must be able to increase the international tourists’ level of satisfaction by attracting and searching for new international tourists as well as urging the regular international tourists to choose to visit and revisit Thailand as their first choice.

6. Limitations and Future Studies

In order to get more specific results, the future research should survey inbound tourists based on their country of residence to obtain representative opinions and perspectives from a variety of inbound tourists in Bangkok, Thailand. Then, the findings may be able to generalize to obtain a meaningful tourists’ loyalty. Future research should use a stratified sampling and random sampling technique with a diverse group of inbound tourists and try to increase a variety of sample size if time and budget is permitted. Moreover, future studies should use small group interviews with an in-depth interview to investigate the reasons behind their level of satisfaction in each factor of visiting Bangkok, Thailand.

7. Acknowledgement

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References


Classroom Management: Cooperative Learning and The Geometer’s Sketchpad in Algebra

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Abstract: The purpose of this paper is to explore teaching approaches cooperative learning and the use of the dynamic software program the Geometer’s Sketchpad in algebra in normal classroom. Action research was conducted in International College, Suan Sunandha Rajabhat University Thailand and there were 22 students in the sample class. Based on the research findings we have to manage three topics namely: students’ social skills, time management, and student’s knowledge. The research findings show that the use of cooperative learning method: Maths-Jigsaw incorporate with GSP approaches were very useful and effective methods for both teacher and students. GSP changed the way mathematics was taught; with GSP the teachers and students were able to construct the representation the graphs of quadratic functions in algebra. In addition, Maths-Jigsaw enhanced students to help each other to learn. They worked together as a team in order to complete the work assigned to them. Best of all, most of the students have positive attitude toward mathematics after they learned mathematics using cooperative learning method: Maths-Jigsaw incorporate with GSP.

Introduction

Over the past few decades many mathematics teachers, faced with the problems of teaching students who do not understand mathematics. The teachers have tried to change the way they teach mathematics. These teachers have begun to wonder how they should teach those students in their classes who always seem to struggle to understand the mathematics presented in ordinary lessons? They have pondered over questions like: What exactly don’t they understand, and why? What do they understand—and in what sense do they understand? What do I need to do to assist more students to understand? Sierpinska[1] described that understanding is the mental experience of a subject by which he/she relates an object to another object. Personal understanding of a concept is grasping or acquiring the meaning of the object. Blythe [2] explained that understanding is a matter of being able to do a variety of thought-provoking things with a topic, such as explaining, finding evidence and examples general listing, applying and representing the topic in new ways. Therefore, in order to help students learn mathematics with understanding the teacher should facilitate the construction of ideas concepts and processes through a careful selection of resource materials and relevant with the real world problems. The students should be actively involved in the learning process and work as a team.

1. Rationale

In traditional mathematics classes, most teachers continue to use the traditional chalk-and-talk “telling approach.” This approach relies heavily on an assumption of transmission of knowledge from teacher to students. The “telling” defines what students should learn, and the approach assumes that the students, for their part, will listen, watch, and practice. The teacher’s task is assumed to be one of providing clear, step-by-step demonstrations of each procedure, restating steps in response to student questions, providing adequate opportunities for students to practice the procedures, and offering specific corrective support when necessary. Smith [3] explained that it is presumed that students will learn by listening to what the teacher demonstrates, and therefore students are expected to listen carefully and practice diligently. Teachers judge their effectiveness by the level of “skills proficiency” their students achieve.

Algebra is an important subject in mathematics. Students have to learn and understand the language, including the symbolisms, and grasp basic algebra algebraic concepts such as factorization and simplification, before they can expect to have any chance of success in studying pre-calculus, linear algebra and other more advanced areas of mathematics. Yet, algebra is one of the subjects that
most students learn without understanding. The reason might be that with algebra, there has traditionally been an overwhelming emphasis on the manipulation of symbols, and because of that it has been too abstract for many students. Teachers expect their students to spend more of time attempting to paper-and-pencil algorithms associated with elementary algebra. Students are required to memorize algorithms, but they did not know why they have to do and did not understand. They simply do not learn and they quickly forget them.

Many teachers have reached the conclusion that algebra classrooms consist of two groups of students—those who understand and those who do not. Because it seems pointless to attempt to transmit algebraic know-how to the latter group, many teachers come to believe that it is more profitable to concentrate on the former group. Not surprisingly, the low achieving students conclude that algebra is boring, and irrelevant subject. For those students, it is a waste of time to try to learn the subject. In other words, the students are no longer motivated to try.

In Thailand, teacher-centered teaching “telling method” is the traditional and common method. Teachers used teacher-centered teaching daily in their mathematics class at all levels from primary to secondary. As such, Ministry of Education, Thailand [4] stated that child-centered learning or student-centered learning have to be used in the learning classroom. Teachers need to design learning activities that allow children to demonstrate what and how they are learning. The teaching and learning approaches to be used in child-centered mathematics classes as suggested by the Ministry of Education, Thailand are constructivist approaches, cooperative learning, problem solving, and the use of information and communication technology.

2. Cooperative Learning

As stated, cooperative learning is one of the suggested teaching and learning approaches in student-centered classes and its use is consistent with the theories of learning and how children learn mathematics. Slavin [5] defined cooperative learning as a teaching method in which students work together in mixed-ability groups. Cooperative learning is a group-learning process built on the belief that students learn better when they learn by talking and working together. Cooperative learning involves structuring of the learning environment so that students work together toward defined objectives. In addition, Johnson & Johnson [6] described that cooperative learning is an instructional strategy that puts students in both learning and teaching roles. Through the use of cooperative learning, students work together as a team on academic tasks, and help each other to learn in order to achieve their common academic goal and acquire social skills. Cooperative learning encourages group interaction using assigned roles, with each member sharing responsibility for the group and the work produced.

There are a variety of cooperative learning methods based on the social psychological principles of cooperative learning. Cooperative learning methods have been adapted from different methods to meet the practical requirements of classrooms and to solve problems introduced by the use of cooperation itself. However, Slavin [5] explained that one component of cooperative learning method is always the same: the students work together in heterogeneous groups toward a common goal. According to Kagan [7] the methods of cooperative learning have certain elements in common that distinguish them from traditional instructional formats, for example the division of the whole class into small teams of students who are made positively interdependent by the systematic application of principles of reward and task structure. Slavin [5] described that cooperative learning as comprising structured, systematic instructional strategies, which can be used at any grade level and in most school subjects. Johnson, Johnson and Holubec [8] argued that there was evidence that cooperative learning can only be effective when teachers structure and promote all of the principles, namely: clearly perceived positive interdependence, considerable face-to-face interaction and felt personal responsibility, i.e. individual accountability to achieve the group’s goals, frequent use of relevant interpersonal and small-group skills, periodic and regular group processing.

According to Slavin [9] the essential components of cooperative learning consist of three concepts, namely team rewards, individual accountability and equal opportunities for success. Kagan [7] while agreeing with the ideas of Johnson, Johnson and Holubec, and Slavin, claimed that the basic principles of cooperative learning must include four
principles, namely positive interdependence, individual accountability, equal participation and simultaneous interaction.

Davidson [10] described that in cooperative learning students work together in small groups, explain how to solve problem, and discuss in order to ensure that all members understand and master the assigned concept and procedures. The students talk and work together on mathematics problems, and interest is focused not on the right answer but rather on confronting the different suggestions and discussing the different ways that the students had gone about the problems. Students are able to use their own language while solving problems, carry out different actions and vary their perspectives on mathematical problem solving and on the presented problem.

Johnson & Johnson [6] explained that the strategies for motivating low-achieving students to learn has revealed that such students need a safe supportive environment which will allow them to feel that if they make a genuine effort to learn the chances of “success” will be high. In the context of algebra, the use computer software program which can be connected to students’ interest and use cooperative learning in their mathematics classrooms has created the right environment for students to feel they have some chance of success.

Sharan [11] stated that cooperative learning is a motivational strategy where students work together in small team to accomplish specific learning objectives. Research findings show that cooperative learning can promote intrinsic motivation, which is a key element in successful teaching and learning. Cooperative learning can help students to develop positive attitudes, which can generate higher self-esteem, and increased achievement. Slavin [5] explained that cooperative learning is a teaching strategy that places students in both learning and teaching roles, for they have two responsibilities. Each student is expected to learn cognitive skills and concepts, at the same time the student is expected to help team members learn in order that the team will achieve common cognitive goals and acquire desired social skills.

Through cooperative learning students can increase their communication skills by interacting with team members. They can become actively involved in the learning process and therefore interested in what they are expected to learn. Research finding by Khairiree [12] shown that cooperative learning: Maths-Jigsaw do motivate learning-resistant students want to learn, and generate higher performance than would have been achieved in traditional classes.

3. The Geometer’s Sketchpad

The Geometer’s Sketchpad (GSP) is one of the dynamic mathematics software that provides opportunities for students to investigate and discover mathematics concepts in particular algebraic concepts. GSP empower students to use their ability to access, drag, visualize, and create graphical representation, which will enable them to develop their mathematical thinking skills, concepts and understanding. By using GSP students learn through exploring, investigating and discovering. Khairiree [13] in her research findings on “Constructivist in mathematics in virtual class with Moodle and the use of the GSP” revealed that the students were able to visualize the value of point at break-even point and the value of the loss region and profit region. The students had deeper and better understanding of the lessons because of GSP and Moodle.

4. Classroom Management of Using Cooperative Learning and the Geometer’s Sketchpad

The cooperative learning method: Maths-Jigsaw used in this research study were based on the Student Team Learning model created by Slavin [9] and his colleagues at Johns Hopkins University. The cooperative learning method: Maths-Jigsaw is an adaptation of Jigsaw II of Student Team Learning. The cooperative learning method: Maths-Jigsaw incorporate with the Geometer’s Sketchpad with its use in algebra contexts on the topic “Quadratic Functions” was employed in this study. The first procedure of Maths-Jigsaw involves the teacher teaching the lesson or topic through discussion, questions and answers to the whole class. Then, students work in a heterogeneous Home group of four or five. Each Home group member selects only one section. Next, students from different Home groups who chose the same section meet in an Expert group to discuss and work together until they complete their tasks. Then, the students return to their Home groups and teach their group members what they have learned in their Expert groups. Students take it in turns to teach, starting from Section 1 and ending with
Section 4. Finally, the teacher wraps up the mathematics lesson and checks the solutions of the tasks before distributing a quiz. Students take the quiz individually, and the scores of all group members are added to give a group score. A weekly class newsletter highlights the top-scoring group and individual improvement scores. In general, the cooperative learning methods Maths-Jigsaw and Jigsaw II of the Student Team Learning are based on the same principles and procedures. The difference is that in Maths-Jigsaw the teacher wraps up the mathematics lesson and checks the solution of the tasks before students take an individual quiz. The students take the quiz in the same hour or on the following day.


In Fiscal Year 2013, Suan Sunandha Rajabhat University allocated budget to conduct community academic services to mathematics teachers. Under the community services, the author received budget to conduct the training workshops on cooperative learning and the use of GSP as a tool in mathematics classes. In order to have direct experiences the author conducted the action research in mathematics class in International College, Suan Sunandha Rajabhat University in order to explore the classroom management of using cooperative learning and GSP approaches in normal mathematics classes on the topic of algebra. The students took turn using GSP and their notebook computers in every groups.

The action research questions were:

1. How to implement cooperative learning method: Maths-Jigsaw and GSP in mathematics classes effectively?
2. What are the effects of using cooperative learning method: Maths-Jigsaw and GSP towards students’ attitudes in mathematics?

5.1. Research Question 1

Research Question 1: How to implement cooperative learning method: Maths-Jigsaw and GSP in mathematics classes effectively?

The following activities showed how the author who act as a teacher managed these approaches in the classroom. The example of the implementation of cooperative learning method: Maths-Jigsaw and GSP approaches in algebra which used in this research are as follows:

Step 1: The teacher and the students reviewed a topic of Quadratic Function using GSP through lecture and discussions as follows.

Example 1: Quadratic Function: General Form

This activity, students explored Quadratic Function in General Form. The students used GSP to explore the relationship between the x intercepts of the graph of a quadratic function \( f(x) \), and \( f(x) = ax^2 + bx + c \), where \( a, b, \) and \( c \) were real numbers and not equal to zero. By changing the parameters \( a, b, \) and \( c \) and chad effects on the graph of quadratic function. The students sketched and investigated the Quadratics Function using GSP as follows:

- Using Graph menu to construct a parameter \( a \), \( b \), and \( c \). Let \( a = 2; b = 8 \) and \( c = 6 \)
- Enter function \( f(x) = ax^2 + bx + c \) from the Graph menu;
- Enter \( aby \) clicking on parameter \( a \) on the sketch and click on the \( x \) in the New Function dialog box click \( ^\wedge \) and 2; click + , parameter \( b \), \( x \), +, and parameter \( c \) and click OK;
- The graph of \( f(x) = ax^2 + bx + c \) shown on the screen as in Fig. 1

![Fig.1 Graph of Quadratic Function](image)

Example 2: Quadratic Function: Standard Form

This activity, students explored Quadratic Function in Standard Form: \( f(x) = a(x - h)^2 + k \). The students used GSP to explore the graph of a quadratic function. The graph will either have a maximum or a minimum point called the Vertex. The \( x \) and \( y \) coordinates of the vertex were given by \( h \) and \( k \) respectively. The GSP was used to sketch and investigate Quadratic Function in Standard Form as follows:
● Using Graph menu to construct a parameter $a$, $h$, and $k$. Let $a = 1$; $h = 4$ and $k = -5$.
● Enter function $f(x) = a(x - h)^2 + k$ as following:
  o Select the New Function from the Graph menu.
  o Enter $abh$ clicking on parameter $a$ on the sketch and clicking on the $x$ in the New Function dialog box.
  o Enter $(x - h, ^2 + k)$ and 2;
  o click +, parameter $k$ and OK.
The graph of $f(x) = a(x - h)^2 + k$ shown on the screen as in Fig. 2.

![Fig. 2 Graph of Quadratic Function: $f(x) = a(x - h)^2 + k$](image)

**Step 2:** Home groups: Students worked in small heterogeneous home groups. Each home group consisted of 4 members. The teacher divided the topic into 4 sections equal to the members in each group. Each group member read his/her own unique section only.

**Step 3:** Expert groups: Expert groups consisted of students with responsibility for the same sections, were formed. These expert groups used GSP to explore and to discuss the material covered by their sections. The students planned to present their work assignment to other members of their teams.

**Step 4:** After worked in the expert groups, students returned to their home groups and taught their group members what they had learnt in their Expert groups. Students took turns to teach, started from Section 1 until Section 4.

**Step 5:** Teacher and students reviewed all sections and check the answer before taking a quiz.

**Step 6:** Students took the quiz and the score of each member in each home group were summed. This sum score was a home group’s score.

A weekly class newsletter highlights the top-scoring group and individuals.

Some of the lesson plans and worksheets that have been used are provided as an appendix to this paper.

### 5.2. Research Question 2

Research Question 2: What are the effects of using cooperative learning method: Maths-Jigsaw and GSP towards students’ attitudes in mathematics?

The author collected data and feedback from students using classroom observation and interviews. The following data are excerpted from students’ semi-structured interview.

- I learned a lot from my friends through Maths-Jigsaw method and GSP.
- At first, I did not like Maths-Jigsaw because I had to explain the exercises to my friends, now with the use of GSP I can do it.
- I did not like to explain the exercises to my group members because they are very slow.
- The activities made us do a lot of discovery and exploration, which were impossible without GSP and discussion during expert group.
- When I have to explain to my friend, I can use GSP to show how coefficient $b$ or $c$ had effects to the graph of quadratic function.
- The Maths-Jigsaw method and using GSP gave me a deeper and better understanding of the lessons. The activities that go with it enabled us to work together during expert group. Learning became more fun and easier.
- With GSP, we were able to visualize the effect of the value of coefficient. I learned how the graph of quadratics functions look like if some variables are changed.
- There are a lot of new discoveries while we use GSP.
- It made quadratic functions activities more enjoyable. It is a big help in plotting the graphs of functions that are quite tedious and difficult to do manually.
- The activities that go with the GSP and work with my friends are challenging.
- GSP is a useful tool in learning algebra.
- Learning mathematics has become more enjoyable.
- Algebra has become more fun and easy to learn.
- I learned how to changes of constants and variables that affects the graphs.
6. Research Findings

Based on the research findings, in order to implement the cooperative learning method: Maths-Jigsaw and GSP effectively we have to manage three topics as follows:
1) Students’ social skills,
2) Time management, and
3) Student’s knowledge

Students’ social skills, there were some problems at the first month of the duration of research conducted. Because the students were not trained to work together as a team. The students did not help each other as it should be. The author had to develop students’ small group communication, social skills and helping skills. In the third month of study, the students had changed, they enjoyed working in groups, liked to help one another. The students were able to complete their homework assignments.

Time management, in Maths-Jigsaw class incorporates with the Geometer’s Sketchpad the research found that students learnt by talking, asking questions, answering, discussing and teaching their group members. Whenever two or more students attempt to solve a problem or answer a question they become involved in the process of exploratory learning. Students are encouraged to express themselves and to explore their ideas without fear of failure or criticism. However, the teacher had to control time spent during students worked together in the Expert group and Home group.

Students’ knowledge, results from the research findings revealed that the students now liked to learn mathematics because they were able to do many activities in algebra. The students revealed that when teachers explained mathematics by using GSP the graphs illustrating ideas were not only clear but also made the concept much more basic and easier to understand. In addition, when the students worked in Home group and Expert group, their friends helped them to do the work assigned to them. These enabled them to explain to their team members easier. The students liked the new way of teaching mathematics using cooperative learning method: Maths-Jigsaw incorporate with GSP. The students’ academic achievements from the test were increased at the end of semester.

These research findings are supported with the research findings of Klongkatok[14]. He used GSP in teaching algebra on the topic of geometry and conic section. The sample group in his research was 33 students in Grade 10 at the Demonstration School of Suan Sunandha Rajabhat University. Tools used in his study included lesson plans on the introduction to Geometry and Conic Section using the Geometer’s Sketchpad, a 30-questions achievement test on geometry and conic sections and attitude test on mathematics. The mean, standard deviation, t-test, and coefficient of variation were analyzed. The results revealed that students’ academic achievements on the post test were higher than that on the pre test at the significant level of 0.05 and students’ attitude toward mathematics after the use of these mathematical teaching materials was at a good level.

7. Conclusion

I had shown that with the use of cooperative learning method: Maths-Jigsaw incorporate with GSP approaches were very useful and effective methods for both teacher and students. GSP changed the way mathematics was taught; with GSP the teachers and students were able to construct the representation the graphs of quadratic functions in algebra. In addition, Maths-Jigsaw enhanced students to help each other to learn. They worked together as a team in order to complete the work assigned to them. Best of all, most of the students have positive attitude toward mathematics after they learned mathematics using cooperative learning method: Maths-Jigsaw incorporate with GSP.

References


APPENDIX

Lesson Plan: Quadratic Functions

Method of teaching: Maths-Jigsaw and GSP

Objectives:
1. To sketch the graph of quadratic functions
2. To identify the significance of the values of \( a, b, \) and \( c \) on the graph of \( y = ax^2 + bx + c \)
3. To describe the quadratics functions.

Materials: 1. Worksheets: Number 1 to Number 4
           2. Computer with the program The Geometer’s Sketchpad(GSP)

Procedure:
1. Teacher and students review topic of quadratic functions and the use of GSP
2. Teacher divides the topic quadratic functions into 4 sections:
   1. Section 1: Worksheet No. 1: \( y = ax^2 \)
   2. Section 2: Worksheet No. 2: \( y = ax^2 + c \)
   3. Section 3: Worksheet No. 3: \( y = a(x \pm b)^2 \)
   4. Section 4: Worksheet No. 4: \( y = a(x \pm b)^2 + c \)
3. Home Group: Students work in small heterogeneous groups of four members in each group. Each group member work on his/her own unique section only.
4. The Expert Group

Students with the same section meet in the Expert Group to discuss, using GSP to construct, drag, explore and write the answers or short note of their sections.

5. Students return to their Home Groups and take turns teaching their groupmate by using the reports and worksheets from the Expert Group. In the Home Groups you should start at Section 1 and end with Section 4.

6. Teacher and students review all sections, check the answers and make sure all students understand the lesson.

7. Students take individual quiz and all correct scores add up to the group scores.

8. A weekly class-newsletter highlight to the top scoring group and individuals.

Worksheet Number 1: \( y = ax^2 \)

1. Using a GSP to draw a graph of each function, and complete the chart.

<table>
<thead>
<tr>
<th>Function</th>
<th>Sketch</th>
<th>Value of ( a ) in ( y = )</th>
<th>Does the parabola</th>
<th>Coordinate of the Vertex of ( a )</th>
</tr>
</thead>
<tbody>
<tr>
<td>( ax^2 )</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
1. Predict what the graphs of these equations will look like. Sketch each graph on plain paper and then use your GSP to check your answers.

<table>
<thead>
<tr>
<th>Function</th>
<th>Predict the graph by drawing from your understanding</th>
<th>Using GSP to draw each graph and compare with your graph</th>
</tr>
</thead>
<tbody>
<tr>
<td>y = (x−1)^2 + 7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>y = (x + 3)^2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>y = −3(x)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. Use GSP to draw a graph for each function and then complete the chart.

<table>
<thead>
<tr>
<th>Function</th>
<th>Sketch</th>
<th>Value of a, b in y = a(x±b)^2</th>
<th>Coordinate of the vertex?</th>
</tr>
</thead>
<tbody>
<tr>
<td>y = 2(x + 3)^2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>y = 2(x − 2)^2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>y = −3(x − 6)^2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>y = 2(x − 6)^2</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. Describe how the graph of y = a(x ± b)^2 changes, if a is kept constant and b varies.
4. Describe how the graph of y = a(x ± b)^2 changes, if b is kept constant and a varies.

**Worksheet Number 4**: \( y = a(x±b)^2 + c \)

1. Predict what the graphs of these equations will look like. Sketch each graph on plain paper and then use your GSP to check your answers.

<table>
<thead>
<tr>
<th>Function</th>
<th>Predict the graph by drawing from your understanding</th>
<th>Using GSP to check and sketch the graph</th>
</tr>
</thead>
<tbody>
<tr>
<td>y = (x − 3)^2 + 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>y = −(x + 1)^2 + 7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>y = 3(x − 5)^2 −</td>
<td></td>
<td></td>
</tr>
<tr>
<td>y = 2x^2 − 12x +</td>
<td></td>
<td></td>
</tr>
<tr>
<td>y = (x + 2)(x +</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
2. Use GSP to draw the graph of each function. Adjust the range values so all the vertices are visible. Then complete the chart.

<table>
<thead>
<tr>
<th>Function</th>
<th>Sketch</th>
<th>Value of a, b and c in $y = a(x+b)^2$</th>
<th>Coordinate of the vertex</th>
</tr>
</thead>
<tbody>
<tr>
<td>$y = (x - 1)^2 + 3$</td>
<td></td>
<td>$a$</td>
<td>$b$</td>
</tr>
<tr>
<td>$y = (x + 3)^2$</td>
<td></td>
<td>$a$</td>
<td>$b$</td>
</tr>
<tr>
<td>$y = -(x + 6)^2 - 7$</td>
<td></td>
<td>$a$</td>
<td>$b$</td>
</tr>
<tr>
<td>$y = 4x^2 + 8x - 2$</td>
<td></td>
<td>$a$</td>
<td>$b$</td>
</tr>
<tr>
<td>$y = (x + 2)(x + 3)$</td>
<td></td>
<td>$a$</td>
<td>$b$</td>
</tr>
</tbody>
</table>

3. What if you vary $c$?
(a) Predict what the graphs of these equations will look like.
   $y = x^2 + 4x + 3$  
   $y = x^2 + 4x + 6$  
   $y = x^2 + 4x + 9$  
(b) Use your GSP to graph the equations. Did the result agree with your prediction?
(c) Repeat, using other values of $a$ and $b$. Did you get a similar pattern?
(d) Explain why the patterns occur.

4. What if you vary $b$?
(a) Predict what the graphs of these equations will look like.
   $y = x^2 - 6x + 3$  
   $y = x^2 - 4x + 3$  
   $y = x^2 + 2x + 3$  
   $y = x^2 - 2x + 3$  
(b) Use your GSP to graph the equations. Did the result agree with your prediction?

3. Predict what the graphs of these equations will look like. Sketch each graph on plain paper.
(a) $y = -2x^2$  
(b) $y = (x + 2)^2$  
(c) $y = (x + 2)^2 - 2$  
(d) $y = x^2 - 2$  
(e) $y = -x^2 - 2$  
(f) $y = (x - 2)^2$

4. Which of these graphs of $y = x^2$ shifted 2 units to the left of the $y$-axis?
(a) $y = 2x^2$  
(b) $y = (x + 2)^2$  
(c) $y = (x + 2)^2 - 2$  
(d) $y = x^2 - 2$  
(e) $y = -2x^2$  
(f) $y = (x - 2)^2$

2. Which of these graphs of $y = x^2$ shifted 2 units down from the origin?
(a) $y = 2x^2$  
(b) $y = (x + 2)^2$  
(c) $y = (x + 2)^2 - 2$  
(d) $y = x^2 - 2$  
(e) $y = -2x^2$  
(f) $y = (x - 2)^2$

Quiz

Answer the following questions **without using GSP**. Some questions may have more than one correct response.

1. Which of these graphs will have vertex at the origin?
   (a) $y = x^2$  
   (b) $y = (x - 5)^2$  
   (c) $y = 4(x + 3)^2 - 7$  
   (d) $y = 2x^2 + 4$  
   (e) $y = -x^2$  
   (f) $y = (x + 2)^2$

2. Which of these graphs of $y = x^2$ shifted 2 units to the left of the $y$-axis?
   (a) $y = 2x^2$  
   (b) $y = (x + 2)^2$  
   (c) $y = (x + 2)^2 - 2$  
   (d) $y = x^2 - 2$  
   (e) $y = -2x^2$  
   (f) $y = (x - 2)^2$

3. Which of these graphs of $y = x^2$ shifted 2 units down from the origin?
   (a) $y = -2x^2$  
   (b) $y = (x + 2)^2$  
   (c) $y = (x + 2)^2 - 2$  
   (d) $y = x^2 - 2$  
   (e) $y = -x^2 - 2$  
   (f) $y = (x - 2)^2$

4. Predict what the graphs of these equations will look like. Sketch each graph on plain paper.
   (a) $y = -0.5x^2 + 2$  
   (b) $y = (x + 1)^2 - 3$  
   (c) $y = (x + 2)(x - 5)$  
   (d) $y = 2x^2 + 4x - 1$

Acknowledgement

The author gratefully acknowledges the Research Center of Suan Sunandha Rajabhat University, Bangkok Thailand for granting research funding and the students of the International College, Suan Sunandha Rajabhat University for their cooperation and contribution.
The Impact of AEC on English Communication:  
Case Study of Thai Travel Agent

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Abstract: This research aims to study English communication of Thai travel agencies and the impact of the ASEAN Economic Community (AEC) on Thai travel industry. The questionnaire had been used in this research. The multi-stage sampling method was also utilized with 474 respondents from 79 Thai travel agencies. Descriptive statistics included percentage, average, and standard deviation. The findings revealed that English communication for most travel agencies was between the poor and intermediate level and therefore improvement is needed, especially the listening and speaking skill. In other words, the majority of respondents needed more training in terms of communicating in English. Since the age average of travel agencies was around 30-39 years, the training technique should integrated communicating skills together, such as stimulating technique or cooperating technique that could encourage travel agencies to use English in communicating with foreigners.

Introduction

English is an international language. Currently, the first priority task for Thai people is to be able to communicate in English. Start from the bottom up, the Thai government often encourages Thai students to study English as a second language. However, from the English Proficiency Index, which divides English skills into five levels: very high, high, medium, low, and very low, Thailand has been rated at the very low level which is below Indonesia and Vietnam [1]. This indicated that there is a need for Thai students to improve their ability to communicate in English and to be ready to use English to communicate within the ASEAN countries.

One of the objectives of AEC is to create a single market, which will allow the free movement of goods, services, investments, and labors [2]. In terms of tourism industry, competitive advantage of Thai skilled workers is the high quality of service. However, the big problem is the ability to communicate in English [3]. Thus, there is a need to improve communication for this skilled labor [4]. This research paper is interested in identifying weak skills that should be improved as well as strong skills that should be maintained.

The researchers chose Silom Road as a target area of study since it is a main area that most travel agencies are located and serves mainly to international tourists. The language that many travel agencies need to use in communicate with these international tourists is English, especially the speaking and listening skills. It is, therefore, important for these travel agencies to enhance their communication in order to compete within the competitive market. The findings of this research will be used to develop a plan to improve English communication skills for tourism industry.

1. Literature review

Communication theories

According to Croft [5], communication is the way that people exchange their information, data, knowledge, and though. It is an interaction that can convey through symbolize system between a person and a group. Berelson and Steiner [6] also gave a similar meaning of communication as it is the way that persons exchange information, though, feeling, and skills via symbolize system. From those meanings, it can be concluded that communication is an interaction between 2 or more people for exchanging though, information, feeling, and skills through symbols, technologies, and social process, such as culture, norm, value, and attitudes.

Although there are many communication theories, the famous model is SMCR of Berlo [7] which will determine how source will send the message and how receiver will translate and response to those messages. There are 4 elements; source, message, channel, and receiver. Source should have high communicating skills with the ability of encoding messages as well as has a good attitude with receiver. The content, symbols and channel of sending a message should related with each other. Then a message will be sent through one of 5 senses; listening, looking,
touching, testing, and scenting. In this case, a receiver should have a similar attitude, value and culture so that he or she would be able to decoding a message sent by a source. Figure 1 illustrated Berlo’s SMCR model.

![](source.png)

**Figure 1. Berlo’s SMCR model**

Regarding to SMCR model, main factors that can be viewed as a burden of source’s and receiver’s ability include communication skills, attitudes, knowledge levels, and socio-cultural systems. Therefore, communication between different countries should take into account those factors in order to communicate effectively [8].

**English communication concept**

The concept of English communication for professional career is developed by Limpakdee [9]. The study suggested that the best way to communicate in English is through practicing, especially Thai travel agent. This practice should adapt with the changing environments or situations. Thus, English communication concept is focusing on learning by doing to get the real experiences in real circumstances.

There are many articles related to the quality of English communication in Thai students. The study of Pongpanish [10] illustrated that factors associated with communicating in English include existing knowledge is not enough for communicating with foreigners and even though students have knowledge, they cannot use that knowledge in the real situation. Moreover, the differences in demographic factors also affect the attitude of learning English in students [11].

**Effect of AEC on English communication**

The coming of AEC in 2015 is creating more pressure on Thai skilled workers in terms of both positive and negative sides. For the positive side, it increases the competition in labor market. The study of Charoensuk and Charoensuk [12], who examined English language and the forces of AEC 2015, stated that Thai skilled workers in tourism industry have disadvantage in English. This problem could be measured by preferences of owners in labor market who need workers with high skills of English communication. In this case, education could play an important role in creating the graduated students who have high ability of communicating with foreigners, not only in English but also in other languages.

Another factor that can affect English communication skills of travel agencies is cross-cultural communication. The article about English communication of travel agencies in Phuket of Suwattikul and others [13] stated that most of agencies lack the basic knowledge of others cultures. Furthermore, they do not research about expectation of customers as well as the etiquette of each culture. This, in turn, reduces efficiency of communication under the SMCR model.

**2. Methodology**

The objectives of this research were to study English communication skills of travel agencies, identify communicating problems that most agencies have in common and analyze the results in order to find the guideline to improve their communication ability. Due to the limitation of fund provided, area collecting data was limited in Silom province, Bangkok, where most travel agents located. The quantitative approach was conducted with the multi-stage sampling method was utilized, 474 respondents from 79 travel agencies.

A Questionnaire was developed to collect the data and it was divided into three parts. The first part was about the demographic information. The second part of the questionnaire was about their ability to communicate in English, which was a self-evaluation on four communicating skills: listening, speaking, reading, and writing. The third part consists of interview questions. The questionnaire had been tested by using index of item objective congruence (IOC). As a result, a score of IOC for the questionnaire was equal to 0.947.

The time frame for collecting data had been divided into 2 stages. Firstly, the author cooperated with Thai Travel Agent Association (TTAA) in order to seek a sample group. Then the author prepared the questionnaire and spread it through TTAA channel.
For the data analysis, descriptive statistics had been used. These included percentage, average, and standard deviation. The result illustrated how well travel agents can use English to communicate as well as how much they have to develop.

### 3. Results

The findings revealed that the majority of respondents, 61.5 percent, were females. The average age of the respondents was between 30-39 years old having an undergraduate degree or approximately 79.5 percent. About 53.8 percent had their average income between 15,001-25,000 baht per month. The majority of the respondents were single or about 74.4 percent. In terms of their duties, most of the respondents were ticket seller with 10-14 years of working experience.

For English communication skills, the results showed that the majority of respondents had a medium skill level of English communication when compared with other ASEAN countries. The table 1 and 2 illustrated that listening often related with speaking. The problem was that it usually has a time delay between listening and speaking when travel agent officers communicated with foreigners. Normally, they would translate from Thai into English before speaking. Some officers commended that if they had to listen in long sentences, it could reduce the efficiency of understanding the main point. Therefore, it was very important for them to enhance listening in long sentences rather than in words or phrases along with speaking and thinking skills.

#### Table 1. Listening level

<table>
<thead>
<tr>
<th>Skills</th>
<th>Mean</th>
<th>S.D.</th>
</tr>
</thead>
<tbody>
<tr>
<td>When you listen to foreigners, you can…</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. understand without translation</td>
<td>2.97</td>
<td>0.67</td>
</tr>
<tr>
<td>2. understand the main points</td>
<td>3.00</td>
<td>0.73</td>
</tr>
<tr>
<td>3. understand long sentences</td>
<td>2.79</td>
<td>0.73</td>
</tr>
<tr>
<td>4. understand their accent</td>
<td>2.56</td>
<td>0.82</td>
</tr>
</tbody>
</table>

#### Table 2. Speaking level

<table>
<thead>
<tr>
<th>Skills</th>
<th>Mean</th>
<th>S.D.</th>
</tr>
</thead>
<tbody>
<tr>
<td>When you talk to foreigners, you can…</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. answer immediately without thinking</td>
<td>2.79</td>
<td>0.86</td>
</tr>
<tr>
<td>2. answer with correct grammar</td>
<td>2.72</td>
<td>0.65</td>
</tr>
<tr>
<td>3. answer in long sentences</td>
<td>2.67</td>
<td>0.84</td>
</tr>
<tr>
<td>4. transfer information precisely</td>
<td>2.85</td>
<td>0.78</td>
</tr>
</tbody>
</table>

Table 3 identified the problem of reading. The main problem was that they usually opened dictionary when they wanted to translate some technical terms. This habit led to the inefficiency of understanding the context. Furthermore, travel agencies still had a problem with writing English correspondences, shown in table 4, which was very important in writing an electronic mail as well as writing a program tour for customers.

#### Table 3. Reading level

<table>
<thead>
<tr>
<th>Skills</th>
<th>Mean</th>
<th>S.D.</th>
</tr>
</thead>
<tbody>
<tr>
<td>When you read some information, you can…</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. use scanning technique to find the main points</td>
<td>2.92</td>
<td>0.70</td>
</tr>
<tr>
<td>2. understand long articles</td>
<td>2.97</td>
<td>0.74</td>
</tr>
<tr>
<td>3. understand most difficult terms without using dictionary</td>
<td>2.72</td>
<td>0.83</td>
</tr>
<tr>
<td>4. understand the content and context of those sentences without using dictionary</td>
<td>2.77</td>
<td>0.71</td>
</tr>
</tbody>
</table>

#### Table 4. Writing level

<table>
<thead>
<tr>
<th>Skills</th>
<th>Mean</th>
<th>S.D.</th>
</tr>
</thead>
<tbody>
<tr>
<td>When you write some sentences, you can…</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. write the main important data from the conversation</td>
<td>2.87</td>
<td>0.70</td>
</tr>
<tr>
<td>2. write sentences with correct grammar</td>
<td>2.74</td>
<td>0.79</td>
</tr>
<tr>
<td>3. write sentences in a formal English style</td>
<td>2.69</td>
<td>0.86</td>
</tr>
<tr>
<td>4. write sentences using correct terms</td>
<td>2.69</td>
<td>0.77</td>
</tr>
</tbody>
</table>

### 4. Conclusion and recommendation

From the study, it could be concluded that the majority of travel agencies were able to communicate in English but it was not enough to take any benefit from the coming of AEC. In other words, there was a need of improving communication skills in tourism industry in Thailand. The study of Imumpai [14] suggested that for any person who had no time to study, the best technique to encourage them was through cooperative learning technique such as round robin, jigsaw classroom, etc. Moreover, e-learning also played an important part since they can do a self-study at home. Another researcher also advised that English communication training program could be the alternative solution for travel agencies [15]. The training program should include stimulating conversation to encourage them to communicate with
each other. By this way, they could apply experiences with the ability to solve a problem. The learners would also have chances to work in team or pair in order to build and maintain a relationship with others.

5. Acknowledgment

This research would not have been possible without the support of many people. N. Simasathiansophon would like to thank Dr. Kamonpan Boonkit and Ms. Tassana Pairojboriboon who were offered a valuable assistance, support and guidance with this paper. Special thanks also to Dr. Nipon Chuamuangphan for giving insightful suggestions throughout the research period. I would also like to show the greatest appreciation to Mr. Suthiphong Pheunphiphop, the former presidents of Thai Travel Agents Association for the information and supporting. Furthermore, I would like to express gratitude to Suan Sunandha Rajabhat University to give me a supportive of both fund and suggestion in every step. Last but not least, I want to thank my parents for their endless love and support for this paper.

References


The Investigation of Service Quality on Thai Airways: the Perspectives of Passengers

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Abstract: The purpose of this research paper was to investigate the service quality of Thai airways perceived by both domestic and international tourists. The population of this study consisted of both international and Thai passengers flying domestic flights with Thai Airways, making a total of 400 samples. These 400 samples, determined by Taro Yamane, participated in this study by answering interview questions from a Likert-scale questionnaire. The findings revealed that service quality was rated at the highest level. The important factors of service quality such as reliability, responsiveness, assurance, and empathy had determined the passengers’ level of satisfaction and led to a repeated purchase of flight service. Moreover, reliability as well as responsiveness factors had a strong influence to the passengers’ repeated purchase of flight service at a high level. The findings lead to some important recommendations. Passengers’ level of satisfaction could be maximized by maintaining high standard service quality through various kinds of special activities and programs, whereas high quality and fair pricing strategy should be considered in order to differentiate Thai airways from major competitors and beat low cost airline competitors.

Introduction

The rapid changes in the world economy and expansion of both domestic and international transportation has shaped the way transportation business operates. Consequently, related businesses of transportation are forced to continuously enhance their service quality in order to respond to customers’ needs and wants which come with the changes and the progress of economic growth. Nowadays, various domestic transportation modes are offered low prices. Air transport has been increasingly popular due to the emergence of many low cost airlines. There is also a high demand of traveling as well as high demand of service quality which is reflected by high competition in both domestic market and international market [1].

Thai Airways is the most popular airline among Thai passengers since it is a national airline and presumably the best in terms of high standard of service quality. Service quality in the airline business includes service mind, ability to communicate in English, good personality, well-dress, and good physical proportion. The job is generally well-paid and come with the good chance to travel abroad. Therefore, it is one of the dream jobs for many newly graduates in Thailand. Many researchers have argued that service quality include both behavior and attitude dimensions. In terms of the behavior dimension, service provider must frequently perform the service with high standard of quality and in terms of attitude dimension, service provider must possess positive attitude and enjoy doing his or her service function.

Nowadays, the majority of airline marketing strategic plan focuses on creating an image of their flight attendance and their companies to be that of grace, up-scale, and impeccable. The modern image of the airline businesses has been created to be optimistic, fast, smart, and reliable. While the marketing team tries to create modern image, the training department has to provide the real service which is up to the standard and the image. Therefore, in order to offer the service quality with high international standard requires a long hour of substantial training program. Like many other hospitality businesses, airline business requires their employees to regularly enhance their grace, beauty, and pleasant personality.

Over the past decades, domestic flight of Thai airways has become a lucrative business or one of the most important sectors in terms of bringing revenue to the company. However, after year 2000, the business performance of domestic flights has been eroded and severely affected by many political crises, many reductions in temporary tourism, and many new low cost competitors. During this turbulent time, there were several changes in top management team. In order to bring the firm back to the top of market share again, Thai airways needs a turnaround strategy. Therefore, it is imperative to investigate how to enhance customer satisfaction during a severe competition. The ability to cons-
stantly gain sustainable growth during hard times guarantees a good future for the firm. In general, there are two sources of revenue for company. First is to find more new customers from both domestic and international passengers and second is to maintain regular customers as well as push them to increase their demand more and more by using marketing strategy to generate customers’ repurchase of the products and service again and again.

This research study focused on a service quality factors that can affect airline passengers to become satisfied customers. Service quality is known as one of the most important factors that lead to customer satisfaction. The more customer satisfaction on the service quality of the same products and service, the higher the probability will be that customers have satisfaction of a particular brand. Service quality has been increasingly accepted as a key marketing strategic plan in differentiating and building a competitive edge in many modern international businesses including airline business. Positive experience from high quality service that can be defined is the key of success. The airline industry are one of the most important industries that can create good paying jobs as well as bring foreign currency to Thai economy. Therefore, customer satisfaction from positive experience is important not only for airlines businesses but also for the Thai economy as a whole. Because there are limited research findings available, this objective of this research study were to investigate the service quality from the perspective of domestic and international passengers in Bangkok, Thailand in order to offer the findings that can enhance the understanding of service quality and how to improve it.

1. Literature Review

The Thai Airways has been accepted for its high quality of service from both domestic and international passengers in many decades. Reader’s Digest consumer survey reported the Thai airline was the most trusted brand among passengers in the year 2009. Thai Airways has won many prestigious awards such as “Best Intercontinental Airline” and “Best Quality” in the past decades [2]. However, in the past decades, there were new airline carriers, new form of management that allow better quality of service as well as lower price. The new and severe competition is partly a result of changing in world economy and world competition as well as the liberalization of the rules and regulations of the international aviation industry. New airlines included premium, full service, and low-cost have been emerged and operated all over the world. Therefore, Thai Airways have to compete in the new rules and new platform and unable to compete effectively. Thai Airways started to lose its market share to many low cost airlines from many short and lucrative routes [3]. It is imperative for Thai Airways to overhaul its management team, marketing campaign, and service quality to increase customer satisfaction and regain their loyalty. However, the change has not been easy. There is an huge effect from political in Thailand and the unable to negotiate with the union labor which is so powerful. Power struggle in the Thai Airways organization was reported in the news all the times. This situation makes it hard for the organization to turn around from losing money into profit in the near future.

It is vital for this paper to identify important factor to enhance airline service quality. The research finding of this study can be implemented to create airline marketing strategy to improve Thai Airways’ service quality in a sustainable manner. When one is talking about service quality, one has to start by talking about SERVQUAL. This is because this the original research on quality and has been accepted from many researchers all over the world. The study of service quality generally was based on the theory of SERVQUAL which was developed by the classic research papers of Parasuraman, Zeithmal and Berry (1993) [4]. The gist of this theory is based on the gap between the service quality that customers hope to get and the real experience of service received by customers. The bigger the gap implies the lower customer satisfaction. The smaller the gap implies the higher customer satisfaction. In other words, the service quality can be defined as the measurement of the difference of expectation and perception from the perspective of customers. There are many items that can be measure and the original measurement designed to measure 22 important service items in five dimensions which included assurance, empathy, reliability, responsiveness, and tangibility. The likert five scales are the most suitable methods for this measurement. In fact, there are many factors influencing the quality. Siriwanseririt (1999) explained that it was possible to use 7 simple questions to ask questions in order to investigate consumer behavior. These questions included: Who are the main tourist target market? What exactly tourists want to purchase? Why do tourists purchase?, Who involve in the purchasing process?, When do tourists pur-
chase?, Where is the tourist market?, and How do tourists feel during the post purchase?[6]. Moreover, many studies recommended that there should be three special questions to investigate the topic of quality. The first question is what kind of service is important to tourists? The second question is what is customers’ expectation about service? Finally, the third question is how do customers define the meaning of quality? It is important to know factors influencing the decision to evaluate quality.

2. Methodology

The purpose of this research paper was to investigate the service quality of Thai airways perceived by both domestic and international tourists. The population of this study consisted of both international and Thai passengers flying domestic flights with Thai Airways, making a total of 400 samples. These 400 samples, determined by Taro Yamane, participated in this study by answering interview questions from a Likert-scale questionnaire [7]. This paper is aimed to focus on the experience of passengers in Thailand during the first quarter of 2014. Suvarnabhumi International airport was chosen as the area of study due to the fact that it is a gateway to Thailand. The data collation was conducted via an English questionnaire to elicit respondents’ experience and to obtain their experience and perspectives. The pilot study of 30 samples was performed to obtain the Cronbach Alpha value of at least 0.70. In addition, the validity of each question in the questionnaire was tested by using Item-Objective Congruency or IOC index. This research paper was a quantitative method. Statistics description included mean, SD, t-test. The service quality of domestic flights of Thai Airways in this study consisted of tangible elements, reliability, responsiveness, assurance and empathy. The random sampling method was conducted to obtain 400 passengers who regularly flew with Thai Airways were collected at Suvarnabhumi International Airport Thai-land by use of English questionnaire. Based on the service quality, the independent variables included tangible element, reliability, responsiveness, assurance and empathy while the dependent variable was passengers’ satisfaction that leads to loyalty [8]. By incorporating the service marketing theory to the research framework, it helps to understand the service consumption behavior and the purchase need responsiveness and the service marketing mix. The service marketing mix in this study covers the following 7 Ps: product; price; place or distribution channel; promotion; people; physical evidence; and process.

3. Findings

Form the findings, the demographic sector revealed that male and female respondents were collected in almost the same proportion. Up to 63 percent of the respondents had a high school diploma and 19.5 percent had an undergraduate degree. The majority of the respondents or 87 percent had the age between 31 to 40 years old. Up to 62 percent of the respondents were single and about 26 percent were married, while only 12 percent were either divorced or widowed. The majority of respondents or about 85 percent had an average income between 30,000-50,000 baht per month. In terms of traveling, 57 percent chose to travel in couple, 25.5 percent chose to travel with small group, and only 13 percent chose to travel with an organized tour.

<table>
<thead>
<tr>
<th>TABLE I. Service Quality of Airline Business</th>
</tr>
</thead>
<tbody>
<tr>
<td>Factors of service</td>
</tr>
<tr>
<td>1. Service quality you received is provided by a reliable staff</td>
</tr>
<tr>
<td>2. Service quality you received is correct.</td>
</tr>
<tr>
<td>3. Service quality you received is in a timely manner.</td>
</tr>
<tr>
<td>4. Service quality you received is provided by competent staff</td>
</tr>
<tr>
<td>5. Service quality you received is provided by neat and clean staff</td>
</tr>
<tr>
<td>6. Service quality you received is provided by polite staff</td>
</tr>
<tr>
<td>Overall</td>
</tr>
</tbody>
</table>

The results from TABLE I revealed six different tourist perception levels of tourists’ perception of staff service quality in tourism industry as follows:
1) “Service quality you received is provided by reliable staff was rated as number one with a mean of 4.97 and 0.889 SD 2) “Service quality you received is correct,” was rated number two with a mean of 4.78 and 0.765 SD 3) “Service quality you received is provided by neat and clean staff” was rated as number three with a mean of 4.71 and 0.901 SD. 4) “Service quality you received is provided by polite staff” was rated as number four with a mean of 4.64 and 0.870 SD. 5) “Service quality you received is provided by staff in a timely manner” was rated as number five with a mean of 4.60 and 0.908 SD. 6) “Service quality you received is provided by competent staff” was rated as number six with a mean of 4.53 and 0.901 SD. The overall mean was 4.70 with 0.873 SD.

The findings from TABLE I represented how much the service quality influenced the perception of the passengers. This ranking was done according to their mean and standard deviation. The ranking shows that the most important service quality was “service quality you received was provided by reliable staff” and the least important was “service quality you received was performed by a polite staff”. From the findings, it can be summarized that service quality was rated very high since the overall mean scores were higher than 4.00.

4. Limitations and Future Studies

The main limitation of this research paper was the fact that this study was conducted in the one dimension of service quality which was the perception (attitude) dimension, and did not include the behavior dimension. Therefore, future research should cover both behavior and attitude dimensions. Also, a random sampling technique with a diverse group of passengers should be sampled with purposeful sampling technique. Moreover, future studies should use a mixed method of qualitative and quantitative. The technique of in-depth interviews should be used in order to find the reasons behind passengers’ decision to evaluate each factor of influencing the decision to repurchase the domestic flights in Bangkok, Thailand.

5. ACKNOWLEDGMENT

THE AUTHOR WOULD LIKE TO THANK THE RESEARCH AND DEVELOPMENT INSTITUTE, SUAN SUNANDHA RAJABHAT UNIVERSITY, BANGKOK, THAILAND FOR FINANCIAL SUPPORT. THE RESEARCHER WOULD LIKE TO THANK MR. KEVIN WONGLEDEE, DIRECTOR OF CENTRE FOR ASEAN STUDIES AND TRAINING FOR PROOF READING THIS RESEARCH PAPER.

REFERENCES


A Study of Tha-Kha Communities Capacity for Enhancing Conservation Awareness and Interpretation for Coconut Sugar Production Based – Agrotourism and sustainable Management

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Abstract: This research is undertaken using both quantitative and qualitative research. It focused on the Tha-Kha communities capacity for enhancing conservation awareness and interpretation for coconut sugar production based agro tourism in the community and visitors perspective. The findings indicated that people in the Tha-Kha community would be willing to enhance conservation awareness for coconut sugar production based agrotourism by training their successors, starting from climbing to catch the sap, the production processing, and the selling of coconut sugar. Most of the local people, including the peddlers have a plethora of knowledge and experience regarding the production and processing of coconut sugar. In visitor perspectives, it revealed that teaching by demonstration is the bestway to conserve coconut sugar production processing at a high level (4.00), followed by the satisfaction of passing on the information (3.56) and knowledge (3.30) of the processes involved in the production of coconut sugar and having a chance to join in the process (2.94). In addition, there are sufficient facilities available at the moderate level comprising of guideposts (3.23), navigation signs (3.03), tourist information services around the site (2.88), route maps (2.82), tourist information services in the public sphere (2.70) and brochures (2.52).

Introduction

The concept of agrotourism is a direct expansion of ecotourism, which encourages visitors to experience agricultural life at first hand. Agrotourism is gathering strong support from small communities as rural people have realised the benefits of sustainable development brought about by similar forms of nature travel. Visitors have the opportunity to work in the fields alongside real farmers and wade knee-deep in the sea with fishermen hauling in their nets. The climate and geography of Thailand is suited to agriculture. Therefore, there are various kinds of agriculture in Thailand that are different in each region of the country. The different methods of agriculture is accumulated from age to age or from old generation to new generation. The methods are based on local wisdom, traditions and unique ways of life that can be promoted as tourism resources. These tourism resources are worth conserving and can be learned from the people. So, the Ministry of Agriculture and Cooperatives has set agro tourism as a strategy and policy to promote tourism in Thailand. Agro-tourism could provide more jobs, income and increase the quality of life in the local community.

Samutsongkhram is an outstanding province for unique agro-tourism. There are plenty of coconut orchards in this province. The local government constantly promote agro tourism to coconut sugar producers. As coconut cultivation has continued for more than 100 years (Soranapong Bauroy: 34) in this area. There were a lot of coconut sugar mills in the past, but they rarely seen in the present. There are many causes of the reducing number of coconut sugar producers, eg. There are many stages involved in producing coconut sugar and the farmers have to get up very early to collect the coconut juice. It is risky to climb up the coconut trees. It takes time to stir the coconut juice until it becomes sugar. As a result, the local government and community want to preserve this traditional occupation by turning it into coconut sugar production based tourism. The coconut farmer can demonstrate the procedures required to make coconut sugar to the tourists.

The researcher chose this community to study because nearly 90% of villagers cultivate coconut orchards due to the proper climate and geology required to grow coconut. The landscape in the ThaKa community is scattered with coconut trees. In the past there were 325 coconut sugar mills however there are only 108 mills in the present time.

The other reason that makes this area perfect to study is that there is no current study into the capacity for enhancing conservation awareness and interpretation for coconut sugar production based – agro tourism in this community. The result of this research could su-
pport tourism stakeholders in the Tha-Ka community in managing agro tourism to sustainability.

1. Objective

To study the Tha-Kha communities capacity for enhancing conservation awareness and interpretation for coconut Sugar Production Based – Agrotourism both in the Community and to Visitors.

2. Literature review

Ecotourism is now defined as "responsible travel to natural areas that conserves the environment, sustains the well-being of the local people, and involves interpretation and education" (TIES, 2015). Education is meant to be inclusive of both staff and guests. Ecotourism is focusing on the agricultural way of life of local farmers, tourist participation, and generating income to the local economy. Ecotourism stimulates tourists to experience and conserve agricultural farms, orchards, gardens, and livestock. Ecotourism strives to meet the following principles (www.livingprinciples.org): minimize the tourists impact -conservation of local, indigenous wildlife and culture- provide positive experiences for both visitors and hosts- raise sensitivity to host countries’ political, environmental, and social climates

Any plan should be concerned about tourism products, tourism impacts, carrying capacity, tourism facilities, tourism routes, cultural landscape, information and interpretation, human resources and security in tourism activities (Terdchai Chuibumrung, 2009 :70). Moreover, ecotourism management includes demonstration, location preparation, rest areas, food and beverage services, tour guides, souvenir shops, clean restrooms and enough rubbish bins. All these things will support ecotourism smoothly and the administrative team should focus on responsible travel as well.

3. Research Method

This research was undertaken by mixed methods (quantitative and qualitative research)

For qualitative research, the chosen population is the villagers in the ThaKa community. There are 12 villages and 5,645 people. The sample size is 30 people or continue interviewing until the saturated data is acquired. The researcher used semi structure interviewing and content analysis. The key informants are related groups of stakeholders in managing agro tourism in the ThaKa community.

<table>
<thead>
<tr>
<th>Key informants</th>
<th>Number of population</th>
<th>Sample size</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Executive of Sub district Administrative Organization</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Head of Village</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Local wisdom scholar and the elders in ThaKa community</td>
<td>-</td>
<td>8</td>
</tr>
<tr>
<td>Coconut sugar producers</td>
<td>108(average in each village is 9 *12 villages)</td>
<td>20</td>
</tr>
</tbody>
</table>

Table:1Sample group

For Quantitative research, the average tourists per year are 165,600. The sample size is 400 tourists (Taro Yamane) by conducting random sampling. The researcher used questionnaires as a research instrument. There are two parts in the questionnaires, the first part is the personal data of the tourists and the last part is about the capacity for managing ecotourism in the ThaKa community. Five systematic scales were used to measure the capacity for enhancing conservation awareness and interpretation for coconut sugar production based-agro tourism in the community. All data has been analyzed by descriptive statistics.

5. Result

From the villagers perspective

In enhancing local tourism resources conservation awareness of this community

Most of the coconut sugar mill owners have their own successors to continue this local wisdom. They tried to promote the next generation to learn how to cultivate coconut trees and how to produce coconut sugar in traditional ways. Most of the villagers realized that coconut sugar mills are symbolic of the Tha-Ka community so they have to conserve this local occupation and do not let it decline as like the KruSiri coconut sugar mill, Pra Yun traditional coconut sugar mill and the Tra weep coconut sugar mill. These coconut sugar mill owners always teach
their successors to take care of the coconut orchards and the coconut mill.

Coconut sugar mills in the Tha-ka community were pleased to explain and interpret the procedures required to produce coconut sugar. If the visitors want to experience the coconut sugar process they allow the visitor to take part even when they are busy. They proudly present this local wisdom to everybody.

Visitor perspective

This article studied attributes of the population classified by gender, age, education level and the number of people visiting agro tourism in the Tha-Ka community and found out that the capacity for enhancing conservation awareness and interpretation for palm sugar production based–agro tourism in community has the following issues: The visitors knowledge of palm sugar production after visiting. The way to impart knowledge and interpretation of palm sugar production. Activities arranged by the palm sugar stove owners to promote conservation awareness about the way of life in a palm sugar community and the chance for visitors to join in the palm sugar production procedures.

The result was summarized as the following table:

<table>
<thead>
<tr>
<th>Personal data</th>
<th>Amount</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>gender</td>
<td></td>
<td></td>
</tr>
<tr>
<td>male</td>
<td>135</td>
<td>33.8</td>
</tr>
<tr>
<td>female</td>
<td>265</td>
<td>66.3</td>
</tr>
<tr>
<td>total</td>
<td>400</td>
<td>100</td>
</tr>
<tr>
<td>Age</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&lt;= 20 years</td>
<td>80</td>
<td>20</td>
</tr>
<tr>
<td>21-30 years</td>
<td>95</td>
<td>23.8</td>
</tr>
<tr>
<td>31-40 years</td>
<td>100</td>
<td>25</td>
</tr>
<tr>
<td>41-50 years</td>
<td>65</td>
<td>16.3</td>
</tr>
<tr>
<td>&gt;=61 years</td>
<td>30</td>
<td>7.5</td>
</tr>
<tr>
<td>total</td>
<td>400</td>
<td>100</td>
</tr>
<tr>
<td>Education</td>
<td></td>
<td></td>
</tr>
<tr>
<td>primary school</td>
<td>42</td>
<td>10.6</td>
</tr>
<tr>
<td>secondary school</td>
<td>99</td>
<td>24.9</td>
</tr>
<tr>
<td>diploma</td>
<td>58</td>
<td>14.6</td>
</tr>
<tr>
<td>bachelor degree or higher</td>
<td>199</td>
<td>50</td>
</tr>
<tr>
<td>total</td>
<td>398*</td>
<td>100</td>
</tr>
<tr>
<td>occupation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>agriculture</td>
<td>19</td>
<td>4.8</td>
</tr>
<tr>
<td>general employers</td>
<td>62</td>
<td>15.5</td>
</tr>
<tr>
<td>self-employed jobs</td>
<td>85</td>
<td>21.3</td>
</tr>
<tr>
<td>company-employed</td>
<td>77</td>
<td>19.3</td>
</tr>
<tr>
<td>government staffs</td>
<td>47</td>
<td>11.8</td>
</tr>
<tr>
<td>students</td>
<td>75</td>
<td>18.8</td>
</tr>
<tr>
<td>others</td>
<td>35</td>
<td>8.8</td>
</tr>
<tr>
<td>total</td>
<td>400</td>
<td>100</td>
</tr>
</tbody>
</table>

*Some people did not answer

Table 2: Personal data of the visitors

Most of the visitors are female 265 (66.3%) and male 135 (33.8%). For the age, most of the visitors are between 31-40 years which are 100 people (25%), next group of age between 21-30 years are 95 (23.8%), group of age less than or equal 20 years are 80 (20%), group of age between 41-50 years are 65(16.3%) and group of age more than or equal 51 years old are 60 (15%).

For education of the visitors, bachelor degree or higher are 199(50%), next secondary school are 99 (24.9%), Diploma degree are 58(14.6%), last primary school are 42(10.5%) respectively

For occupation, mostly the visitors are self-employed jobs about 85(21.3%), Next company-employed about 77 (19.3%) and students about 75(18.8%) respectively

There were 207(51.8%) visitors are first time to visit, next more than 3 times or 3 times 167(41.8%), last 2 times equal 26(6.5%) respectively.

For capacity in enhancing eco-tourism resources conservation awareness, in perspective of the visitors, the visitors get more knowledge about coconut sugar producing and coconut cultivation in moderate level 121(30.3%). Next, they get this knowledge in high level 82(20.5%). Then some visitors knew coconut sugar procedure in the highest level 74(18.5%). Furthermore some visitors had no knowledge about coconut sugar 70(17.5%). Last they knew some 53 (13.3%).
For conserving the way of life of the traditional coconut sugar mill, most visitors highest agreed to conserving the traditional way of life 188(47%), next the visitors moderately agreed 91(22.8%), then agreed to conserve 78(19.5%) and disagreed to conserve 11(2.8%) respectively.

For satisfaction level about interpreting coconut sugar production and coconut cultivation in the community, most visitors moderately satisfied 133 (33.3%), then highest satisfied 120(30%), next highly satisfied 81(20.3%) and unsatisfied 33(8.3%).

Getting chance to join in activities in coconut sugar production, Most visitors moderately get a chance 115 (28.8%), next no chance to join activities 87 (21.8%), then highly get a chance 68(17%) and some visitors get chance to join activities 60(15%).

Satisfaction level in interpreting of the coconut mill owners, Most visitors moderately satisfied 119 (29.8%), next most satisfied 89(22.3%), then satisfied 87(21.8%), and dissatisfied 41(10.3%) respectively.

Interpretation center in the central area of the community, most visitors satisfied 125(31.3%), next not at all satisfied 106(26.5%), then more than satisfied 78 (19.5%), and very satisfied 52(13%) respectively.

4. Discussion

The findings indicated that the capacity for enhancing local tourism resources and conservation awareness of this community in perspective of the visitors is in moderate level as mean (3.37) and capacity in interpreting for coconut sugar production based – agro tourism is also in moderate level as mean (2.86). Therefore, the agro-tourism management team in the Tha-Ka community should emphasize the interpretation of agro-tourism resources. The management team could generate various types of interpretation mediums as activity, leaflets, guidebooks, information signs that promote the value of local wisdom regarding coconut cultivation and coconut sugar production procedures.

5. Conclusion

The capacity for enhancing conservation awareness and interpretation for coconut sugar production based–agro tourism in the community is at only a moderate level.

If the Tha Kha community wish to enhance agro tourism to a sustainable level, they must raise awareness of the importance of converting local knowledge and wisdom regarding coconut plantations and the production of coconut sugar into activities and stories more meaningful to visitors. This community could improve their management efforts to enhance Agro tourism interpreting to attract more tourists, Interpreting tourism resources is a very significant way to promote conservation awareness to visitors. Interpreting is the better method to create agro tourism to sustainability.

When the visitors realize the significance of the tourism resources they will change their behavior in travelling and visiting tourism destinations. This will lead to easily managed agro-tourism in the Tha-Kha community.

References


Factors Influence the Decision of Foreign Tourists to Travel in Thailand

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Abstract: The purposes of this study were to 1) study the decision making for tourism style in Thailand 2) study foreign tourist behavior in making decisions to travel in Thailand 3) study the decision making by foreigner tourists. The sample was 400 foreign tourists determined by Taro Yamane formula at a confidence level of 95% with a significant level of 0.05. The data was analyzed by frequency, percentage, mean and standard deviation. For testing hypotheses were analyzed with the Statistical Multiple Regression to test the correlation at the significance level of 0.01. The result showed that the majority of the foreign tourists were females, aged between 21-30 years old, from Europe, graduates, with an annual income of 20,000 baht. In addition, the majority was first time travelers to Thailand and their main reason for traveling was leisure. Most of them came with family and couples and selected to stay in hotel or resort. The hypothesis testing revealed that the decision making by foreign tourists in Thailand with an \( R^2 = 0.449 \). The decision making concerning the style of traveling in Thailand = 1.195 (constant) +0.425 (the tourist) +0.217 (the obtained information). The factors of transportation, tourist attraction, information people and tourist infrastructure were associated with a decision to travel in Thailand with a significant level of 0.01.

Introduction

Tourism industry plays an important role in the economic growth and social welfare of Thailand for many decades. The Thai government has issued many policies to promote tourism to be a national agenda from the past until today. Tourism can be counted as the main source of foreign revenue and job creation especially in the service sector and related sectors. Tourism has been the number one source of foreign revenue with the export of computer parts as the second source of foreign revenue. Moreover, the increasing in tourism investment will result in more benefits in the future in terms of national employment and national income to every corners of Thailand. Tourism is the foundation of the national development and the reduction of the income gap for many years.

Many Thai governments in the past and present all agree that tourism is one of the top agendas of national plan. The Thai 11th National Development Plan for the year 2011-2016 set the tourism industry as the strength of the nation economic and it is imperative to promote the tourism industry to more sustainable and more balance with other dimensions such as economic, social, and environment. The new investment in tourism, hotels, and restaurants must be environment friendly and community friendly. The service sector of Thailand has a great potential to attract new investments from all over the world and attract many creative and innovative investments as well as many projects that are environment friendly [1].

From the national statistics of tourism, there were 26,735,583 international tourists visit Thailand during the year of 2014 and expected to expand to 19.60 percent during the year of 2015 [2]. It is a big and interesting market since it brings the huge revenue and seems to expand every year. The year 2015, it is expected the growth will be increased more during the January to September with the 23 percent increased. However, some years there was a slump of the growth due to national disaster such as earthquake, but it was temporarily [4]. There is often a change from one tourist destination to other tourist destinations. Therefore, it is important to do the research study Thai tourism and the decision of the international tourists to obtain information and offer the marketing plan to attract new international tourists from overall the world.

1. Methodology

The objectives of the study were to investigate the factors influencing the choice to travel in Thailand, to examine the factors influencing to choose the tourist destinations in Thailand. The population was all international tourists who were traveling in Thailand and able to communicate in English. The sampling included the international tourists who were traveling in Thailand during September of 2014 and able to communicate in English and willing to answer the research questions. A total of 384 Sample was obtained by using table of Krejcie and
Morgan from the textbook of Thongbai. [4]. However, the researchers collected all 400 samples by using convenience sampling technique during September 2014. The independent variables in this study included factors influencing to choose to travel in Thailand of the international tourists and dependent variables included the decision to travel in Thailand.

This was a survey research to study factors influencing to choose to travel in Thailand to collect information by using English questionnaire and using Taro Yamane with a 0.05 level of significance [5] to obtain 400 samples from the passenger hall of the Suvarnabhumi International Airport. Research analysis included frequency, percentage, means, and standard deviation. For hypothesis testing, regression analysis was used at the 0.01 level of significance.

2. Findings

The characteristic information of the international tourists revealed that more female than male respondents, a ratio of 56:44. The majority of the respondents were 21-30 years old about 153 persons or 38.3 percent. The second age group was 31-40 years old or about 134 persons or 33.5 percent. In terms of education, the majority of respondents had at least an undergraduate degree or about 159 persons or 39.8 percent. In terms of income, the majority of the respondents had an income more than 20,001 baht per month about 210 persons, or 52.5 percent. The second largest group had the income about 10,000-20,000 baht about 131 persons, or 32.8 percent. The majority of international tourists were European tourists about 128 persons, or 32 percent and the second group of international tourists was Asian tourists about 111 persons, or 27.8 percent, and the third group of international tourists was from North America about 74 percent, 18.5 percent.

The decision to choose the tourist destinations in Thailand revealed that factor of transportation had the highest mean.

<table>
<thead>
<tr>
<th>Factors</th>
<th>Mean</th>
<th>S.D.</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Factor of Transportation</td>
<td>3.49</td>
<td>0.58</td>
<td>Medium</td>
</tr>
<tr>
<td>2. Factor of tourist destination (Place)</td>
<td>3.46</td>
<td>0.63</td>
<td>Medium</td>
</tr>
<tr>
<td>3. Factor of Relevant information</td>
<td>3.42</td>
<td>0.65</td>
<td>Medium</td>
</tr>
</tbody>
</table>

The findings from table 1 revealed five different levels of importance from the perspectives of international tourists as follows: 1) the respondents rated “factor of transportation” as the number one indicator of influencing with a mean of 4.49 and 0.58 SD. 2) the respondents rated “Factor of Tourist Destination” as the number two indicator of influencing with a mean of 4.46 and 0.63 SD. 3) the respondents rated “Factor of Relevant Information” as the number three indicator of Influencing with a mean of 4.42 and 0.65 SD. 4) the respondents rated “Factor of Infrastructure” as the number four indicator of Influencing with a mean of 4.39 and 0.52 SD. 5) the respondents rated “Factor of Reliable Personnel” as the number five indicator of Influencing with a mean of 4.34 and 0.63 SD. The overall mean was 4.41 with 0.58 SD. Hence, it is important to note that the overall influencing of factors was rated as medium.

<table>
<thead>
<tr>
<th>TABLE II. Coefficient Correlation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Factor</td>
</tr>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>6</td>
</tr>
<tr>
<td>Decision</td>
</tr>
<tr>
<td>1. Factor of Transportation</td>
</tr>
<tr>
<td>2. Factor of tourist destination (Place)</td>
</tr>
<tr>
<td>3. Factor of Relevant information</td>
</tr>
<tr>
<td>4. Factor of Infrastructure</td>
</tr>
<tr>
<td>5. Factor of Reliable Personal</td>
</tr>
</tbody>
</table>

TABLE I. Factors influencing the decision

The overall mean was 4.41 with 0.58 SD. Hence, it is important to note that the overall influencing of factors was rated as medium.
From table 2, the independent factors had the relationship with dependent factors with the 0.01 level of significance. Also, the relationship was in the good term. In addition, the relationship of all the dependent factors were in a good relationship with the 0.01 level of significance and the coefficient correlation values were not more than .80.

**TABLE III. Factors influencing the decision**

<table>
<thead>
<tr>
<th>Factor</th>
<th>b</th>
<th>t</th>
<th>p</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tourist destinations</td>
<td>.425</td>
<td>8.290</td>
<td>.000</td>
</tr>
<tr>
<td>Relevant Information</td>
<td>.217</td>
<td>4.369</td>
<td>.000</td>
</tr>
</tbody>
</table>

\[ R = .670 \]
\[ R^2 = .449 \]
\[ \text{Adjust } R^2 = .446 \]
\[ \text{Sig } 0.000 \]

From table 3, stepwise analysis was performed to forecast the factors that influenced the decision to choose to travel in Thailand. There were five factors of independent variables which were factor of transportation, factor of tourist destination (Place), factor of relevant information, factor of infrastructure, and factor of reliable personal. The findings revealed that factor of tourist destinations and factor of relevant information have a relationship with the decision to choose to travel Thailand of the international tourists.

From the analysis of the findings, it is found that the factor of transportation, factor of tourist destination (Place), factor of relevant information, factor of infrastructure, and factor of reliable personal. The findings revealed that factor of tourist destinations and factor of relevant information have a relationship with the decision to choose to travel Thailand of the international tourists with a 0.01 level of significance.

1. Hypothesis testing one: the factor of transportation, factor of tourist destination (Place), factor of relevant information, factor of infrastructure, and factor of reliable personal. The findings revealed that factor of tourist destinations and factor of relevant information have a relationship with the decision to choose to travel Thailand of the international tourists.

From the analysis of the findings, it is found that the factor of transportation, factor of tourist destination (Place), factor of relevant information, factor of infrastructure, and factor of reliable personal. The findings revealed that factor of tourist destinations and factor of relevant information have ability to forecast the decision to choose to travel Thailand of the international tourists.

2. Hypothesis testing two: the factor of transportation, factor of tourist destination (Place), factor of relevant information, factor of infrastructure, and factor of reliable personal. The findings revealed that factor of tourist destinations and factor of relevant information do not have a relationship with the decision to choose to travel Thailand of the international except factor of tourist destination (Place), factor of relevant information. In other words, the findings revealed that factor of tourist destinations and factor of relevant information can forecast the decision of international tourists to choose Thailand as the final destination with 44.6 percent and with a 0.01 level of significance.

From the analysis of the findings, it is found that the factor of transportation, factor of infrastructure, and factor of reliable personal. The findings revealed that factor of tourist destinations and factor of relevant information do not have a relationship with the decision to choose to travel Thailand of the international tourists.

3. Recommendation

Since this research study focused on the factors influencing the decision to choose Thailand as the main tourist destination, the future research should focus the study on each province of tourist destinations in order to obtain in-sight information and useful information. Moreover, there should be more study on how to develop and enhance the model of tourist destinations to respond to the need of both...
domestic and international tourists. Finally, there should be more study on the comparative of domestic and international tourists.

4. ACKNOWLEDGMENT

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References


The Effects of Social and Politics on the New Ethical Phenomenon of Anamnikaya Sect in Thailand

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Abstract: The purposes of this study were to 1) examine the effect of social and politics on the new ethical phenomenon and the existence of Anamnikaya sect in Thailand, and 2) to investigate the new mechanisms operated by Anamnikaya sect in Thai society. This study was a qualitative research and utilized an in-depth interview and focus group. The research findings reveal that Anamnikaya sect is one of the disciplines in Buddhism that has been practiced in Thai society since the 18th century and was co-existed with the history of Bangkok. The believers are Vietnamese, Chinese and Thai people in Bangkok. The temples and the ordination of Anamnikaya monks have expanded into other 17 provincial areas in the country. The merit-makings are designed to be simple in order to welcome all kinds of worshipers by focusing on happiness, good fortune, and peace and tranquility. In the past following 30 years, the number of Anamnikaya monks has been declined due to changes in society and politics. This has a great effect on the continuation of the sect in the future. In this respect, Anamnikaya sect utilizes a new strategy by creating a good citizen for the society. The sect adopted 12 years old and up boys to be ordained as novices and gave them an education in Anamnikaya schools, one in Bangkok and the other two in the up-country. As a result, Anamnikaya sect, one of the sects in Mahayana Buddhism, can help many teenagers who are less fortunate in the society to receive an appropriate education.

Introduction

Buddhism which has been spread to Asian regions can be divided into two sections; Lankawong in Thailand, Cambodia, Laos and Myanmar, and Mahayana in Vietnam. The overall practice of these two sections is similar while there is a bit difference in the belief about the identity of Lord Buddha. Based on Lankawong, the nirvana of Lord Buddha means Lord Buddha is in the state of peaceful and happiness without all personal desires. This belief leads to the strict practice of Buddhist monks and Buddhists for peaceful mind. However, based on Mahayan in Vietnam, the Buddhists’ perception of Lord Buddha is on the Lord’s superstitious spirit in terms of the life after death. That is to say paying respect to Lord Buddha Images, making merit, and being kind to others is key concepts of Buddhism. Buddhist monks in Mahayan can, therefore, live normal life like ordinary people. Anyway, the similarities of the two are the belief of Lord Buddha teaching – the middle path and the peaceful mind.

According to the history, the manifestation of Anamnikaya sect in Thailand can be traced back almost 200 years ago. Thai people recognize this religious group as a Vietnamese or yuan temple or yuan monk. At present, there are 7 temples in Bangkok and others in up-country like U-dornThani province, Nakhonprathom province, Kanchanaburi province, Suphanburi province and AmphorHutyai, Songkha province altogether 17 temples and there are 250 Anamnikaya monks.

Although Anamnikaya sect is not quite popular like Theravada sect but there are still a lot of believers who have a mixed-blood between Thai and Chinese, and/or Thai and Vietnamese who pay their respect in this type of Mahayana Buddhism. The dominant characteristics of Anamnikaya sect are:

The Mahayana Buddhism concentrates around making merit and being compassionate as a major mission of Bothisattva (Buddha-to-be). Buddha is viewed as a sanctuary of all mankind. Human beings can say prayer. Praying is important in order to disseminate merit. Making merit is considered an important religious activity. Merit or boon means happiness, goodness, cleanliness and clarification of the mind. Temples become a center for religious ceremony in order to bring people’s faith together.

The inculcation of good people for the society or the creation of good people.Anamnikaya sect supports scholarship to the needy by having curriculum of dhamma studies and religious studies. The ordination of novice is equipped with dhamma studies and general education up to the bachelor degree and master degree. Anamnikaya will provide an opportunity to develop human resources by giving educa-
tion to novices and monks. These novices and monks, once they finish their education, can leave the monkhood and live their lives in the temporal world. In this respect, Anamnikaya sect provides not only an opportunity for those who live in the up-country to get a chance in pursuing the formal education but also propagating the religion.

The way of making merit is simple and focuses on faith and being a provider. There is no strict rule on the procedure and/or appearance. Anamnikaya monks can talk freely and openly with females. The patterns of making merit are done during Chinese New Year Day, changing one’s bad fortune through a ceremony, strengthening horoscope, donation festival, and vegetarian festival. These activities are well planned among all the abbot in the areas. Each temple will take turn to organize the activities on a weekly basis. The monks will help one another in organizing these activities. This cooperation shows a special kind of bond among monks in Anamnikaya sect beginning from the preparation, to coordination with the community, the people for all over Anamnikaya temples in Bangkok and in up-country.

Making merit based on Anamnikaya concept relies on the thought that temple is the provider in the same way that Bothisattva does to the mankind. The interesting idea is that these religious activities are conducted in a conservative style and, at the same time, are providing opportunity in education for all walks of life. If the monk wishes to stay on his religious life, he will be promoted into a higher rank. However, due to changes in social, culture, and economy, the needs of skilled labors are required in various sectors. The ideas of ordaining as monks to learn and practice Anamnikaya concept have been affected hard.

1. Objectives

1. To examine the effect of social and politics on the new ethical phenomenon and the existence of Anamnikaya sect in Thailand
2. To investigate the new mechanisms being operated by Anamnikaya sect in Thai society

2. Theory and Conceptual Framework

1. According to Franz Boas and his historical theory, culture is the determination of characteristics of a person starting from the evolution of place of origin, the accumulation and continuation of culture. Therefore, human behavior is inevitably connected with past events and continues up to the present.

2. The Functionalist theory focuses on the duty of human being in order to preserve culture by inculcating from social institute. This includes a special ritual in a certain group of people in order to lead to the cooperation in society. The manifestation of male and female role and social gathering.

3. Structural and duty theory of A.R. Radcliffe-Brown and Emile Durkheim in which the study of human society is based on social condition by focusing on the collective behavior of the people.

On top of that, the study is in congruence with V. Turner and Grete’s concept in making merit and performing religious ritual and the participation of people. This concept concentrates on ritual as a symbol with meaning of the practitioners through making merit.

3. Research Methodology

The research is considered as a qualitative research

1. The study of relevant document pertaining to the manifestation of Anamnikaya sect in Thailand.
2. The study from research work on the patterns of merit-making in Anamnikaya sect in Thai society from the past up to the present.
3. The participative observation in merit-making and education activities in Anamnikaya schools throughout the year.
4. In-depth interview with a high ranking Anamnikaya monk together with a person who used to be ordained in Anamnikaya sect.
5. Focus group among Anamnikaya monks, lectures in Anamnikaya schools as well as the supporters all together 20 individuals.
6. Interview with the 10 parents who brought their children to be ordained as novices during summer session, 10 Anamnikaya abbots, 10 monks and 50 novices.

4. Research Findings

In the past from 18th – 20th centuries, the main purposes of being ordained as monks in both Lankawong and Mahayan are to make merit for their parents and to train their minds to be peaceful. However, in the 21st century, due to capitalism and globalization, getting a good job is keys to live one’s life in the changing world. This leads to the declining numbers of males being ordained as monks in general. However, Anamnikaya sect in Thailand is
aware of this limitation and with very few numbers of monks and temples, the sect has taken the challenge by providing lots of educational chances for young Thais as follows;

1. Temples and monks in Anamnikaya sect in Thailand have cooperated with one another to carry on their religious practice with seven Anamnikaya temples in Bangkok as the center. These seven Anamnikaya temples possess cultural capital and use the following three management styles:

1.1 The use of historical and cultural dimensions since Thonburi period up until the reign of King Rama the 5th. The kings of Thailand had provided the toleration concept to Mahayana Buddhism for both Chinese and Vietnamese. Coming to rely on the Grand King’s grace in the land of Siam since King Rama the 4th, the identity of Anamnikaya monks’ robes, the temples’ names given by King Rama the 5th, such as SommanaBorihan temple and Kusol Samakorn are all evidences that combine Thai, Chinese, and Vietnamese arts and are used to organize religious activities and maintain Buddhism. The cast of Thaksin the Great and King Rama the 5th statues in the temples show respect for the nation, religion, and monarch.

1.2. The 7 Anamnikaya temples in Bangkok work together with other 13 temples in the provincial part to organize the religious activities by focusing on the loving and kindness of the Enlightenment-being. Anamnikaya temples concentrate on the concrete concept under Taoism in which human being is a part of nature. Life and mission should be simple. Anamnikaya sect is different from Theravada sect. There are only 250 Anamnikaya monks in Thailand. There is no kitchen in the temple. Since the temples are in the business areas, the incomes are coming from the temple’s foundation by collecting parking fees. The incomes are used to pay for utilities expenses. The temple is quite small due to the fact that temple is located in the business areas. This is the reason why Anamnikaya temple prefers the simple concept. The main religious ceremonies are performing a ritual to exorcise bad luck or karma, strengthening horoscope, worshiping the stars, vegetarian festival, and donation festival. The temples will work together in order to receive invitation for a ceremony of releasing soul from purgatory so monks and novices alike as well as the temple care-taker will have incomes.

1.3. The education whether primary or high-school levels are provided to monks and novices in Dhamma Studies schools that have centers at U-dornThani province and Bangkok. There are 50 novices study in the school. When they finish their high-school they can further their study. After finishing their highest education, they can remain in the monkhood or they may decide to leave the monkhood. This education opportunity attracts more people to join the sect. From the interview of 50 novices at KusolSamakorn temple, they admitted that education opportunity is the main reason they had become a part of Anamnikaya sect since their families are quite poor.

2. The 7 Anamnikaya temples in Bangkok focus on the wide-open pattern in organizing religious activities in order to create good-deed and charity unity.

2.1. The good-deed unity. Due to the small number of monks and novices of Anamnikaya sect, they will work together in order to perform religious ceremony. Each temple will take turn when they have to perform the religious ceremony in order to make sure that each temple has activity to perform throughout the year.

2.2. The charity unity. The religious ceremony is designed as simply as possible. Especially one month after the Chinese New Year Day, the Chinese people have to look after their horoscope by performing the religious ritual to strengthen their horoscope. This type of ritual can be performed by every member of the family. At night they can go to the temple and perform the ritual. They can walk with lighted candles in their hands around the temple. They can observe the precepts, become vegetarian or make donation. All of these activities are intended to follow the path of Boothisattva.
3. The cooperation among 7 Anamnikaya temples in Bangkok and other 13 temples in the provincial areas to provide education opportunity by having centers at U-dornThani and Hudyai, Songkha. This education opportunity draws youngsters to join the sect. Once they have finished the primary school, they can further their study in Bangkok by staying at Kusol Samakorn temple. Here are the responsibilities of the temples.

3.1 Manage learning and teaching in the school of Anamnikaya temples based on the secondary school education curriculum including training students’ minds to be strong, determined and responsible. Moreover, grants and scholarship are funded to those capable of furthering their education in postgraduate level or higher. For the school fees, monks are allowed to allocate the monks’ income gained from religious ceremonies as school fees, and temples provide accommodation for them.

3.2 After the graduation in secondary level, if the novices wish to further their study in higher education, they are allowed to stay in Anamnikaya temples in Bangkok. The novices are also allowed to quit their novice-hood and later when they are 20 years old, they can ordain as monks. Moreover, monks in Anamnikaya temples are allowed to further their study abroad. For example in Taiwan, accommodation in temples is available for monks coming to study there while monks from Vietnam wishing to further their Doctorate Degree in Comparative Religions in International Program, Thailand, are allowed to stay in Anamnikaya temples in Bangkok.

5. Conclusion and Discussion

Anamnikaya sect in Thailand has adapted the practice of religion by paying attention to providing education both in religious studies and in formal education. Moreover, the merit making activities which are less formal and more practical lead to the warmth of cooperation between temples and people. This results in the faith of Buddhists in making merit with the purposes of donation for those who are in need of education and well-being.

The study concerning the effects of social and politics on the new ethical phenomenon of Anamnikaya sect in Thailand reveals that temple is used to inculcate good individuals for the society by using Buddha’s Enlightenment as a key to create loving, kindness for all mankind in the forms of ceremony and ritual to make life happy. These activities are in line with Chinese ways of life. Temples are used as centers for providing education in which boys are drawn to join the sect in order to maintain Anamnikaya sect in Thai society. Besides, all religious ceremonies are adapted to suit with the urban life in the globalization period. That rituals and other symbols are changed in the way to suit with social structures and the management of change toward the conflict within the social structure [1],[2]. The ritual has some effect on the true concept that exists and serves as a main objective in performing those rituals whether they are making merit activity, transforming the culture to individuals and society. The secret land of the temple as Buddhist location. The temple’s land is associated with the universe which is superstitious combined with religion. This has a lot to do with Thai way of life [3]. The Vegetarian Festival of Chinese Society in The South: A Case Study of Chinese People in Takua Pa District, Pang Ngaa Province [4], “Making Offerings to the Spirits and Religious Beliefs: A Case Study at Dragon Temple Kammalawat, Bangkok.” And Chavalit
Ruengprad on the study of “Beliefs and Muslim’s Merit-making in PhraNakhon Si Ayutthaya Province [5]. It can be concluded that the administration and religious management of Anamniraya to catch up with changes of society in new dimension is regarded as new phenomenon of religious education for peace and social cooperation [6].

References


Administration Model for the College of Film, Television, Multimedia and Performing Arts, Suan Sunandha Rajabhat University

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Abstract: The objective of this research was to investigate how to develop an appropriate management and administration model for the College of Film, Television, Multimedia and Performing Arts at Suan Sunandha Rajabhat University. A combination of qualitative and quantitative data collection and analysis methods was employed. The data collection was from the 8 experts who were the academic staff and entrepreneurs in films, television, multimedia and performing arts, and from 471 students studying in the communication arts field. The findings of this research paper presented the appropriate management and administration model for the College of Film, Television, Multimedia and Performing Arts, which depended on 3 factors: [i] the marketing management and the supporting facilities such as buildings, equipments and accessibility for students to the college; [ii] the competency of academic staff or lecturers and supporting staff; and [iii] career opportunities after graduation.

Introduction

The Faculty of Management Sciences, Suan Sunandha Rajabhat University was opened to manage the teaching and learning of business administration and communication arts. At present, the College of Film, Television, Multimedia and Performing Arts has been during an establishment under the responsibility of the Faculty of Management Sciences, aimed to be a centre of teaching and learning, training and research for film, television, performing arts, animation, computer game, commercial music, web design, multimedia and modern exhibition. In this regard, this paper investigated how to develop an appropriate management and administration model for the College of Film, Television, Multimedia and Performing Arts in terms of the physical and human resource factors. The findings could facilitate a readiness in the establishment for a success in both marketing and educational concepts, as well as in accordance with the Thai Qualifications Framework for Higher Education or TQF: HEd.

1. Literature review

The research incorporated the following concepts; these included management and administration [1] [2] [3], Campbell’s educational management concept [4], the learning resources concept of Hargreaves [5], the educational institution management concept of Hoy and Miskel [6] and the non-formal education concept of Dove [7]. These theories were studied with the Thai Qualifications Framework for Higher Education or TQF: HEd, 2009. The conceptual framework was demonstrated in Figure I. The management concept was designed for operations of activities to achieve defined objectives, where achievement of objectives depends on the people, budget and tangible assets. The factors of achievement can be classified into 3 main components: physical and budget factor, marketing factor and human resources factor. The concept of educational management addresses the aspects of roles, models and structure of educational management. Furthermore, the models and structures of the learning resource concept, the principles of educational institution management and theory of readiness in the aspect of non-formal education management were employed. The Higher Education Standard used in this research referred to 3 types of standards including the standard of the graduate, the standard of the management and administration and the standard of the knowledge-based and learning society development. Another independent variable utilized with the theories was the Thai Qualifications Framework for Higher Education or TQF: HEd of 2009. TQF: HEd consisted of 5 learning outcomes, which were ethics and morals, knowledge, cognitive skills, interpersonal skills and responsibilities, and numeric analysis, communication and information technology skills [8].

These learning outcomes were used for learning assessment. The dependent variable of this research was an appropriate management model for the College of Film, Television, Multimedia and Performing Arts, Suan Sunandha Rajabhat University in the following factors: (1) physical and budget which included buildings for teaching and learning, teaching and learning materials, and welfares and...
facilities; (2) marketing factor which included direction of education, curriculum management, teaching and learning management, extra - curricular activities requirement, academic community service and research, learning assessment and evaluation, and education quality assurance; and (3) human resources which included academic and supporting staff and academic excellence. The expected outcome was the quality of graduates of the College of Film, Television, Multimedia and Performing Arts for the desired satisfaction level of employers and the society.

Management and Administration Concept

The management concept was designed for operations of activities to achieve defined objectives, where achievement of objectives depends on people, budget and tangible assets. The factors of achievement can be classified into 3 main components:
- Physical and budget factor
- Marketing factor
- Human resource factor

Educational Management Concept
- Education roles
- Education models
- Educational structure

Learning Resources Concept
- Models and structure of learning resources

Educational Institution Management Concept
- The principles of educational institution management

Readiness of Non-Formal Education Concept
- Readiness
- Theory of readiness

The Higher Education Standard
- Standard of graduate
- Standard of management and administration
- Standard of knowledge-based and learning society development

Thai Qualifications Framework for Higher Education or TQF: HEd, 2009, with the 5 learning outcomes
- Ethics and morals
- Knowledge
- Cognitive skills
- Interpersonal skills and responsibilities
- Numeric analysis, communication and information technology skills

Appropriate Management Model for the College of Film, Television, Multimedia and Performing Arts, at Suan Sunandha Rajabhat University in the following factors:

Physical and budget factor
- Buildings for teaching and learning
- Teaching and learning materials
- Welfare and facilities

Marketing factor
- Direction of education
- Curriculum management
- Teaching and learning management
- Extra - curricular activities requirement
- Academic community service and research
- Learning assessment and evaluation
- Education quality assurance
- Human resources
- Staff (academic and supporting staff) Academic excellence

The quality of graduates of the College of Film, Television, Multimedia and Performing Arts for the desired satisfaction level of employers and the society

2. Methodology

The objective of this research was to investigate how to develop an appropriate management and administration model for the College of Film, Television, Multimedia and Performing Arts at Suan Sunandha Rajabhat University. A hypothesis was also established: an appropriate management and administration model was dependent on the readiness in physical, budget, marketing management and human resources factors. A combination of qualitative and quantitative data collection and analysis was employed. The sample of the qualitative part was 8 experts who were the academic staff and entrepreneurs in films, television, multimedia and performing arts. The sample size of the quantitative part was based on the population of 52,485 students [9] at a significant level of 0.05, making 396 samples. However, 471 students of Communication Arts Programs were randomly selected from both public and private universities. In-depth interviews and focus groups were utilized in eliciting from the experts, appropriate principles, concepts, policies and structures for establishing and operating the College of Film, Television, Multimedia and Performing Arts. A questionnaire was used with the students to explore factors that influenced the decision making of the respondents to select the communication arts curriculum for their study. It covered 3 parts: (1) the respondents’ general background; (2) eight determinant factors that
influenced the decision making; these factors including buildings, curriculum management and administration, teaching and learning management, extra-curricular activities requirement, learning assessment and evaluation, teaching and learning materials or equipments, welfare and facilities and educational human resources; and (3) the respondents’ different general backgrounds and the influences of the 3 factors that determined their decision making to select the communication arts curriculum for their study.

3. Findings

The findings of this research paper were divided into qualitative and quantitative findings. The qualitative findings revealed from the focus group and in-depth interview with the 3 educational experts and the 5 employers in the field of communication arts that the development of buildings for teaching and learning was the most important factor in the operation of the college’s establishment. Adequate and outstanding characteristics of the buildings should be concerned in order to attract prospective students. However, due to the high investment, the college was suggested to manage the priority and cooperate with related organizations in the public sector. Shared resource management between each program was found to be necessary for the highest productivity. Moreover, owing to the college’s high dependency on technology for teaching and learning, an investment for teaching and learning materials was relatively higher. Thus, in order to reduce the investment cost in teaching and learning materials, it was suggested to create a partnership with the private sector, especially in the communication arts field, in conducting teaching. The suggestions from the key informants unveiled that the marketing factor which concerned the relatively high competition in education; thus the college should study the trends of education development in different sciences, especially those focusing on technology, and to have a clear target market. The curriculum management and administration was found to be different from other programs, due to the fact that this curriculum was highly dependent on uses of technology for teaching and learning in small class; in addition, it requires academic staff who have expertise in technology and teaching and demonstration skills. The investment is therefore towards long-term value and profitability. As a result, the college should also conduct academic community services, trainings and research through creating partnership and cooperating with both public and private sectors in order to generate more income. Teaching and learning should put more emphasis on practical knowledge than lectures in order to ensure that students have the necessary skills for future employment. Constant changes in technology require academic staff to have regular meetings for exchanging knowledge and experiences with employers and entrepreneurs in the field.

The quantitative findings encompassed 3 parts: (1) general background of the 471 respondents; (2) the factors that determined the decision making of the respondents to select the communication arts curriculum for their study; and (3) the respondents’ different general backgrounds and the influences of the 3 factors that determined their decision making to select the communication arts curriculum for their study. It was found that the majority of the respondents were female, making up 58.8 percent. Most of them were studying in both public and private universities, counting 50.5 and 49.5 percent respectively. Mostly, their parents were reported having privately owned business at 43.7 percent, followed by working as governmental officials at 20.4 percent, while 16.8 percent were working in private organizations and 12.5 percent were working in government enterprise organizations. With respect to the factors that determined the decision making of the respondents to select the communication arts curriculum for their study, the findings reported the expertise of academic staff or lecturers and career opportunities as the most determinant factors, followed by readiness and modernity of teaching and learning materials or equipments, fame of university, interestingness of the curriculum, readiness of facilities, extra-curricular activities such as inspection and study visits, environmental, landscape and building attractiveness, and partnership and cooperation with other organizations.

After the numbers of the factors in this study were reduced by the factor analysis in order to create a clearer investigation to find out appropriate management and administration model, the statistic finding unveiled a .843 Kaiser-Meyer-Olkin score, and 3 factors ranked by importance as follows: accessibility of the college (Eigenvalue = 5.174), readiness of the place and equipments (Eigenvalue = 2.44), and expectation after graduation (Eigenvalue = 1.327). Accessibility of the college referred to physical accessibility, convenience in traveling, recommendations by others, and funding opportunities for students and appropriateness of admission
cost. Readiness of the place and equipment covered readiness of facilities, readiness and modernity of materials or equipment used in teaching and learning, environmental, landscape and building attractiveness; extra-curricular activities requirement such as inspection and study visits, the expertise of academic staff or lecturers, and partnership and cooperation with other organizations. Lastly, interestingness of the curriculum, fame of university, career opportunities and outstanding characteristics or differentiation of the curriculum from other universities presented the important factors in the expectation after graduation.

The last part of the finding was the respondents’ different general backgrounds and the influences of the 3 factors ranked by its importance (accessibility of the college, readiness of the place and equipments, and expectation after graduation) that determined their decision making. The findings revealed that the respondents’ gender, the type of the university, where they were studying, and career of their parents related with a statistical significance with the accessibility of the college in terms of whether the respondents would decide to select the communication arts curriculum for their study. Expectation after graduation was found to have a relation with a statistical significance only with the type of the university where the respondents were studying, in that the respondents who were studying in public university had a higher level of expectation after graduation than those who were studying in private university. In addition, readiness of the place and equipment reported no relation with either the respondents’ gender, the type of the university where they were studying or the career of their parents.

4. Discussion

The research findings contributed to 3 aspects of the discussion: marketing and accessibility management, physical and human resources management, and graduates quality and employability management. The college should have a clear positioning and direction in managing the college in the communication arts field, by focusing on the curriculum with flexibility and in accordance with changing technological trends, cooperation with different entrepreneurs in the private sector to keep updated with the market trends and prospect customers (students), while stressing on investment planning and prioritizing to meet with the designated budget and goals. The key success factor is to create accessibility of the college within the public and private partnership environment for basic infrastructure, facilities (such as student dorm) and traveling accessibility development as well as funding allocation and admission cost design. The physical and human resource management addresses the development of the physical environment to be attractive and friendly for teaching and learning, along with seeking partnerships with private organizations in communication arts industry as the secondary placements which are more ready in terms of modern technology for students’ practical opportunities, in order to reduce investment costs on modern teaching and learning materials and equipment. However, an investment on basic equipments still is necessary. Managing human resources to have quality and transparency, and development of the autonomous organizational structure with trustworthy and transparency requires a support staff with knowledge and skills who can be responsible for taking care of the buildings and expensive technological equipments, as well as academic staff who have high competency to conduct teaching and to adapt to changing technological trends in the communication arts profession. Managing expectation of students is very critical, thus a question is how to create a concrete teaching and learning environment that can profit students in meeting their expectation after they graduate. Practical opportunities and extra-curricular activities should be emphasized in order to produce quality graduates, while long-term cooperation with professional entrepreneurs is also suggested in order to increase or even guarantee students’ employability.

The policy-approached suggestions of this paper included appropriate investments planning before opening new programs and variety of the programs, designs of buildings, equipments for teaching and learning, for higher productivity. Furthermore, the college should study market trends and future directions of education, as well as technological changes in the communication arts industry. Differentiation is also suggested in order to position the desired image. Sufficiency and productivity of the investment budget should be concerned both in the early period of operation and in the long run. In addition, partnership with public and private sectors for the operations of infrastructure development and teaching and learning contributes to benefits not only for the students and graduates but also for the college in terms of investment cost reduction and long-term marketing.
5. Limitation and Future Studies

Limitations of this research concerned the site of data collection, Bangkok, and the small sample size and the sampling technique. Therefore, in order to get more specific results, the future research should survey students based on their province of residence to obtain representative opinions from a variety of students in Thailand. Then, the findings may be able to generalize to find more specific answers to devise a proper marketing plan. Therefore, future research should use a proportion and random sampling technique with a diverse group of students. Moreover, future studies should use small group interviews to investigate the reasons behind their choices.

6. Acknowledgment

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7. References


Challenges of Information Technology Service Management for Educational Management Supporting System

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Abstract: The rapid growth of technology computer, communication and network impel a strong influence not only to empower business management but also to add value for educational management. An Information Technology Service Management (ITSM) is a way of supporting system for educational management processes, activities and roles of IT delivery. This research studies the usage of an ITSM in supporting system for educational management in Office of the permanent Secretary: Ministry of Education, Thailand and evaluation on quality and convenience for educational management supporting system. Seven applications for supporting system have been studied and investigated the quality of the applications based on 125 staff of Ministry of Education. The quantitative approach was used to determine the assessment of quality. The findings showed that the ITSM application supporting system both to enhance users’ working process and to recognize the importance of technology management. Furthermore, the research found that the quality of ITSM application for supporting system is on effective level.

Introduction

The National Education Act of B.E.2542 (1999) has been influenced to education management all of levels in Thailand for providing Information Technology and communication, educational learning media to promote highly efficient education management and lifelong learning. Ministry of Education is responsible to handle these roles. Moreover, Education Information Technology and communication Policy Framework 2007-2011 emphasized in students’ quality of learning and education management and service provided the educational personnel. [1] The demand of technology services rapidly increase from stakeholder. Using Information Technology is a value added to Educational Management.

1. Information Technology Service Management (ITSM)

Information Technology (IT) disseminates most organizations not only in business but also in education organization with efficiency and quality. In addition, IT systems are continually developed for customers’ new demand and are more focus on IT service delivery and IT service management [2].

Information Technology Service Management (ITSM) are described and determined by many of different models and methods with a focus on work processes and how to create service quality [2]. ITSM has been a set of processes that combine to guarantee the quality of IT services, according to the levels of service agreement by the customers [3]. In addition, Conger et al. [4] pointed that the business/IT alignment by focusing on defining, managing and delivering IT services to support business goals and customer needs.

2. Purpose of the research

The research studies 2 objectives. First, the research examined the usage of an ITSM in supporting system for education management in Office of Permanent Secretary, Ministry of Education, Thailand. Secondly, the study evaluate on quality and convenience for educational management supporting systems (back-office services).

3. Methodology

The research methodology consisted of 3 parts as follows:

Part A.
Collect and analyze the usage of an ITSM in supporting system for education management from document.

Part B.
Evaluate of quality and convenience for supporting system by
- Create the tool to assess the quality and convenience.
- The quantitative approach was used to investigate the descriptive statistics of the evaluation survey.

Part C.
The participants were 125 staff of the Office of Permanent Secretary, Ministry of Education

4. Results

There are two research findings as follows:

5.1 The usage of an ITSM in supporting system for education management

The study from document in Office of Permanent Secretary found that the organization started from National the National ICT Frame 2011-2020 including National Education ACT of B.E. 2542 to perform the Implementing of Information Technology with TH e-GIF and SDLC waterfall model for creating Information Technology Management (TTM). It consisted of two services, front-office and back-office. The front-office service provides the education information, education indices, and monitoring the individual in web-base and web services. On the other hand, the back-office consisted of 7 applications in Figure 1.

There are 7 applications for supporting system such as Electronic document management system, Personnel management system, Statistical report filing system, Auditorium booking system, Sick leaving system, Payroll system, and Budget system.

- Electronic document management system provides users to search, create, update, delete and insert all of documents. Moreover, the system shows the information both on screen and document report.
- Personnel management system prepares personal history.
- Statistical report document filing system shows the statistical of document both electronic and manual filing.
- Auditorium booking system offers the booking service system and the detail of the Office of permanent secretary auditorium and user.
- Sick leaving system arranges the personnel information about sick leaving or other leaving for example; vacation, education leave, parenting leave.
- Payroll system supports the staff salary including annual promotion.
- Budget system creates the financial report and monitors the budget.

5.2 The evaluation of quality and convenience for supporting system is shown in Table 1- 2.

Table 1. Demographic information of users

<table>
<thead>
<tr>
<th>Items</th>
<th>Amount</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Gender</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>37</td>
<td>29.60</td>
</tr>
<tr>
<td>Female</td>
<td>88</td>
<td>70.40</td>
</tr>
<tr>
<td>2. Age</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21 - 30</td>
<td>31</td>
<td>24.80</td>
</tr>
<tr>
<td>31 - 40</td>
<td>66</td>
<td>52.80</td>
</tr>
<tr>
<td>Over 40</td>
<td>28</td>
<td>22.40</td>
</tr>
<tr>
<td>3. Experience</td>
<td></td>
<td></td>
</tr>
<tr>
<td>0 – 5</td>
<td>51</td>
<td>40.80</td>
</tr>
<tr>
<td>6 – 10</td>
<td>32</td>
<td>25.60</td>
</tr>
<tr>
<td>Over 10</td>
<td>42</td>
<td>33.60</td>
</tr>
<tr>
<td>4. Usage of Internet</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Excellent</td>
<td>40</td>
<td>32.00</td>
</tr>
<tr>
<td>Good</td>
<td>52</td>
<td>41.60</td>
</tr>
<tr>
<td>Fair</td>
<td>25</td>
<td>20.00</td>
</tr>
<tr>
<td>Poor</td>
<td>8</td>
<td>6.40</td>
</tr>
</tbody>
</table>

The most of participants is female, their age are between 31-40 years old who have work expe-
experience less than 6 years and almost of them have a good usage of internet.

Table 2. Quality and convenience for supporting system

<table>
<thead>
<tr>
<th>Items</th>
<th>$\bar{x}$</th>
<th>S.D.</th>
<th>Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Quality of the supporting System and facilities</td>
<td>4.59</td>
<td>0.98</td>
<td>Excellent</td>
</tr>
<tr>
<td>2. Understanding of work process</td>
<td>4.61</td>
<td>0.54</td>
<td>Excellent</td>
</tr>
<tr>
<td>3. Services providers and facilitators</td>
<td>4.73</td>
<td>0.78</td>
<td>Excellent</td>
</tr>
<tr>
<td>4. Support policy</td>
<td>4.68</td>
<td>0.97</td>
<td>Excellent</td>
</tr>
<tr>
<td>5. Quality of service</td>
<td>4.83</td>
<td>0.61</td>
<td>Excellent</td>
</tr>
<tr>
<td>Summary</td>
<td>4.64</td>
<td>0.83</td>
<td>Excellent</td>
</tr>
</tbody>
</table>

The evaluation of users’ opinions regards that the quality and convenience for support system was mostly at high level ($\bar{x} = 4.64$).

5. Conclusion

According to the ITSM in supporting system for educational management, it indicated that the supporting system especially back-office system achieved an excellent level.

This study was intended to be the beginning step for challenging ITSM for education management supporting system. It would be beneficial to those looking for ITSM for education management supporting system in Thailand. For further research investigation, several more looking ITSM for education management supporting system in ITSM on international standards such as ITIL or ISO/IEC 20000.

6. Acknowledgement

The research was successful by help from Mr. titikorn Changsakol, my friends, colleagues, and all participants from the Office of Permanent Secretary, Ministry of Education, Thailand. The author is really appreciative and gave many thanks to all.

References


The Management of Ethical Issues in Organization: 
A Case of Communication Arts Students

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Abstract: The purposes of this study were to investigate the management of ethical issues in organization: a case of communication arts students and to examine the ethical enhancement in mass communication for undergraduate students in Communication Arts and to develop guidelines and strategy for ethical enhancement of mass media for undergraduate students in Communication Arts. This was a qualitative study aimed to focus on the management of recent ethical issues and how to enhance the ethical knowledge. This action research was conducted by utilizing documentary research, in-depth interview, and workshop seminars. The findings revealed that the ethics principles, in all situations, were the necessity for communication arts students. The important ethics principles should be developed into 5 topics which were 1) honesty 2) facts and correction 3) right and honor 4) rapport and 5) responsibility. Moreover, the suggestion for this research included the good communication arts employees should be the role model of ethical development for communication arts students. The government organization and mass media organization should develop guidelines of ethical enhancement for communication arts students. The communication arts department should produce students with high profession and ethics principles. The promotion of activities of ethics for communication arts students will increase the knowledge and awareness of ethical issues in public and reduce social problems from the ignorant of ethical issues.

Introduction

The mass communication and media play an important role in shaping the national ethics because it sends the message to everywhere and everyday and it can stimulate the development and learning of the receivers or audience. Mass communication is also an important mechanism for national development to meet the national objectives. The role of mass communication included sending the messages to the target group and be able to obtain the feedback. The messages can create knowledge, attitude, and practice. Therefore, mass communication is vital to politics, economics, education, culture, entertain, environment, and so forth.

The role of mass communication is so vital that it affects the society and can shape the future of the society. The questions are often asked about what is mass communication and media responsibility? What are the scope of their freedom and liberty? The Thai constitution section 46 stated that the employees of newspapers, radio, television and other media have the freedom and liberty to reveal the news, facts, and opinions without the intervention from the government and government agencies but what is revealed by the media must not against the law and national ethics. Moreover, there are seven sections of the law to protect the persons who are working in the areas of mass communication and media which are 1) to protect the freedom of the profession 2) to set the ethical standard of profession 3) to set up the profession committee 4) to set up special committee for rights and liberty 5) to hear the complains 6) to set up the high standard of the profession 7) to set up the penalty. Moreover, for the ethical standard of the mass communication and media, there are five details: 1) to offer the news that should benefit the public 2) to offer the truths in a variety of angles 3) to be just for those who are in the news 4) to respect human rights in any case and 5) to be honest in their profession and had no conflict of interest.

In the past, mass communication and media in Thailand had been abused and used as a tool for some political groups and interest groups. The mass communication and media had been accused of not being fair and just. Therefore, it is imperative for this research study to focus on the moral and equity of the profession. It is important for undergraduate student majoring in mass communication and media to have a high standard of ethics.

1. Literature Review

N. Ostanukoul (2006) who studied the ethical development in many universities and found that
The ethical standard need to be develop included honesty, disciplinary, responsibility, tenacity, patience, conscious, faith, and scarified when it is needed [1]. Moreover, there were three model of teaching the ethical standard in the classroom of many universities in Thailand: 1) The intervention of ethical standard in the classroom 2) The Activities that teaching ethical standard during the semester and 3) The special class of ethical standard for undergraduate students. The ethical standard for mass communication and media students needed to be offered for students in a specific way. By using the King’s teaching of morale and ethics, the university can set up the program of teaching and promoting class ethical standards.

The group of researchers from the Institute of Higher Education Development (2006) who studied the effective teaching and ethical standard in the classrooms revealed that the guideline to develop the high standard of ethics in the classroom must have three important factors: 1) the management of the education institutions must have high ethics standard and leadership 2) the teachers must possess the knowledge and the willingness to promote the ethics standard in the classroom and 3) the material and activities of ethics must be interconnected students with the real life situations [2].

2. Methodology

This operational research study utilized the qualitative technique by using documentary research and an in-depth interview. The questions were designed to be open end questions to collect the information of the development, the management, and problems of ethical standards of mass communication and media students [3]. The process included for steps [4]. The first step was to study all the necessary document and review old studies and case study with the best practice of this topic from many libraries and many universities. Mass communication and media from Chulalongkorn and Thammasat universities were used as a case study of how to teach ethics for their undergraduate students and using analytical description. The second step was to do the survey research in terms of ethics, moral in the classroom of undergraduate students majoring in mass communication and media. Moreover, the content analysis was performed with Thailand Qualification Framework (TQF) [5]. The analysis of the promotion of ethical standard by using SWOT analysis and in-depth interview with three different groups of target groups: students, professors and lecturers, and experts in the field of mass communication and media. The third step was the synthesis parts which the researcher performed with the experts in the field of mass communication and media by using the seminar technique. Finally, the fourth step was to make an improvement of the strategy to set up the special training and evaluation of ethical standard and the experts would provide the suggestions and recommendations regarding the ethical standard that can be improved.

The population of this study included all the professor and lecturers who currently teaching the mass communication and media in the university level, the experts in the field of mass communication and media such as committee from the Thai News Association. There people were considered as the key-informant to provide information during the in-depth interview. Moreover, the undergraduate students were sampling in order to collect information from them by using questionnaire.

3. Findings

The findings revealed some of the problems. First was the student’s personal problem. Students have the problem of not wearing the uniform properly, lack of focus in the classroom, cheating in the classroom, and improper sexual expression. The problems in the classroom included study only in the classroom, no interest to expand their study and knowledge, lack of creative thinking and learning, learning by memorizing, unable to think and analyze the problem.

The finding from the strengths, weaknesses, opportunities, and threats (SWOT) can be summed up as follows. The strengths included the offer of the ethical standard in the classroom, the mass communication and media have a high ethical standard, and there are many activities to promote the ethics standard. The weaknesses included there was no clear objectives of ethical standard for undergraduate students majoring in mass communication and media, many teachers lacked motivation to teach about moral and ethics in the classroom, and there was not enough new case studies and material to provide new knowledge for students. The opportunities included there was a wake-up call about the topic of ethic and moral in the Thailand and Thai universities, Thai society expects the fair and just professional in the areas of mass communication and media, and the local community and management of the university still
agree that ethical standard is important for students. Finally, the threats included politics and influencing political figures still use the mass communication and media in the wrong way and try to promote self-interest more than the good of ordinary people, there is a flow of materialism in the Thai society which promotes being rich and show off in the wrong way.

Ethical standard for undergraduate students was collected from many studies and obtain the opinion and experience of the key-informant. The findings revealed that there were five topics that need to be promoted to the students as soon as possible. The first topic is honesty. It is important for mass communication and media profession to promote honesty to be the first ethical standard because the job duty now requires to be more transparency and to be clear in the objective and their work to report to the public. The second topic is the truth, and nothing but the truth. It is important for mass communication and media profession to offer the truth to the public and the public can rely on the truth provided by the media. Truth means to offer the news without bias, lie, and cooking up number and statistics. The third topic is the human right. It is important for mass communication and media to promote the protection of human rights and provide the knowledge of the vitality of human rights to the general public. The fourth topic is speed and accuracy of work. It is important of mass communication and media profession to be able to work with speed and accuracy in the line of work. The last topic is responsibility. It is important for mass communication and media profession to be high responsibility in the duty and work that report to the general public.

The strategies for develop and improve the ethical standard of undergraduate students majoring in mass communication and media can be derived from the work with the experts and academic professors. It is imperative for mass communication and media to crate the model of ethical standard for students to follow the foot step and respond to the high expectation of the modern society.

Strategy to build the connection and enhancing the ethical standard was to promote the cooperation among private sector, public sector, and non-government organization sector in order to set up some important activities to promote the understanding of ethics situations and responsibility. Moreover, there is an important way to introduce the philosophy of sufficiency economy to be the guideline for students to practice and hold on to as the guideline and self-immunity of life. The philosophy of sufficiency economy has a focus on the middle path which means not too much and not too little. Life is to be proceeded with frugality, reason, and immunity. Frugality means not to follow the materialistic life-style but to maintain life with only necessary. Reason means to use proper reasoning and logic in every decision and in every day. Immunity means to create self-protection from bad habits such as drinking alcohol, gambling, and using illegal drugs.

In addition, it is important to promote the strategy for management to promote the high ethical standard for the students. It is important to find new management technique to enhance the ethical standard of the students to be highly responsibility when they go out to work in the job market. There should be a way to draw tacit knowledge from the lecturers and professors to get the high benefits to the students. It is also important to promote the new skill and knowledge of the lecturers and professors to be able to translate the new knowledge and new skills to their students.

4. Methodology

In order to obtain a comprehensive result, the future research should survey students not only based on their major but also on their hometown or their residence to obtain representative opinions from a great variety of students in Thailand. Then, the findings may be able to generalize to obtain a meaningful of ethical standard and proper strategies. Whenever, students graduated and go to job market, there should be a follow up study to see how
they perform in terms of ethical standard. Moreover, future studies should use a mixed method of research or both qualitative and quantitative method by adding an in-depth interview as a qualitative technique in order to examine the thought of students behind their opinions and the experience of the experts in the field of mass communication and media.

5. Acknowledgement

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REFERENCES


English Classroom Management Model through E-Learning for Thai Students

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Abstract: This study is to develop English classroom management model through an E-learning platform for students in Thailand. ASME Model (Analyze, Select, Manage, Evaluate) was found for providing English and supplementary lessons for language practice. The efficiency of online lessons is higher than the standard criteria (84.5/86.5). The findings suggest the efficacy of e-learning trend is accepted in language learning and teaching. Three main benefits: most students are interested to learn 1) with modern, interesting lessons 2) directly responses to learning objectives 3) the convenience and suitability for using. We share our experience for teaching English courses focusing on how the ASME model managed and used for supporting student motivation, student-centered learning, individualization and cooperation in creating the study materials, including increasing the feeling of belonging together for supporting integrated language and ICT skills. The classroom activities are managed as group-work, pair-work and individual work. We will also view with the usefulness of supplemental tutorial mediums over the internet such as movies, TV shows, or other web-linked channels for language practice.

Introduction

September 2013 marked the first year anniversary of the Global Education First Initiative (GEFI), a campaign launched by UN Secretary-General Ban Ki-moon to place education at the centre of the social, political and development agenda [1]. About 35,000 students' results of the Programme for International Student Assessment (PISA) in 2012 indicates that in mathematics, science, and reading Thai students had improved slightly from 2009, but overall the Thai performance was below expectations and even poor or fell behind elsewhere, when compared to most countries involved in the testing [2] and [3]. It leads to many practice guides for administrative educators seeking to improve language instruction for English learners to increase their language acquisition, academic achievement and skills enhancement.

One aspect of learning language development is motivation contribution in second language acquisition. When learning a first language could be attributed to the desire to gain identity within the family unit and then the wider language community and this basis for his own research Gardner went on to investigate motivation as an influencing factor in L2 acquisition [4]. Students who are most successful when learning a target language are those who like the people that speak the language, admire the culture and have a desire to become familiar with or even integrate into the society in which the language is used [5]. Motivation is an important factor in L2 achievement. For this reason it is important to identify both the type and combination of motivation that assists in the successful acquisition of a second language [6].

Hence, reading is an essential skill the government is now promoting reading amongst Thai students in universities, since students are not giving this skill enough attention. In our university Business English students have less stock of vocabulary in marketing field that affects their ability in reading. Therefore, we build up an E-learning to encourage and motivate the students to read more and increase their vocabulary. Student motivation is a key factor in successful reading. However, in order to effectively support reading motivation in the classroom, it is helpful to consider the research on reading motivation [7].

The use of multimedia in teaching and learning presents challenges to institutions of higher learning. Multimedia refers to any computer-mediated software or interactive application that integrates text, color, graphical images, animation, audio sound, and full motion video in a single application. Multimedia learning systems consist of animation and narration, which offer a potentially venue for improving student understanding [8]. Well-prepared teachers, trained in technology use in the classroom, enable all students to engage in powerful learning experience [9]. Using technology increases students’ engagement. When creating teaching materials, teachers should consider ways in which they could use available technology. A website is a way to integrate technology to increase students’ reading motivation. The development growth of technology-mediated learning systems leads to ‘flexible deli-
very’ and ‘virtual learning’, which has created a whole new learning environment that enables students to increase their achievement and academic encouragement.

Our students need to develop reading skill and vocabulary in English for marketing and advertisement. It is essential for them to apply these skills in their future career since they major in Business English. However, they are not very good at English reading to meet the requirement of the university curriculum. Students do not have enough opportunities to practice reading or be exposed to more reading materials so we are using a teacher created website to host activities to provide them this practice.

The aims of this study are 1) to develop English classroom management model through an E-learning platform for students in Thailand. 2) to survey students’ opinions on E-learning for learning vocabulary and reading skill 3) to survey the students’ motivation for learning vocabulary and reading skill through E-learning.

1. Method

The population of this study is 240 students majoring in Business English Program of Suan Sunandha Rajabhat University. The sample group drawn by specific sampling consists of 67 third-year Business English students who enrolled in English for Marketing course in first semester of 2013 (September - December 2013).

The research tools contain one set of pre and post learning questionnaire surveys and an interview form to survey the students’ motivation. Both of them are examined and consulted by the three specialists for the concurrences before using them in the classroom. Data is analyzed by using statistic computer program and content analysis.

3. Results

This study can be reported in three main parts: 3.1 ASME Model (Analyze, Select, Manage, Evaluate) was found for providing English and supplementary lessons for language practice. The efficiency of online lessons is higher than the standard criteria (84.5/86.5). The findings suggest the efficacy of e-learning trend is accepted in language learning and teaching. Three main benefits: most students are interested to learn 1) with modern, interesting lessons 2) directly responses to learning objectives 3) the convenience and suitability for using.

3.2 Students ‘opinion and motivation on E-learning for learning vocabulary and reading skill

E-learning for learning and practising vocabulary and reading skill responds to the student’s need with 94% increasing to 98.5% by pre and post survey respectively. They mostly access the website everyday with 89.6% and increasing to 95.5%.

The website motivates the students in learning new business vocabulary and reading skill from textbook with 56.7% and increasing to 62.7% by pre and post survey respectively. They are interested to learn from songs (82.1% up to 83.6%), movies (61.2% up to 74.6%), and to do English exercises (28.4% up to 31.3%). They prefer to study the website as a part of English classroom with 40.3% and increasing to 70.1% and as a self–interest with 58.2% increasing to 59.7%. On the contrary, the practice teacher provided decreases from 41.8% to 11.9%.

All can be seen in Table 1.

| Table 1. Students’ opinion on using E-learning for learning vocabulary and reading skill |
|-------------------------------------|---------------------------------|----------------|
| Item list                          | Pre-questionnaire | Post-questionnaire |
|                                    | Frequency | Percent  | Frequency | Percent |
| 1 Students ’ need on using E-learning to practice’ | | | |
| 1.1 Yes                            | 63        | 94       | 66        | 98.5    |
| 1.2 No                             | 4         | 6        | 1         | 1.5     |
| 2 Frequency on using E-learning    |            |          |           |         |
3.3 Usefulness the students find from E-learning.

From the interview, this is what they said about the website that can be classified into four parts – vocabulary improvement, development of language skills, integrating with other knowledge, and facilitation. They are as follows:

3.3.1 Vocabulary improvement

1) Students gain more business knowledge, learn more vocabulary and become aware of changes in our world.
2) They benefit from learning new vocabulary and unknown words.
3) They improve their English reading and listening skills and learn how to play varieties of games.
4) They accept that E-learning is quite useful and it encourages them to practice the English language and enables them to gain more knowledge.
5) They have more knowledge and at the same time are able to entertain themselves by watching movies, listening to music and reading magazines.
6) They gain knowledge in different fields and know more vocabulary.

3.3.2 Development of language skills

1) They develop their listening skills, know more vocabulary and have the joy of learning.
2) They improve their listening, speaking, reading and writing skills in many aspects through interesting teaching media.
3) They watched movies, did varieties of language tests and listened to English songs and conversations through E-learning.
4) They practice English language from watching movies, listening through music and gain more knowledge from viewing online media.
5) They practice to do projects, get more ideas from games, watch movies and listen to music.

3.3.3 Integrating with other knowledge

1) They applied in everyday life and built on what they learn.
2) It is easy to learn from E-learning and know many issues as well as gain knowledge of the world.
3) They gain knowledge regarding internet and can get news faster.
4) They enjoy what they learn in varieties of aspects.
5) The website encourages students to pay attention in class more since they can surf the internet, do tests on the website which are more convenient and faster.
6) It is eye-opening for them as to how they can learn the English language and it is a good opportunity to change the learning atmosphere.

3.3.4 Facilitation

1) It is faster and easier to use E-learning.
2) It is more comfortable for them to learn the English language through the websites in the classroom and it is also easier to submit their assignments.
3) It is easier to access English lessons through websites.

More importantly, school climate of computer technology among L2 teachers moderated the magnitude of the relationship between L2 teacher-directed student use of technology during class time and
the teachers’ prior technology education experience [10] and ESL teachers’ beliefs about the computer were context-bounded and interaction-focused; and attention to the significance and necessity of a teacher education program and mentoring in integrating computers is needed [11].

3. Recommended research

As reading and listening are receptive skills, the research on enhancing motivation to practice listening through available websites should be done to explore the results.

4.1 Implications

4.1.1 These results of study were informed to the colleagues who teach English, Japanese and Chinese in the Humanities Department for further research of other courses and other languages.

4.1.2 An example of created website has an important role to encourage some colleagues to use it for motivation.

Conclusion

This study could help increase students’ motivation to read more, build up a large stock of vocabulary and improve their understanding of the vocabulary so they can read marketing texts better. Moreover, they can develop both social engagement and emotional satisfaction at the same time. This course is a part of Business English student’s curriculum, and it has been taught every year for sophomore students. The curriculum is still in development. Using the SME Model has helped us analyze and evaluate students. On behalf of Business English majors, I’ve been teaching this marketing class for four years and have been conducting research for two years.

The subject of research is relevant and it is recommended to refer to what extent the study of English language for the research group is reported to the standards of curriculum for the specific subject being marketing using English for classroom management to guide the students on proper use of the E-learning software.

Because of the success of this study, we believe further research should be conducted with more analytical data on different sets of curriculum to which each student would be evaluated on learning comprehension versus improvement of English vocabulary. We could then review the difficulty level of the student’s English comprehension versus their expectation on new marketing vocabulary words to have a higher standard of evaluation.

References


Abstract: The purposes of this study were to investigate the quality of life’s improvement from the practice of the philosophy of sufficiency economy and to set a comparison between demographic variables. This was a case study of many local communities in Bangkok, Thailand. This study utilized mainly a quantitative approach. The independent variables included gender, age, education, occupation, income and residential area, whereas the three important dependent variables included frugality, reasonableness, self-immunity, knowledge, and integrity. A total of 400 samples were selected and a questionnaire was developed as a research tool for interviewing and collecting data. Descriptive statistics in this research was performed by SPSS program. The findings revealed that the majority of respondents were male between 45-60 years old with an undergraduate degree. The majority had income between 20,001 – 30,000 baht per month and most were working as government officials. The findings also revealed that self-immunity was considered as the most important quality of life’s improvement and ranked at a high level. Moreover, different demographics of the respondents had a difference in their results from the practice of the philosophy, except for residential areas.

Introduction

The philosophy of Sufficiency Economy was known to Thai people for the last two – three decades and the philosophy itself was formally bestowed from the King of Thailand to the Office of National Development for Economics and Society in 2000. The gist of the philosophy concur with the Buddhist idea of a middle path of living and how to create self-immunity to protect oneself from negative impacts of a changing world and economic depression [1]. Thai social development policy of today under the national strategic 2008-2011 focuses on the usefulness of application of the Philosophy of Sufficient Economy. Therefore, the administrative officials of government sectors must understand the principles in detail in order to be able to explain the processes of implementation of the philosophy.

In generally, traditional capitalism often focuses on both consumption and spending from both government sector and consumer sector. Also, business cycle means the economy often faces with up and down business cycles. During the boom period, consumers will have more money to spend. However, during the recession or the bust period, consumers will have less money to spend. A problem with Thai economy is that there are small group of high income and large group of low income. The majority of Thai people have limited income but unlimited wants and needs. This often leads to the problem of borrowing too much and too fast. The overspending leads to the over-debt. Many Thai do not have an understanding of the effects of debt and interest. A short term debt soon becomes a long term debt. The debt means spending of future income where there is no steady income now or in the future. Individual debt is often become household debt and the financial problems is exacerbated by other problems such as unemployment, losing income, over-shopping, gambling, drug abuse, and alcohol abuse. These daily problems affect an individual’s quality of life. In other words, the more people have less self-immunity, the more people suffer from these daily problems. The philosophy of sufficiency economy offers the guidelines of life to cut off the unnecessary spending or over-spending. It also promotes hard working, frugality, and community collaboration. The teaching of philosophy of sufficiency economy has caused a paradigm shift in the way the Thai government started to allows local people or local community to take care of themselves and to manage themselves under the framework of representative democracy in order to distribute the service and benefits the local community [2]. Historically, Thai government system has often been criticized for centralization, slow, rigid, and bureaucratic which is not responsive to the needs and wants of the local people [3]. B. G. Peter (1996) explained that the management system can be reliable to provide service to local people must be based on the involvement or totally local people participation [4]. Therefore, there is a need to
study the philosophy to ascertain if there is an effective way to train local community. Moreover, it is imperative to find ways to enhance the usefulness of the philosophy to its maximum capability to serve local needs and wants effectively.

His Majesty the King had developed the Philosophy of Sufficiency Economy to offer the ways of life that suits with Thai and Thai problems. In fact, the Principle of Sufficiency Economy is not designed to be the “ways of the poor”, but the real meaning implies that one should not live beyond one’s means or over-spending is bad for whatever reasons. The philosophy of sufficiency economy includes three principles and one foundation for national development. The three principles are reason, moderation, and immunity. Whenever good or bad situations change rapidly, makes it difficult to design a proper development plan due to many risk factors. The Philosophy suggests the middle path that will focus on a balance and sustainable development.

This research study is aimed to investigate the improvement of quality of life from practicing the philosophy of sufficiency economy in local communities of Thailand. The chosen areas of study are agriculture communities in the middle of Thailand where the government has the policy to apply the philosophy of sufficiency economy into the development of these communities. Local people in this province have been familiar with local wisdom and how to apply the Principle of Sufficiency Economy to improve local quality of life. Therefore, the findings of this research may benefit local community in terms of enhancing their knowledge of local wisdom and management effectiveness. Therefore, it is imperative for the researcher to be interested in studying if the practice of this philosophy can make any real positive differences and if the practice of this philosophy can contribute to the enhancement of the quality of life for the local communities.

1. Literature Review

The teaching of philosophy of sufficiency economy is based on three factors which are moderation, reasonableness, and risk management. Moderation factor means just enough, or to spend moderately, or to consume neither too little nor too much. In other words, one should consume at a moderate level. Reasonableness means use reasons rather than emotion when making a critical decision or to make decisions by using rational thinking and deep consideration. Risk management means know how to take proper risk or to be able to cope with the impact and change in the modern world and to minimize unwanted risks. In addition, the important decisions and activities in life should be handled by using two important factors which are knowledge and virtue. Knowledge can be defined as local Thai wisdom knowledge. Therefore, it is important to making decisions by using this local knowledge in household planning and operation. Virtue can be defined as the living with the concept of honesty, patience, perseverance, and good path way of life. With the social, economic, and financial problems, it is an important government to offer the different philosophy to change the negative situation to positive situation. This has caused a paradigm shift in the way the Thai government started to move from centralization into decentralization and started to allow the local towns to manage themselves under the framework of representative democracy in order to distribute the service and benefits the local people.

2. Methodology

The objectives of this research were to study the results of the practice of philosophy of sufficiency economy that can improve the quality of life or not as well as to make a comparison between demographic variables and the practice of this philosophy. The population of this study included all community in Bangkok which has been trained about the philosophy of sufficiency economy from the local government officials. A random sampling technique was performed to get a sample group that included 400 local people in local communities in Bangkok who currently practice the philosophy of sufficiency economy [5]. A questionnaire was used as a tool for collecting quantitative data. While an in-depth interview of a small group of local people were performed to obtain qualitative data. Therefore, this is a proper mixed method research of quantitative and qualitative techniques in order to find the results of the study. While independent variables included gender, age, education, occupation, income and residential time, the five important dependent variables included five important factors which included frugality, reasonableness, self-immunity, knowledge, and integrity. A pilot of study of 30 respondents were tested until the questions recived at least 0.75 value of Cronbach Alpha. Descriptive statistics utilized in this research including percentage, mean, standard deviation as well as t-test. For data collection, first, the record booklet was used during the in-depth research to record the experience and conceptual information. Second, the research and staff members worked in the field to retrieve the information to be able to interpret for the findings. Third, a structured in-depth interview was designed.
to get access to important people in the local communities. The validity of the in-depth interview forms were tested by experts in the field of the application of the philosophy of sufficiency economy.

Four, another structured in-depth interview was designed to ask mainly elders who had an expertise in the area of philosophy of sufficiency economy. Again, the validity of this in-depth interview forms were also tested by experts in the field of the application of philosophy of sufficiency economy. The knowledge of local elders in local communities includes human resource management, budget management, enhancement of organization potential, and system to provide service to general public according to application of Philosophy of Sufficiency Economy. The conceptual framework of Philosophy of Sufficiency Economy included these four important factors: reasons, moderation, immunity, and knowledge & virtue which can be illustrated in figure 1 as follows.

3. Findings

The findings revealed that there were more female respondents than male respondents with the ratio of 51:49. The majority of respondents were aged between 21-40 years old with an undergraduate degree. The majority had the occupation of local business, for hire in simple works, and farmers. About 80 percent reported that they had been living in local community for more than 20 years. Moreover, differences in demographics of the respondents correlated with difference in their level of practice of the philosophy, except for residential time.

TABLE I. Philosophy factors that enhance the quality of life

<table>
<thead>
<tr>
<th>Philosophy factors</th>
<th>Mean</th>
<th>S.D.</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Self-Immunity</td>
<td>4.55</td>
<td>0.784</td>
<td>1</td>
</tr>
<tr>
<td>2. Reasonableness</td>
<td>4.50</td>
<td>0.787</td>
<td>2</td>
</tr>
<tr>
<td>3. Frugality</td>
<td>4.36</td>
<td>0.906</td>
<td>3</td>
</tr>
<tr>
<td>4. Integrity</td>
<td>4.17</td>
<td>0.666</td>
<td>4</td>
</tr>
<tr>
<td>5. Knowledge</td>
<td>4.12</td>
<td>0.978</td>
<td>5</td>
</tr>
<tr>
<td>6. Overall</td>
<td>4.34</td>
<td>0.824</td>
<td></td>
</tr>
</tbody>
</table>

The findings from TABLE I revealed the levels of importance of the philosophy factors that can enhance the quality of life as follows: 1) the respondents rated self-immunity as the most importance with a mean of 4.55 and 0.7584 SD. 2) the respondents rated reasonableness as the second most important with a mean of 4.50 and 0.787 SD. 3) the respondents rated frugality as the third most important with a mean of 4.36 and 0.906 SD. 4) the respondents rated integrity as the fourth most important with a mean of 4.17 and 0.666 SD. 5) the respondents rated knowledge as the fifth most important with a mean of 4.12 and 0.978 SD. The overall mean was rated with a mean of 4.34 and 0.824 SD which implied that the mean was rated at a high level.

4. Discussion

From the qualitative study, the findings revealed that there is a high potential for expanding the knowledge and the benefit of the practice of the philosophy into other communities in Thailand. The in-depth interview showed that the self-immunity was the most important factor that contribute the enhancement of quality of life. The findings concurred with the quantitative findings which revealed that self-immunity was rated the highest mean or 4.55 which implies the most important...
factor that contributed to the improvement of quality of life after applying the philosophy of sufficiency economy. The main problem is found to be knowledge and integrity factor which were rated the lowest means. In addition, the findings disclosed that integrity factor is less important factor than self-immunity factor. This finding was not concurred with the idea advocated by PravetWasri (1999) who advocated that in order for the philosophy to be a success in applying to increase the quality of life, integrity is one of the most important factors [6]. Moreover, it is vital for the learner of the philosophy to have a deep understanding as well as regularly practice the philosophy in order to reap the fruits of benefit in a sustainable manner.

5. Limitations and Future Studies

The limitation of this research paper was due to the limited method of obtain the sample groups which included only local communities in Bangkok. It need to widen the population areas and should include other communities around Bangkok which may represent opinions with more variety. Therefore, the findings may not be generalized properly to analyze the improvement of quality of life and a real result of the practice of the philosophy. Therefore, future research should use a proportion sampling technique with diverse groups from different communities all over Thailand. Moreover, future studies should include more focus group interviews from different kinds of groups to search for many long term benefits of practicing the philosophy of sufficiency economy.

6. Acknowledgement

The author would like to thank the Research and Development Institute, Suan Sunandha Rajabhat University, Bangkok, Thailand for financial support. The author also would like to thank Mr. Kevin Wangleede, Director of Centre for ASEAN Studies and Training for proof reading this research paper.

References


The Guidelines for Higher Education Management of Suan Sunandha Rajabhat University for ASEAN Entrance

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Abstract: This study was a survey research aimed to investigate the potential and offer guidelines for higher education management of Suan Sunandha Rajabhat University for ASEAN entrance. A questionnaire was developed and utilized for collecting data from 250 academics and 54 executive officials by employing stratified sampling method. Statistic description included percentage, mean, standard deviation and PCA (Principal Component Analysis.) The findings revealed that there were 5 factors related to potentials on higher education management in Suan Sunandha Rajabhat University for ASEAN entrance: learning innovation for ASEAN; IT center for ASEAN; learning community resource development for ASEAN; knowledge development for ASEAN; and student development for ASEAN. Also, the potential for higher education management overall and individual aspects were at the high level and having knowledge development for ASEAN was at the highest level. Moreover, the guidelines consisted of 5 strategies: 1) the promotion on learning innovation for ASEAN; 2) the reform on IT for ASEAN; 3) the development on learning community resource for ASEAN; 4) the construction on knowledge for ASEAN learning resource center; and 5) the development on student potentials for ASEAN entrance.

Introduction

ASEAN Economic Community (AEC) is the integration of ten nations included Thailand, Myanmar, Laos, Vietnam, Malaysia, Singapore, Indonesia, Philippines, Cambodia, and Brunei. The economic integration was designed to be similar to Euro Zone. The benefits of this integration included power of negotiation, free tariff for export and import, and increase the market size. AEC aimed to be the region that competitive, high potential of economic, and moving towards world economy.

According to the ASEAN Education Ministers Meeting: ASED, there were nine strategies to be implemented to prepare the member nations to the AEC community within 2015. The nine strategies included: 1) to increase the awareness of ASEAN community, 2) to develop English as the main language for ASEAN nations, 3) to exchange professor and students, 4) to promote the education technology, 5) to promote the ASEAN human resources, 6) to promote local wisdom of each nations, 7) to connect the culture of each member nation, 8) to exchange students in all levels, and 9) to have a meeting among ASEAN ministry of education every two years. The ministry of education in Thailand also issues five important policies to enter the AEC 2015. The first policy included the dissemination of information, knowledge, and attitudes of ASEAN to general publics. The second policy included the development of skills and knowledge for general public to be ready to take advantage of the coming AEC. The third policy included the development of standard quality of education to allow professors and students from Thailand to be exchanged with other ASEAN nations. The fourth policy included to enhance the free-dom of education and academic collaboration between universities of ASEAN nations and to promote some specific occupations that will be allowed to move across the ASEAN nations. Finally, the fifth policy included the development of ASEAN youth to be the most important human resources in the future.

Since the coming AEC 2015 is so vital to the education of Thailand in many aspects, it is imperative for Committee of Higher Education of Thailand to prepare a long term plan and to make certain that the plan will included the development of standard quality of education. The long term plan must ensure that Thailand will be able to produce high quality of higher education. There are two clear missions: one is to produce high quality of graduates to be able to compete with other ASEAN nations and another is to produce graduates that can use English in the same level with leading ASEAN countries. The aims included the promotion of Thai students that can work with any ASEAN companies or in any ASEAN nations effectively. The aims also included the plan to...
increase ASEAN students in Thai universities to be up to 25 percent in the future. There are three strategies. First is to enhance the standard quality of graduates. Second is to enhance the standard of universities. And third is to enhance the role of Thai universities in the ASEN stage (HEC Newsletter, www.mua.go.th). [1].

Suan Sunandha Rajabhat University is one of the leading universities in Thailand which aimed to develop ex-cellent graduates with perfect personality, good hu-man relation, highly ethics and integrity. The goal of the university is to be number one of Rajabhat Uni-versity in Thailand, number fifteen in Thailand, and number 150 in ASIA. In order to achieve these goals, there are five missions to be realized. The first mission includes the production of graduates with high quality to match with the demand in the country and ASEAN market. The second mission includes the production of teaching professionals to be ready for ASEAN market. The third mission includes the community service and technology transfer to local communities. The fourth mission includes the center of information for ASEAN and local wisdom. Fina-llly, the fifth mission includes the development of re-searches into ASEAN. Therefore, it is important for researchers to study and to search for guidelines to enhance the educational potentials to be able to enter the ASEAN community effectively.

Fig 1. The Conceptual Framework

1. Methodology

1. This research study was a survey aiming to ex-amine the potential and offer guidelines for higher education management of Suan Sunandha Rajabhat University for ASEAN entrance; and to analyze the five missions of the University for developing a pro-per guideline for higher education management. The population of this study included 54 executives and 626 academic staff of the university. The sample group of 626 staff was calculated by using stratified sampling method, having the value at 0.05 statistical significances (Taro Yamane, 1970) [9]. Stratified random sampling was employed, identifying facul-ties as the strata and randomizing sample according to the population ratio, getting a number of outcome at 250.

2. Two kinds of variables; independent and depend-ent were focused. Independent variables focused on 5 missions of the university - the production of graduates with high quality to match with the demand in the country and ASEAN market, the production of teaching professionals to be ready for ASEAN market, the community service and techno-logy transfer to local communities, the center of information for ASEAN and local wisdom, and the development of researches into ASEAN. On the other hand, dependent variables focused on potential on education management for higher education and guidelines to manage higher education.

3. Two forms of Likert five scales questionnaire were developed, tested by experts (value of reliabil-ity = .9764 and .9635), and utilized for collecting data. Form 1, having two parts, was distributed to academic staff - part A was about demographic information, such as gender, age, marital status, level of education, monthly income, and time period for working; and part B was 30 questions about the po-tential on education management of Suan Sunandha; meanwhile, Form 2, having two parts, was distri-buted to executives – part A was demographic infor-mation and part B was ways for education mana-gement of Suan Sunandha for ASEAN entrance. The identified score concerning the potential and education management fell into 5 levels, from 1.00 to 5.00 points, or from the highest to the lowest levels. This could be illustrated in details as follows:
Average score from 4.21 – 5.00 means the potential/educational management was at the highest level.
Average score from 3.41– 4.20 means the potential/educational management was at a high level.
Average score from 2.61– 3.40 means the potential/educational management was at a moderate level.
Average score from 1.81– 2.60 means the potential/educational management was at a low level.
Average score from 1.00–1.80 means the potential/educational management was at the lowest level.

4. A variety of statistic description and tools was thoroughly employed in order to get the most consistent outcome. Those included percentage, mean, standard deviation and PCA (Principal Component Analysis), exploratory analysis, orthogonal rotation, Varimax rotation, eigenvalue, standardized factor loading, and confirm loading analysis.

5. The analysis on higher education management based on five missions: the production of graduates with high quality to match the demand in the country and ASEAN market; the production of teaching professionals to be ready for ASEAN market; the community service and technology transfer to local communities; the center of information for ASEAN and local wisdom; and the development of researches into ASEAN, was conducted via the opinion survey of the executives of the university. The outcome was employed to identify the strategies, the mission strategies, the projects and activities, as well as the actual implementation plans of the university. As a result, the guidelines to manage higher education could be conformed.

2. Findings

The findings revealed that:
1. The majority of the respondents were female with the age of 31-40 years old and single, holding Master’s degree with 2 to 10 years of work experience and were temporary employees.

2. By using the principle of Component Analysis, the factors could be arranged from highly importance to less importance as follows: Learning Innovation for ASEAN; IT Center for ASEAN; Learning Community Resource Development for ASEAN; Knowledge Development for ASEAN; and Student Development for ASEAN.

3. Learning Innovation for ASEAN means to develop curriculum to be more updated and suitable of ASEAN curriculum and increase standard quality of education.

4. IT Center for ASEAN means to create networks for sustainable education and create information technology to be center for ASEAN in the future.

5. Learning Community Resource Development for ASEAN means to create networks of community and integrated community wisdom and developed it for ASEAN.

6. Knowledge Development for ASEAN means to develop and organized the knowledge to be competitive with other ASEAN nations.

7. Student Development for ASEAN means to enhance knowledge and develop necessary skills for students to be able to work in ASEAN nations.

9. The potential for higher education management was at the high level. The mean average can be ranked from high mean to low mean as follow: Knowledge for Development to ASEAN, Student Development to ASEAN, Community Development to ASEAN, and Learning Innovation to ASEAN.

<table>
<thead>
<tr>
<th>TABLE I: THE POTENTIAL FOR HIGHER EDUCATION MANAGEMENT</th>
</tr>
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<tbody>
<tr>
<td>Potential for Higher Education Management (x,ˉ) (S.D.) Meaning</td>
</tr>
<tr>
<td>1. Learning Innovation for ASEAN</td>
</tr>
<tr>
<td>2. IT Center for ASEAN</td>
</tr>
<tr>
<td>3. Learning Community Resource Development for ASEAN</td>
</tr>
<tr>
<td>4. Knowledge Development for ASEAN</td>
</tr>
<tr>
<td>5. Student Development for ASEAN</td>
</tr>
<tr>
<td>Overall</td>
</tr>
</tbody>
</table>
10. In terms of guidelines for higher education management, five strategies and five tactics were identified.

- The first strategy was to create learning innovation to ASEAN. The tactics were to integrate the change in curriculum with the change in ASEAN community, to develop learning in an innovative way, and to enhance the learning quality standard with international standard.

- The second strategy was to create a new system of information technology for ASEAN. The tactics were to create a sustainable network for ASEAN academic and collaboration, to enhance the information technology for ASEAN, and to create system for integration of human resources.

- The third strategy was to develop learning community to ASEAN. The tactics were to develop community center for learning, and to enhance students’ learning system to include community learning.

- The fourth strategy was to develop knowledge for ASEAN learning center. The tactics were to develop research resource management, and to create ASEAN research network and plan to use the research in the future.

- Finally, the fifth strategy was to develop students to be ready for ASEAN. The tactics were to develop the potential of learning and competency of learning for students.

3. Discussion

From the findings, it is imperative that there must be a significant change in education management of which requires the innovative learning management. This idea concurred with the 15 years of long term education planning of Thailand which aimed to increase the pace of development of innovative learning management as well as creating a vital immunity to Thai education management to be more sus-tainable. The education management should also focus on ASEAN knowledge and English commu-nication, and international standard. Manospon Vitoometha (1999) has adopted this idea to her study and has found out the same result that “…Thai edu-cation system should focus more on ASEAN knowledge, English, and international standard…” [6]. Moreover, the findings concerning Thai education system has suggested that the appropriate approach is the focus on learner or student center. This idea is in line with Jiraporn Noosawat (2012) whose study is concentrated on learning integration method “…student center method is more effective learning than traditional learning method …” [2].

Besides, the need for the new international curriculum design for ASEAN and/or international students is important for the success of those in the ASEAN market. Ponthip Siripatrachai (2014) has noted that it is important to have international curriculum and proportion of international professors to allow students to develop their international perspective to be able to compete in the ASEAN stage [4]. Addition-ally, Punsak Ponsarum (2015) has introduced six tactics for improving the curriculum [5]. First, it is important to have student center of learning environment; second, it is important to reduce the lecture time and role but increase the role of facilitator; third, it is important to increase the activities of learning; fourth, it is important to have a vision of learning program; fifth, it is important to a clear direction of education plan; and finally, it is important to focus on quality rather than quantity. In terms of ASEAN en-trance, the Eagarat Amawn (2012), who conducted the research study entitled “The Development of Army Skills to be Ready for ASEAN”, portrayed his findings that “…it is important to prepare human resources to be ready for ASEAN community and make certain that general public and education officials understand the magnitude of ASEAN commu-nity in the future…” [8]. Finally, the study of Apron Kanwong (2013) has confirmed the idea in “The Analysis of Education East-West Economic Corridor: ASEAN Integration” that in order to develop the quality of education, it is important to develop the quality of teachers and professors first, the quality of researches second, and finally the quality of English communication [7].

4. Recommendation

According to the fruits of the research, two possible ways for application and future study are reco-mmended. In terms of application, strategies for higher education management for ASEAN should be actually and expandingly implemented; and the recognitions of all staff and students on the readiness for ASEAN entrance via integrated strategies should be campaigned, promote and support. Regarding future study, the study on higher education management for ASEAN in particular subjects, such as sciences, public management, should be focused in order to specify the forward engagement policy; and the attitude and recognition of all staff and students on higher education management for ASEAN should be continuously examined in order to form the university policy for ASEAN entrance.
References


The Management of Communication Process to Enhance the Level of Community Participation

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Abstract: The purposes of this study were to investigate and analyze the management of communication process and how to enhance the level of community participation on community radio as well as to develop guidelines to create a high level of participation on community radio. This was a mixed research of qualitative and quantitative methods. The qualitative method included documentary research and an in-depth interview with three producers. The quantitative method included questionnaire with four parts distributed to 400 samples. The findings revealed that the management of communication process to enhance the level of participation consisted of four components which were senders, messages, channel of communication, and receivers. In terms of the senders, the respondents revealed the process of acquiring the information, understanding the community problems, experience, interest of the producers were important. The messages, however, consisted of three different kinds of programs: music, news and music, and conversation and music. The components of channel of communication were ready in terms of techniques and equipment but still unable to provide total coverage of the Dusit area due to the intervention of other waves. In terms of the receivers, the majority of them listened to the community radio mainly at home and at university. The management of community radio was created as a two-way communication. The benefits of community radio included solving community problems, provide the channel of communication and exchange opinions, and provide information and knowledge that could be applied in daily life.

Introduction

The principle of community radio places upon civic right and freedom of community members in operating and providing radio broadcasting service, owned, operated, managed and monitored by community people. The aim of community radio operation is to provide the maximum benefits to communities of ownership and to establish the media center in responding diverse needs of community or locality. Community radio acts as a vehicle for community engagement where community members will be assembled in order to exchange ideas and attitudes, make a common understanding among each other and participate in community projects. By this purpose, community radio is treated as a public service with no profit-seeking or other kinds of benefits of individuals, and can be deliberated as communication participatory process.

1. Literature Review

Community radio has become an issue of social discussions at present. Community radio stations are recognized by general public, particularly in Bangkok metropolitan from the interference of their signals with the public radio stations, most of which usually run unfamiliar programs or address some of unfamiliar civic issues. Community radio has been accepted among several audiences for its variety of programs reporting and updating of the locals; yet many feel of annoyance towards community radio due to its signal interference with the main public radio and some unpleasant programs.

The preliminary survey about the community radio stations in Dusit District, Bangkok found that there were both stations with temporary registered license and unregistered ones. The Office of National Broadcasting and telecommunication Commission (NBTC) of Thailand has provided to community radio entrepreneurs the process of self-assessment for the compliance with the licensing criteria of community radio broadcasting service. Some of these include: (1) no report of interfering radio signal, whereas registration for radio transmitter and indication of signal transmission distance must be done: not farther than 3 kilometers for urban areas such as Bangkok, not farther than 15 kilometers for rural or peripheral areas, and those located in areas with special geographical characteristics such as mountain, valley or seacoast must be run by special permission; and (2) monitoring and prevention of content of social violence and of those violate ethics. The NBTC has come over to manage and control the situation by reinforcing the law. During the previous years, awareness and reinforcement of the law over the opening of community radio stations was not strong enough;
partly for the sake of the public information flow and accessibility. This freedom, as a result, triggered over 5,000 unregistered community radio stations nationwide.

The UNESCO provides main principle to characterize community radio, which is a media access that encourages freedom of listening; expressing opinions and needs towards radio programs in the aspect of management and production; plus the volunteering participation throughout the whole process for common interests and benefits of community [1]. The participation process in this regards involves the beginning stage of igniting ideas, producing programs and self-management, with the application of democracy. Community radio promotes democracy in ways of thinking, planning, establishing administrative policy and producing media among the community members. Six levels of participation of community radio operation were provided by the UNESCO. These encompass the following: (1) a radio program runner of a station reports issue proposed by community members as the public announcement; (2) a radio station owner still take cares of radio program management, production and broadcasting, as well as setting framework and opening place for community members to participate partly in designing radio programs and content; (3) community members’ participation shifts to the level of radio station ownership who act to administrate, design and produce radio programs in the form of committee, yet radio station still belongs to the same groups of individual or organization whose role concerns laws and regulations, and facilitation of production and broadcasting; (4) radio station is still owned by government with its budget supported by the governing body and from donation, yet community members play a volunteer role in administrating and running radio program under the supervision of the radio station officer; (5) community members assemble in order to request to the government for radio frequency and investment of radio station that belongs to community, in the form of administrative committee for establishing policy, controlling, hiring officers and volunteers for managing the radio station, and organizing and producing radio programs, including administration duty; and (6) community members assemble in order to request to the government for radio frequency and license, in which the station administration committee to operation officers are volunteer and supervised for their skills by government or educational institutes.

In regards to the case of Communities in Dusit District, at the initial stage, the community members’ participation for community radio must be carried out unhurriedly and deliberately. This is owing to the fact that at present the community radio stations have been run by the direction of the radio station administrative officer, with lacking of community members’ participation in some areas. They prefer listening to main public radio as they can be involved; the technique of getting people’s participation by use of marketing technique.

2. Methodology

This research aimed (1) to study and analyze the process of communication for building community members’ participation in community radio program; and (2) to identify appropriate ways for enhancing community members’ participation in community radio. The paper applied mixed method; the data was collected through both qualitative and quantitative. The qualitative method utilized documentary research and in-depth interview made with the key informants including the radio station administrator and radio program producers of the registered and legally licensed station, FM 97.25 MHz Home Number 1 We Are One, the community radio of Suan Sunandha Rajabhat University.

The quantitative method used questionnaires asking 400 local people of communities in Dusit District, Bangkok. The set of questions for the qualitative method included the background of the station, the policy adding the communities’ participation, the radio program content, the process of information acquisition, the arrangement of content for broadcasting, and feedbacks from audiences. The questionnaire covered 4 parts: background of respondents, community radio listening behavior, participation with the application of democracy. Community radio promotes democracy in ways of thinking, planning, establishing administrative policy and producing media among the community members. Six levels of participation of community radio operation were provided by the UNESCO. These encompass the following: (1) a radio program runner of a station reports issue proposed by community members as the public announcement; (2) a radio station owner still take cares of radio program management, production and broadcasting, as well as setting framework and opening place for community members to participate partly in designing radio programs and content; (3) community members’ participation shifts to the level of radio station ownership who act to administrate, design and produce radio programs in the form of committee, yet radio station still belongs to the same groups of individual or organization whose role concerns laws and regulations, and facilitation of production and broadcasting; (4) radio station is still owned by government with its budget supported by the governing body and from donation, yet community members play a volunteer role in administrating and running radio program under the supervision of the radio station officer; (5) community members assemble in order to request to the government for radio frequency and investment of radio station that belongs to community, in the form of administrative committee for establishing policy, controlling, hiring officers and volunteers for managing the radio station, and organizing and producing radio programs, including administration duty; and (6) community members assemble in order to request to the government for radio frequency and license, in which the station administration committee to operation officers are volunteer and supervised for their skills by government or educational institutes.

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3. Findings

The findings revealed that the FM 97.25 MHz Home Number 1 We Are One Community Radio Station was established in 2005 with the cooperation in designing the radio programs and the content of the communities’ members, lecturers of Suan Sunandha Rajabhat University, including the organizations from the public and private sectors. The objectives of the establishment were (1) to set up a center of information exchange of the communities and related organizations, and the channel for distributing the academic knowledge to the communities within the radio service area; and (2) to open a learning platform for young generation, students and general people. With a variety of programs, ranging from news, knowledge to entertainment, the FM 97.25 MHz Home Number 1 We Are One Community Radio Station broadcasts on Monday- Friday from 09.00 am - 06.00 pm.

The main findings were described in accordance with the elements of communication process: the sender, the message and the channel, and the receivers.

3.1. The sender

The senders in this research were a group of lecturers of Suan Sunandha Rajabhat University as the administrators, and a group of Dusit communities’ leaders as the advisor and the radio program runner. The latter were identified as those who perceived and understood the communities’ context of problems and a will to solving problems occurred in their communities. This reflected the fact that the communities’ leaders realized their right in presenting and distributing the information and knowledge directly to the communities’ members. Another two officers who operated within the station performed a variety of duties assigned accordingly to the ability and skills of each, for instance radio program runner, technician, accountant and secretary in case of arranging seminars and trainings. The process of information acquisition of the officers in the station portrayed the consideration made towards problems of the communities as the process. This process brought out the roles of the station officers as the program runner, which contributed to the issues of problems in relevancy with the communities’ context. In regards to the feedback of audiences, the finding was unclear as there was only one way of receiving the audiences’ feedback information, the telephoning.

3.2. The message

The consideration of appropriate broadcasting time was made in keeping with the lifestyle of the audiences, which was during 09.00 am. – 08.00 pm., as this was the working hours. The designs of the programs and the content placed an importance of educating, informing and entertaining the audiences, as well as edutainment. The programs’ content was categorized into 3 types: interviews with experts from various public and private sectors depicting interesting issues; news flashes in between the music program reporting what was happening around the communities and the university; conversations with audiences in latest issues concerning the country or the communities and informal sharing of knowledge in between the music program. It was found that the radio programs were produced under the careful selection of content based on the principle of responding to the needs of the communities and of creating an enhancement tool for strengthening the communities.

The readiness of technical aspect and equipment in radio transmission was also reported. The finding revealed that the FM 97.25 MHz Home Number 1 We Are One Community Radio Station had 30 Watt with the Omni Antenna and the radio wavelength of 15 kilometers. Despite the readiness of place and equipment used in radio broadcasting, an obstacle found concerned the several main public radios around the Dusit District, reducing the performance of the community radio in terms of noises and quality.

3.3. The receivers

The quantitative research reported that the majority of the audiences of the FM 97.25 MHz Home Number 1 We Are One Community Radio Station included students and the members of Suan Oy Community, Ban Yuan Community and Wat Racha Community. Mostly the respondents listened to the radio at the university and at home with the frequency of listening per week of 2-3 days, mostly on weekdays. The programs running music, miscellaneous knowledge and news update were the three most favorites programs.
3.4. The participation of the communities’ members in community radio

The finding exhibited a role of the communities’ leaders participating in the policy and planning level of the community radio, whereas the station administration involved the communities and the university. The audiences also played roles both as the listeners, the senders and the producers, since they were also invited to join the programs with the station officers, including the role of policy planner.

4. Recommendation

This paper suggested that the community radio carried out survey of needs of targeted audiences and evaluation of feedbacks, as to know the audiences’ satisfaction level and to evaluate whether the message broadcasted met the audiences’ needs and expectation. Moreover, audiences’ feedbacks could be beneficial in realizing intrinsic and actual problems that assisted in the communities’ enhancement. Furthermore, radio programs run on weekend and holidays may be considered, with the content emphasizing on the twelve Thai values and drug prevention. In the aspect of the communication process, the communities’ members should be encouraged for participation within an appropriate scope in realizing problems within their communities and the right of expressing their opinions by use of community radio channel. Lastly, the same type of research should be conducted with other areas, whose findings would be believed to provide different perspectives in the diverse community contexts.

5. Acknowledgement

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References


The Management of Job Dissatisfaction: A Case of Employees’ Stress in Electronic Parts Factories

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Abstract: The purposes of this study were to examine the management of job dissatisfaction: a case study of employees’ stress and employees’ behavior due to stress and to predict the level of stress with particular factors. The sample of this study was selected from employees who were working in electronic parts factories. A stratified sampling method was utilized to obtain 225 sample size employees. Statistical description included frequency, percentage, average, standard deviation, and Pearson coefficient correlation. The findings revealed that the factors that affected stress and behavior of stress were rated as a medium. The factors of working conditions that affected stress, the advancement of career path, organization harmony, stress behavior to solve problems, and stress behavior of emotion had a positive relationship with stress at work with a level of significance of 0.01. Moreover, the factors of working conditions that affected stress, the advancement of career path, organization harmony, stress behavior to solve problems, and stress behavior of emotion could predict the stress at the workplace at R² equalled to 0.682 and the equation was stress = 1.326 + 0.451 (Factors that affected stress and the advancement of career path) + 0.089 (Factor of stress that affected the harmony of organization) + 0.632 (Factors of stress that aimed to solve problem) + 0.546 (Behavior to face stress with emotion).

Introduction

Well-being of Thai people is one of the strategies stated in the Eleventh National Economic and Social Development Plan. B.E. 2555 – 2559 (A.D. 2012 – 2016). The idea places significance on reducing health risk factors in a holistic manner. Well-being can be measured by three sides: pride of themselves and self-esteem; self-complacency, optimism and sense of humor; and peace in mind and relaxation. However, the society today has always created pressures, which often lead to stress especially at work-places, due to the competitive environment. Stress at workplace occurs within several factors, mainly from work content which refers to job characteristics and work environment, and from work context which includes role in the organization, career path opportunity, interpersonal relationship, and organization structure. The previous studies revealed that persons usually had stress at work due to the perception of unclear and conflicting roles of work. Different ways to manage job stress present the continuing process of individuals’ expression in order to cope with stress when they realize that the stress may cause negative performances and problems. Coping with stress can be divided into 2 types: problem-focused and emotion-focused.

This research studied workers’ stress in factories producing electronic parts. These productions are from the foreign direct investment, where stress has been perceived high due to the high demand of the market.

1. Literature Review

Cooper and Marshall [1] defined work-related stress as a situation occurred when there is a mismatch between the demands of the job and the resources and capabilities of the individual worker to meet those demands. These include, for instance job overload, confusion and conflict of roles in the organization, negative interpersonal relationship. Stress at work can also refer to a feeling of pre- sure of individuals towards work that can threaten their body and mind and cause anxiety [2]. Wheeler and Riding [3] concluded that work-related stress was perceived by individuals when they felt that the work they were doing was threat-en ing their self-confidence, and they could not escape from that situation. Work-related stress of individual workers can lead to both positive and negative outcome, where positive outcome from stress can contribute to higher productivity of an organization, whereas negative outcome from stress can be reflected by unbalance of individuals at work which affect work performance [4].
Work-related stress factors can be summarized into 5 types: job characteristics and work environment; work structure, level of difficulty of work, standard of work, regulation, and routineness; roles in the organization; interpersonal relationship, disparity, level of acceptance at from colleagues and supervisor and executives, including stress occurred while dealing with customers and guests of the organization; and changes occurred in the organization such as changes of supervisor and colleagues, work method and working group. Previous studies found that organization structure and work environment, career path opportunity, and internal and external relationship were the significant factors of work-related stress [5].

Monat and Lazarus [6] defined stress coping behavior as the mechanism individuals use for balancing mind when they face with challenging and severe problem, for example sickness, loss and menace. Another definition of stress coping behavior was made, that it was an action or a thought of individuals to control cause or causes of stress, or to control stress by using individuals’ mind and intelligence, and past experiences already proved as a successful tool. Additionally, stress coping behavior can be an attempt of individuals to adjust or change particular feelings, thoughts and behaviors reacting with particular stress, in order to manage with stress stimuli, caused by both internal and external factors of individuals [7].

2. Methodology

The purposes of this study were to investigate level of importance given to work-related stress factors and behavior in coping with stress of workers in an electronic factory; and to predict stress of electronic factory workers by use of work-related stress factors and behavior in coping with stress. This research established 2 sets of hypotheses. The first hypothesis was that work-related stress factors could predict stress at work of the electronic factory workers. These work-related stress factors included job characteristics, roles in the organization, career path opportunity, interpersonal relationship, organization structure, and work environment. The second hypothesis was that behavior in coping with stress, which included problem-focused and emotion-focused stress coping, could predict stress at work of the electronic factory workers. The population of this re-search was 500 workers of an electronic factory producing cell phone capacitors, and the sample size was 225, according to the Yamane’s 95% level of confidence. The tool for collecting the data of this research was the questionnaire, divided into 4 parts: respondent’s background, 25 questions about work-related stress factors with the 5 Likert-type scales, 20 questions about stress coping behavior with the 4 Likert-type scales, and 20 que-stions about stress assessment with the 4 Likert-type scales. The research utilized Pearson Product Moment Correlation Coefficient and Multiple Regression in the data analysis.

3. Findings

The demographic findings reported the female respondents as the majority, making 73.8 percent, with the age between 21-30 years old. Most of them, 54.4 percent had the secondary school of grade six (Mattayom Six) as the highest level of education, and 50.9 percent was single. Regarding the job characteristics, most worked in shift, or 52.2 percent, with an average years of work between 1-5 years and the monthly salary between 10,001-15,000 Baht.

3.1. The investigation of the level of importance given to work-related stress factors and the behavior in coping with stress

The investigation of the level of importance given to work-related stress factors found that an average level of importance the workers gave to the work-related stress factors was at the medium level (Mean = 3.03, SD. = 0.552). The work-related stress sub-factors informed that job characteristics reported the first importance at the high level (Mean = 3.93, SD. = 0.425), followed by roles in the organization, also at the high level (Mean = 3.84, SD. = 0.523). The last 3 work-related stress sub-factors presented the least importance with the medium and low level included organization structure and work environment (Mean = 2.62, SD. = 0.436), career path opportunity (Mean = 2.48, SD. = 0.549) and interpersonal relationship (Mean = 2.30, SD. = 0.683).

For the investigation of the level of importance given to behavior in coping with stress of workers in an electronic factory, it was found that an average level of importance was medium (Mean = 1.43, SD. = 0.423). The investigation of the sub-factors including the problem-focused and...
emotion-focused stress coping reported that the workers gave a medium level of importance to both the problem-focused and emotion-focused stress coping (Mean = 1.52, SD. = 0.353 and Mean = 1.34, SD. = 0.364, respectively). Lastly, the prediction made from the analysis of work-related stress factors and behavior in coping with stress of the workers at the electronic factory reported that the workers would have the stress at the medium level (Mean = 1.86, SD. = 0.534).

3.2. The prediction of the stress

With the Multiple Regression Analysis, the effectual relationship between the predicting variables of the work-related stress factors and of the stress coping behavior, and the stress of the workers, was carried out. The analysis reported that the job characteristics in term of career path opportunity of the workers in the electronic factory predicted the stress of the workers for 65.2 percent at the significant level of 0.01. This could be implied with the hypothesis that job characteristics could create stress at work of the workers, with the appropriate regression coefficient of 1.326 (constant) + 0.451 (career path opportunity). Secondy, interpersonal relationship predicted the stress for 67.0 percent at the significant level of 0.01. This agreed with the hypothesis stating that interpersonal relationship among the workers could predict the workers’ stress with the appropriate regression coefficient of 1.326 (constant) + 0.089 (inter-personal relationship). This coincided with a previous study reporting that interpersonal relationship at work was one of the significant factors that influenced level of stress at work [8]. In this context, the workers have shift work resulting in lower level of relationship among them.

Stress coping behavior was also reported predicting the workers’ stress. The problem-focused stress coping could predict the workers’ stress for 66.9 percent at the significant level of 0.01 with the appropriate regression coefficient of 1.326 (constant) + 0.632 (problem-focused stress coping behavior). This concurred with a study about sources of stress, ways to cope with stress and outcomes, carried out with the nursing students, revealing that most students applied problem-focused stress coping as it could appropriately reduce stress [9]. The emotion-focused stress coping could also predict the workers’ stress for 67.1 percent at the significant level of 0.01 with the appropriate regression coefficient of 1.326 (constant) + 0.546 (emotion-focused stress coping behavior). Emotion-focused stress coping was found to relieve stress in situations where problems may not be able to solve.

3.3. The multiple regression analysis

The multiple regression analysis was conducted to find the pattern of prediction for the stress of the workers of the electronic factory. The analysis reported that work-related stress factors and stress coping behavior could predict the stress of workers together at the R-Square of 0.682. The equation for prediction was “workers’ stress = 1.326 + 0.636 (problem-focused stress coping behavior) + 0.546 (emotion-focused stress coping behavior) + 0.451 (roles in the organization) + 0.089 (inter-personal relationship)”. Moreover, the analysis found that the problem-focused stress coping behavior was the first predicting variable of the workers’ stress, followed by the emotion-focused stress coping behavior, roles in the organization, and interpersonal relationship.

4. Recommendation

The findings of this informed that most workers faced with the work-related stress. Factory jobs usually are repetitive and routine, due to high production to respond the market demand every day. Problems about machines can also occur, delaying the production as well. Workers should be trained to solve problems at hand, and should be empowered to make decision if needed, with appropriate monitor and evaluation; these can reduce stress at work of the workers. Recreation space should be provided so that the workers can spend their free time relaxing; this can result in more efficient and effective work performance. Trainings about positive thinking, problem-solving and new ways to see challenges at work can also be another technique for preparing the workers to cope with stress at work.

Further studies may consider investigation of the same area with workers or employees who work in other types of businesses or industries. Mixed method approach should be utilized as well in order to receive more in-depth data.

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References


Politics and Government Policies that Affected Royal Thai Army’s Underground Operation

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Abstract: The purposes of this study were to examine the preparation for the future of Royal Thai Army’s Underground Operations that affected by politics and government policies. This study was a mix technique of both quantitative and qualitative method. The study was conducted by utilizing qualitative method of small group in-depth interview and survey methodology via the selection of a sample group to complete their self-administered questionnaire. A sample group was selected from 20 operational and High Commander in Chief militaries related with the Royal Thai Army’s Underground Operations to find out their guidelines or opinions by using Focused Interview method. The aimed of this research were: 1) to study any difficulty in the future of Royal Thai Army’s Underground Operations, 2) to study the future guidelines of Royal Thai Army’s Underground Operations. The findings revealed that general public was currently greater attention to the politics and government policy, probably due to recently democracy awareness. This was considered by the community participations, or various kinds of resistance group to claim for their demand, or expose their opinions. Each resistance group requirements and attentions were very different. Therefore, the army really had to hand on helped and should be supporting the future of Royal Thai Army’s Underground Operations. On the other hand, the ignorant national or military leader without mentioned operations knowledge should be significantly trouble to the military operations.

Introduction

In the world of nature, it is hard to survive if you are being hunted. You can be either hunter or hunted. It is important to survive as long as you can. The nature of instinct will drive you to do the best you can to survive in the world of politics (Thairate online) [1]. To be able to camouflage means be able to hide from hunters or to conceal oneself and not being the easy prey or easy target. Chameleon is one of the best examples of using the tactics of camouflage in the forest. The same idea of camouflage has been used in the army for a long time. For instance the US navy boats were painted in black, the same color of the sea. Hence it was hard to detect with normal eyes. Concealments and covers are the two techniques that were designed by human beings. The Thai underground operation is also implemented these techniques of conceal-ments and covers. The research study was aimed to study the readiness of the royal Thai army underground operation in the future as well as the effects of Thai politics to the underground operation.

1. Methodology

The research tools that were utilized in the research paper included three techniques. The first technique was to use the theories and related researches about the problems of the royal Thai army underground operation and how to train the royal Thai army underground operation to be successful. The second technique was to use the Likert five scale questionnaires to inquire the information from the respondents. There were three types of questions: 1) it was the questions about demographic of the respondents, 2) it was the questions about the survey of the underground operations’ problems, and 3) it was the questions about the suggestions and how to improve the underground operations. The third technique was to use an in-depth interview by using semi-structure interview with naturalistic inquiry and flexible structure. Most of the questions in this part would be open-ended questions which aimed to study the problems and the effects of Thai politics to the royal Thai army underground opera-tion. Each in-depth interview, permission to record the sensitive information was signed and the confi-dential of the identity of the informants could not be exposed. There were two parts of the infor-mation from the in-depth interview. First was the information about the current problems and real current situation in Thailand. Second was the information about the attitudes and experiences from the key informants who gave an in-depth interview and revealed the information. The information collection was obtained with the use of computer and statistics program. Information can be categorized into two groups: quantitative and
The findings of this research study can be summarized into two groups. The first group was about the problems of the royal Thai underground operation in the future. The majority of the respondents were male with the age of 50-60 years old, with a master degree. The majority of the respondents has been working with the army at least 10-12 years and was in the middle and high command ranking officers. The mechanism to develop the human resources for the royal Thai underground operation is very important since its mission is to ameliorate the conflict in the nation and prevent any dangers and harms from the neighbor country. It is important to understand that the Thai enemies are using the tactics of symmetric and asymmetric strategies which is very hard to detect and to abate it completely.

The second group of the royal Thai underground operation is about how to operate the underground operation effectively with four strategies. Strategy number one is about the budget. This strategy is very vital and affect in every unit of the operation. It is imperative to follow, to focus, and to change the tactics when the situation changes. The budget has to be spent effectively and efficiency to find the best person fits for the job and the operation. Strategy number two is about to be ready for any emergency situations. It is important to select individuals and give them proper trainings to be ready for the operation both physically and mentally. Strategy number three is about how to minimize the negative effects of Thai politics. Nowadays, Thai people pay more attention to the Thai politics and often have negative ideas about the politics such as problem of corruptions and problems of power struggles. However, the positive thing with the increasing interests in the Thai politics is the high level of participation which is a good sign that local people are more interested in local politics. How-ever, it is important for the leaders and army to be able to understand the situation and be able to handle the delicate situation of politics properly. Strategy number three is about the psychology and social. Since Thailand as a nation has been changed from the small city into mega city especially Ban-gkok, there are changes in system of politics, busi-ness, and the norm of society. Many people still lack understanding about their roles, their rights, and their system of laws. The harmony of the peo-ple in the Thailand is important to maintain since Thailand has suffered from the big conflicts in the national for many times. The conflicts in politics lead the Thai people into two big groups of politics and tend to hate each other. The level of hate speech in the media exacerbates the conflict situa-tions. It is imperative for the government and the Thai army to reduce the level of conflict and lead the nation into peace and order situation.

3. Conclusion and Discussion

The policies regarding the budget, image creation, and any other policies that leads to the increasing of the factors that influence the success of the royal Thai army underground operation is welcome. Therefore, it is imperative to understand the mean-ing of the objectives of the underground ope-ra-tion and to follow as well as to learn and to change the tactics according to the changing situation. Moreover, the factor of economy also has a tremendous effect to the operation. In the situation of economic recession, the budget cut often plays an important role to minimize the effectiveness of the underground operation. Whereas, the economy boom offers the opportunity for budget increase and expand the magnitude of the operation. Budget cut or budget increase result in the recruitment and training. Budget increase helps to maintain the best staff and the best equipment and promote the effectiveness and the success of the underground operation. One major policy of the army and the underground operation is to integrate the operation and create the positive image of the army and to build a strong community with local community. Strong communities lead into strong nation. The duty of the army in the modern world is to reduce and minimize the conflict and create peace. The ability to reduce conflict means to reduce the chance that the nation to become a weak nation and reduce a chance that will lead the nation into war, both wars with other neighbor countries and wars within the nation or civil war.
The coming of ASEAN Economic Community or AEC at the end of the year 2015 is important for the national security as well as national economic prosperity. The AEC is a good opportunity to increase the market and economic base but it is important to understand that other nation in ASEAN members might be in an advantage situation in terms of economic and financial situation and leads to the change to take advantage of the poor nations. AEC also leads to the higher rival in terms of business and jobs. Many jobs in Thailand will have to compete with other nations and it is also present the opportunity for Thai labor both skilled and unskilled labor to be able to get the high pay jobs in other nations. The study of D. Nurem-rum stated that the attitude of using benefits as the criteria to measure the policy, for example, the best policy is the policy that benefits the large amount of people [1].

In terms of politics and government policies, it is an increasing of interests in politics from the local people and local community which is a good sign. However, the increasing interests in politics results in the increasing in interest groups. Each group tends to promote their own interest above other groups. Each group tends to use any mean necessary to perpetuate their interests. Society with many powerful interest groups leads into a conflict society if these powerful interest groups do not obey the rules and regulations. Therefore, it is important for the Royal Thai army to set up some special underground operation to minimize the conflict and maintain orders in the society. N. Luckana stated that the Thai army nowadays needs to adapt themselves to be able to handle many different kinds of conflicts which may lead to the national conflict easily [2]. In general, the Thai army has to consider many factors and conditions to be able to handle the underground operation successfully. Any situation that may create negative image for the royal Thai army underground operation that can jeopardize the full success of the operation must be halted.

In term of the social and psychology, the change of the society and consumer behavior has resulted in the new dimension of the problem. In the past, community is small and people tend to help each other. But when the community is large and people tend to live individually and lose the sense of community. The act of Unitarianism and Rule of Unitarianism become important in the society. This theory is focus on the result rather the action. For example if the policy creates a good result, it is a good policy even though the act of implement the policy may be not proper in the eyes of modern society.

In terms of geology and environment of Thailand, there are many advantages of being in the middle such as the movement of the labors to do any activities and connect to condition with other factors related to underground operation in the future. With the limited resources, there must be a better control of natural resources. Otherwise, there will be unbalance used of resources which can be the obstruction to the underground operation. This concurred with the study of N. Luckana (2014) which stated that the environment and security have been continuously changed and affected every nation in the world and in every dimension such as politics, economy, society, psychology, science, technology, energy, environment and army [3]. This can be a complex relationship factors. The world has been changed from old threats into new threats which will be the new conflicts of the many situations. There must be a new army and new technology to protect the order of the nation.

In terms of the human resources readiness, from the advantage of the geology, this can affect the national production to expand more than other nations because of the abundant of natural resources. But the royal Thai army underground operation still weak due to the human resources still need more training to work underground. But because of the situation affects the underground operation such as the culture and tradition of Thailand still not help the operation. The current situation shows that staff need more knowledge and ability to translate the knowledge into action for the army according to the Buddhist teaching (1999) stated that the human resource management is the operation with the important resources of the organization to implement the policy of the organization and maintain and develop human resources with better quality of life with the mission of doing the jobs with quality and effectiveness [4]. The weakness of the underground operation included instability of the politics and weakness of society from many conflicts from drugs, crimes, and other problems. Therefore, human resources in the future need to be prepared by enhancing their new knowledge and technology. The budget for the underground operation needs to be maintained in proper size. This idea concurred with L. Intralawid (2014) stated that Thailand is one the ASEAN members which has been prepared the people and organization both public and private
organization for the coming AEC and should be able to take advantage of the politics, economy, and society changes in the near future as well as be able to handle any crisis and any challenge due to the huge change from the integration of the ASEAN market [5].

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References


Consumers’ loyalty Factor and Satisfaction Factor: A Case of International Tourists

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Abstract: The purpose of this study was to examine the relationship of consumers’ satisfaction factor that led to consumers’ loyalty factors: a case study of international tourists, Thailand. The antecedents of loyalty in this study involved the experience of inbound tourists who travelling in Thailand and their satisfaction. An English questionnaire was developed and utilized to collect data from 400 inbound tourists. By using multi stage sampling technique, 400 tourists were determined: 200 male and 200 female inbound tourists. This was a mixed research techniques of quantitative and qualitative. The quantitative technique included a survey of Likert scale questionnaire and the qualitative technique included small group meeting and in-depth interview. In order to define the question that customers tended to come back at the same tourist destination and recommended others to visit the same tourist destination implied that there should a high level of satisfaction from consumers. The findings revealed that inbound tourists’ satisfaction included satisfaction in food, service, price, and friendliness of staff. These factors were the most important factors that could both directly influence and increased the level of customers’ loyalty. Satisfaction factor had a strong influence that could lead to high level of loyalty since the customers tended to purchase repeated due to high satisfaction. The findings indicated that the overall antecedents had a mean of 4.58 with the overall standard deviation of 0.987.

Introduction

The relationship between consumers’ satisfaction and consumers’ loyalty is one of the most interesting and important topics examined by many modern scholars and researchers. The level of satisfaction has been linked with the frequency of repurchasing of the same products and services. In other words, the choice factors influence the decision of consumers to repurchase or to revisit a particular tourist destination in the near future is a vital decision. Many researchers and many findings stated that high level of satisfaction leads to high probability of revisit the same tourist destination whereas low level of satisfaction leads to low probability of revisit the same tourist destination. Factors influencing the decision of international tourists to revisit Thailand in this study aimed to investigate the relationship between the level of satisfaction and the ten important factors that would increase consumers’ loyalty. These factors included safe place to stay, friendly people, low price, clean country, clean food, clean water, politically safe, good hospitality, good weather, and convenient transportation. Many researches and studies revealed that consumers’ satisfaction is an important factor that leads to consumers’ loyalty but it is not sufficient factor to determine a revisit of a particular tourist destination [1] [2]. The study of satisfaction factor influencing the loyalty of international tourists to revisit Bangkok, Thailand was based on the ideas that there are some factors that can better influence and better increase the level of loyalty from inbound tourists. The loyalty here means the way that consumers continue to repurchase the same tourist destination and are willing to recommend the same tourist destination to other consumers. The same theme can be generalized for today’s Thai tourism. Many researchers have argued that tourists’ loyalty include both behavior and attitude dimensions. In terms of the behavior dimension, international tourists must show frequently visits to the same tourist destination again and again. Whereas, the attitude dimension, international tourists must show a positive attitude as well as show sign of their willing to say positive comments about their experience to others, especially friends and family members.

In fact, tourism industry in Thailand has been subsidized in many forms for decades by every Thai government. Tourism industry is a proud industry of the nation that creates many jobs and income for low and middle income class. Tourism industry must be subsidized and promoted frequently in order to sustain because Thai economy as a whole depends on it. Generally, several activities and many national marketing campaigns from the Ministry of Tourism and Sports aim to increase the demand of spending of both domestic and foreign tourists. Because of job creation and revenue generation, the tourism industry, therefore, has played an important role in the Thai economy as well as national development [3]. Thailand, as one of the top three tourist destinations of ASEAN countries, has a plan to increase the number of
international tourists and tourists’ revenues every year. Based on the tourist arrival statistics of the year 2013 and 2014, despite of political instability, it was clearly that the majority of increasing international tourists was both Chinese and Russians. On the other hand, the ASEAN tourists become the most important tourists especially Malaysians and Singaporeans. Also, the European tourists tend to stay longer and spend more money than Asia and ASEAN tourists [4] [5]. With the proper policy, Thailand emerges as the world’s top five tourist destinations. Hence, it is imperative that the Thai government needs to maintain the subsidy policy and an extra effort in developing more of the nation’s tourist attractions, quality of tourist destinations, and high quality of service. This research was aimed to focus on the factors that international tourists often experience that can lead to their level of loyalty during their trip in Bangkok, Thailand. International tourists also often have both positive comments and negative comments towards these important factors. This research surveyed on international tourists to examine among these ten factors, to find out which factor is the most important one and which is the least important one. The question was this: How important are these factors in terms of influencing the decision to repurchase or to revisit the tourist destination in the near future? What are the reasons behind their level of satisfaction and dissatisfaction?

1. Literature Review

Historical data of tourist arrivals to Thailand from the Ministry of Tourism and Sports for the last two or three decades unveiled the fact that there is an increasing number of international tourists every year even in the time of political and economic recessions in Thailand or overall the world. It is an acceptable fact that Thailand has been very successful in attracting the interests of both new and repeated international tourists. The statistics indicates that Thailand was one of the top five tourist countries which are successful in gaining the income from new international tourists and in sustaining them as repeated tourists [6]. Therefore, it is important for the Thai government to provide the focus and budget to continue to promote Thailand as one of the best tourist destinations of the world. To rely on the positive word of mouth form the satisfied international tourists may not be a sufficient marketing technique to gain more demand of tourism. In the modern world, especially with the coming of ASEAN Economic Community (AEC), it is imperative for Thailand to utilized modern marketing campaign to increase higher demand for its many tourist destinations and to increase new resources of tourist destinations. Although, it is important to have the positive word of mouth concerning the tourists’ direct experience from a destination help understand loyalty, it is better to take advantage of these positive word of mouth. Since loyalty of international tourists will be an important factor to reduce many expenses and costs in terms of the advertising cost spent in luring and maintaining new international tourists. Many studies stated that experienced international tourists who have a high loyalty to a particular tourist destination will be the ones who are likely to perform a role of spreading of positive word of mouth. Reicheld (1996) revealed his findings that cost spent in attracting new tourist or new customer is normally 6 times higher than the cost spent in retaining old tourist as a tourist customer [7]. In other words, satisfied tourists lead to loyalty tourists and loyalty tourists generates higher revenues and profit due to the fact that repeated tourists are bring more and stable income and cost effective in terms of marketing cost. Therefore, international tourists with highly loyalty are the most preferable. What is the definition of loyalty tourists? The definition can be coined from their behavior. Frequent travel of international tourists to the same tourist destination is certainly an indication of loyalty to a particular tourists’ destination. Moreover, the loyalty tourists must show the sign of willingness to express positive word of mouth to others. After that it is important to take advantages of these loyalty tourists. In the modern world of tourists, it is necessary to find the collaborative national marketing campaign for the competitive edges. Therefore, tourists’ satisfaction, tourists’ loyalty and tourists’ destination loyalty are one of the most important topics frequently studied by many experts and scholars. The reason is because tourist destination loyalty is often connected to the issues of tourist satisfaction. The two factors are related and influence each other.

However, Chen and Gursoy (2001) focused the study on the tourists’ decision making process and their findings stated that recent past trip experiences often directly and indirectly affected the future decision of international tourists whether to make a decision to revisit a particular tourist destination or not [8]. This finings help to understand tourists’ behavior and their decision making regarding revisiting in the future. In other words, the overall satisfaction of international tourists is the factor use to make a decision to repeat a visit to a particular tourist destination or not. Since there is limited research on this interesting topic, this research study is aimed to examine the satisfaction from the perspective of international tourists in the
Bangkok, Thailand in order to search for the best possible way to understand what international tourists link the overall level of satisfaction with the loyalty from their experience with their trips with various tourist destinations in Bangkok and to be able to provide a suggestion to create a positive image of tourist destinations as well as to increase knowledge of the topic. This research study was thus conducted in order to examine the important factors as the antecedents of loyalty of inbound tourists visiting Bangkok, Thailand.

2. Methodology

This study aimed to investigate the influence of selected factors as antecedents of loyalty as well as tourists’ satisfaction towards tourist destinations.

A Likert-five-scale questionnaire was developed specifically to obtain the important information of each the satisfaction factor and loyalty antecedents from the perspectives of inbound tourists in Bangkok, Thailand. The population included all inbound tourists in Bangkok, Thailand. A Multi Stage Sampling technique was used. The study sample size of 400 foreign tourists was determined by Taro Yamane technique [9]. The quota sampling technique was also performed to get a sample group that included 200 male and 200 female respondents from the departure lounge of Suvannabhumi international airport, Thailand. Descriptive statistics used in this research including mean, and standard deviation. In addition, 25 pilot questionnaires were conducted to make certain that each question could pass the Cronbach Alpha criteria with at least 0.70.

3. Findings

The findings of this study revealed the demographic information that male and female respondents were collected in the same proportion, or 50:50 respectively. The majority had the age between 41-50 years old. About 55.5 percent of the respondents were married, 11.5 percent were single, and the rest were either divorced or widowed. Up to 72.5 percent of the respondents had at least a high school diploma. The majority of respondents or about 86 percent would be considered themselves as lower middle class with an average income between 25,000-30,000 US dollars per year. In terms of their traveling frequency, 34.5 percent has been in Thailand at least one time or more and often chose to travel in Thailand in small groups of 2-3 persons without children.

TABLE 1

<table>
<thead>
<tr>
<th>Antecedents of loyalty</th>
<th>Mean</th>
<th>S.D.</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Satisfaction of Tourists</td>
<td>4.65</td>
<td>0.45</td>
<td>1</td>
</tr>
<tr>
<td>2. Positive perceived value of tourists</td>
<td>4.63</td>
<td>0.91</td>
<td>2</td>
</tr>
<tr>
<td>3. Positive Feeling of engagement of tourists</td>
<td>4.51</td>
<td>0.87</td>
<td>3</td>
</tr>
<tr>
<td>4. Positive feedback of tourists</td>
<td>4.50</td>
<td>0.69</td>
<td>4</td>
</tr>
<tr>
<td>Overall</td>
<td>4.57</td>
<td>0.73</td>
<td></td>
</tr>
</tbody>
</table>

The findings from table 1 revealed four different levels of importance from the perspectives of inbound tourists as follows: 1) the respondents rated “Satisfaction of tourists” as the number one indicator of loyalty with a mean of 4.65 and 0.45 SD. 2) the respondents rated “Positive perceived value of tourists” as the number two indicator of loyalty with a mean of 4.63 and 0.91 SD. 3) the respondents rated “Positive feeling of engagement with tourists” as the number three indicator of loyalty with a mean of 4.51 and 0.87 SD. 4) the respondents rated “Positive feedback of tourists” as the number four indicator of loyalty with a mean of 4.50 and 0.69 SD. The overall mean was 4.57 with 0.73 SD. Hence, it is important to note that satisfaction of tourists was the number one indicator of tourist loyalty.

TABLE 2

<table>
<thead>
<tr>
<th>Level of importance</th>
<th>Mean</th>
<th>S.D.</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Safe place to stay</td>
<td>4.44</td>
<td>0.75</td>
<td>1</td>
</tr>
<tr>
<td>2. Politically safe</td>
<td>4.42</td>
<td>0.78</td>
<td>2</td>
</tr>
<tr>
<td>3. Clean food and water</td>
<td>4.38</td>
<td>0.81</td>
<td>3</td>
</tr>
<tr>
<td>4. Good hospitality</td>
<td>4.34</td>
<td>0.82</td>
<td>4</td>
</tr>
<tr>
<td>5. Reasonable price</td>
<td>4.33</td>
<td>1.09</td>
<td>5</td>
</tr>
<tr>
<td>6. Good weather</td>
<td>4.27</td>
<td>0.84</td>
<td>6</td>
</tr>
<tr>
<td>7. Good service</td>
<td>4.01</td>
<td>0.65</td>
<td>7</td>
</tr>
<tr>
<td>8. Convenient transportation</td>
<td>3.98</td>
<td>0.70</td>
<td>8</td>
</tr>
<tr>
<td>9. Sport Activities</td>
<td>3.85</td>
<td>0.71</td>
<td>9</td>
</tr>
<tr>
<td>10. Night life</td>
<td>3.74</td>
<td>1.61</td>
<td>10</td>
</tr>
</tbody>
</table>
The findings from table 2 revealed the top ten ranking of different factors to influence the decision of international tourists to choose to visit Thailand. This ranking was done according to their mean and standard deviation. The ranking shows that the first three important factors are safe place to stay, politically safe, and clean food and water. The three least important factors are convenient transportation, sport activity, and night life.

4. Future Studies

In order to obtain more specific results, the future research should survey inbound tourists based on their passport or their country of residence to obtain representative opinions from a great variety of inbound tourists in Bangkok, Thailand. Then, the findings may be able to generalize to obtain meaningful tourist destinations and marketing plans and proper strategies. Moreover, future studies should use a mixed method of research or both qualitative and quantitative method by adding an in-depth interview as a qualitative technique in order to examine the thought of inbound tourists behind their decision making to visit and to revisit Bangkok, Thailand as their chosen tourist destination.

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References


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