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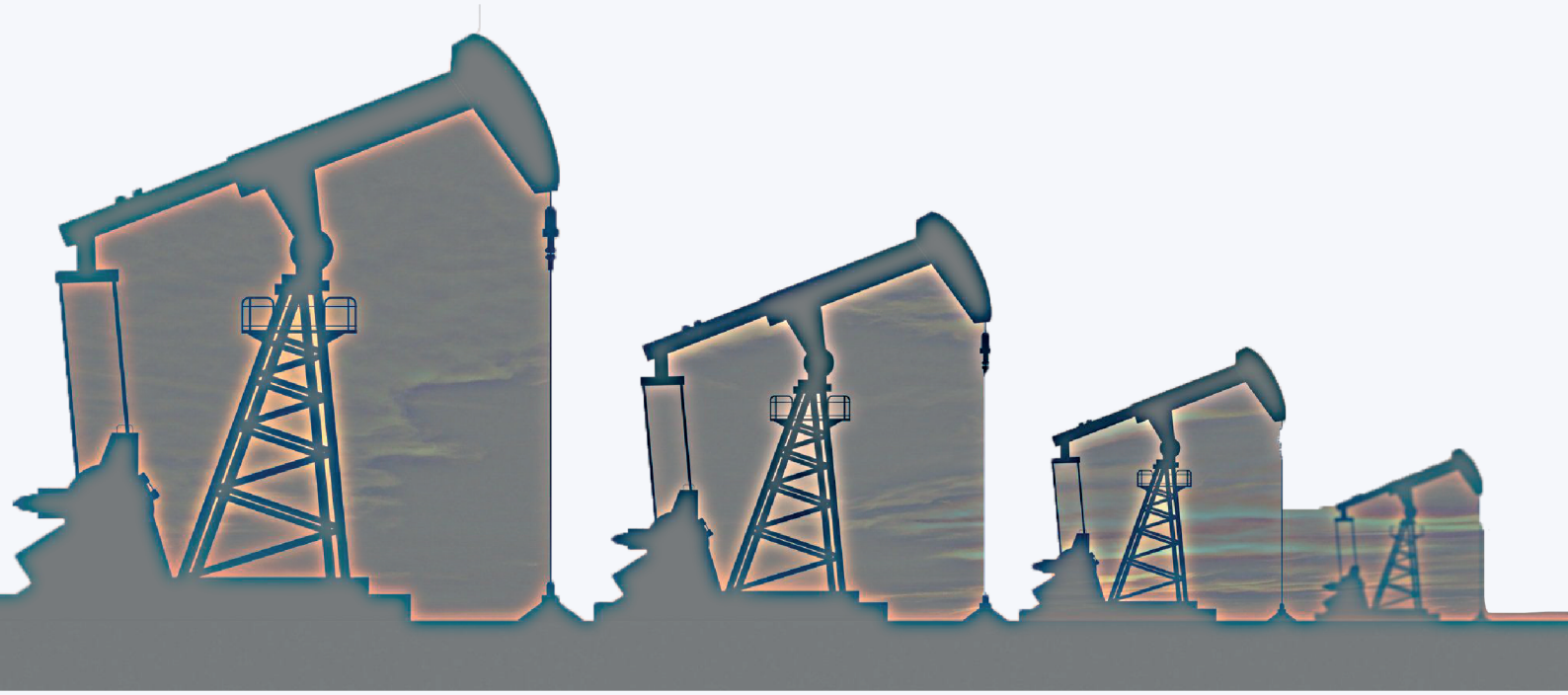

DOSSIER

EL ESTADO QUE NOS PROTEGE: COMUNIDADES, RECURSOS NATURALES Y DERECHOS DE LA NATURALEZA

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El Estado que nos protege: Comunidades, Recursos Naturales y Derechos de la Naturaleza

The State that protects us: Communities, Natural Resources and Nature Rights

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El extractivismo se ha convertido en el concepto que mejor define la política pública de los modernos estados nacionales en América Latina, hacia los Recursos Naturales. Este concepto surge y se posiciona desde: una postura política que cuestiona, el Desarrollo y la subordinación del Estado a intereses Multinacionales a los cuales poco importa la conservación y la vida, y una opción con la búsqueda de alternativas a la crisis ambiental, alternativas que encuentran necesaria e inevitable la superación del capitalismo como sistema que rige la vida en el planeta.

A la par, otros conceptos en las últimas décadas, esta vez de carácter social y ambiental, surgen y se posicionan desde; la academia, la política pública, en las normativas, en la vida diaria y sobre todo en acciones de intervención. Los Derechos Colectivos y Derechos de la Naturaleza, son conceptos que dan cuenta de los desarrollos propios de la humanidad y del surgimiento en la sociedad política de actores como pueblos y nacionalidades históricamente discriminados y de la Naturaleza como sujeto de derechos. Estos conceptos dan sentido a otras búsquedas y defensas de la vida, son sin duda respuestas a las paradojas de la modernidad capitalista que deja con pocas alternativas al Estado, que no cumple su rol de garante de derechos y ejerce autoridad a favor del sistema. Sin embargo, todos estos conceptos están articulados y en constante dinámica y tensión, por la acción del Estado como motor de las sociedades donde estos conceptos están presentes.

Entonces existe una paradoja que cada vez más pone en evidencia y quizá en crisis, el concepto mismo de Estado. El Estado que permite el extractivismo y por consiguiente afecta la naturaleza como como sujeto de derechos, es el mismo que debe defender y garantizar el ejercicio propio de las comunidades y la naturaleza. Permite que, por extraer recursos naturales se afecte la vida y debe garantizar el derecho de las comunidades afectadas a ejercer resistencia, y a la vez es responsable de sancionar a quienes afectan y de reparar lo que fue dañado.

Esto es a lo que la cátedra de Gestión socio ambiental de la universidad de Cuenca llama "minería que viola derechos por ausencia del Estado" es decir que el Estado por ausencia en un territorio permite que diversos actores tomen control del mismo (en este caso la minería ilegal), o por otro lado que el Estado tenga una presencia ambigua en las concesiones entregadas a las empresas "legales", dejando que estas actúen impunemente, es decir entrega un patente de corso para que hagan y deshagan en el territorio. En ambos casos la ausencia o presencia ambigua legitimando una acción extractiva, viola derechos de la naturaleza y de las personas. Cuando decimos ausente, nos referimos a todo el estado en su conjunto, instituciones, autoridad, planificación, y no sólo al ente encargado de regular la acción extractiva o ambiental.

El análisis del concepto minería que viola derechos por ausencia del estado, es también un método, mismo que a través del análisis de las legislaciones locales (decretos, ordenanzas), nacionales (constitución y leyes) permite encontrar los vacíos que hacen posible esas contradicciones y que esa paradoja exista. El estado en todos los casos actúa "bajo lo que manda la ley", por eso es necesario saber qué es lo que manda y compararlo en función de los derechos que debe proteger. En un Estado

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garantista, los derechos (de las personas y la naturaleza) están por sobre cualquier otro aspecto normativo y bajo ese principio debe operar el análisis. Bajo esa premisa un breve análisis a partir de la aplicación metodológica de este concepto.

El gobierno ecuatoriano encuentra en la minería "la puerta hacia el desarrollo" para ello diseña el eslogan "Minería responsable" haciendo alusión al cuidado de la naturaleza y el uso adecuado de los recursos para invertirlos en el bienestar de las personas, a partir de la extracción cuidadosa de los minerales. Con este eslogan ambiguo que pretende ser técnico, los gobiernos han buscado imponer la acción extractiva sobre los derechos. Por medio de ello busca convencer de que la extracción no alterará los ciclos naturales y además estará acorde con los intereses de las comunidades que lo habitan. Obviamente quien se opone o piensa contrario a este eslogan, es parte de los irresponsables.

Este eslogan ha sido impuesto en algunos casos para obviar el ejercicio de derechos colectivos, como la consulta previa, libre e informada que es obligatoria previa a cualquier actividad extractiva. Desde los pueblos y nacionalidades se ha planteado que no hay nada responsable en la actividad extractiva si no se cumple el primer paso, que es la consulta. Desde este aspecto se han detenido varios proyectos mineros. Jueces han determinado que no se puede continuar con la acción si no se consulta primero.

La consulta es una acción democrática, saber lo que opina el pueblo fortalece la institucionalidad y es una garantía de acción legitimada. Cuando el estado pretende –con el eslogan mencionado- pasarse por sobre ese derecho, es obvio que hay algo que está fallando, algo no transparente. De ahí que lo que se pretende es perfeccionar el accionar del estado para que su accionar sea "responsable" con la extracción de recursos naturales para el desarrollo.

Este concepto entonces permite escudriñar en la aplicación de la norma, poner énfasis en las prácticas de intervención de empresas privadas, multinacionales, públicas o ilegales y desde ahí identificar los sentidos, las prácticas, los discursos e intereses de los diversos actores y dónde se rompieron los hilos de control, dónde hay vacíos por normar o ejecutar, en dónde el Estado falla en su rol de garante de derechos y sobre todo como debe intervenir a ciudadanía para garantizar que ello se cumpla. Este concepto entonces, desde un cuestionamiento al rol del estado, busca perfeccionar su accionar, democratizar sus prácticas. Esto implica que el Estado debe abrirse a una especie de –co gobierno- con sectores sociales y defensores de la naturaleza- por si sólo está claro que no lo puede hacer. Entonces este concepto No es contrario al estado, apuesta por perfeccionarlo. Está claro que contar con un estado fuerte (no depende sólo del Estado), que corrige sus errores, que llena sus vacíos, que no entrega patente de corso a las multinacionales, hará que la garantía de derechos se imponga al extractivismo.

Hay una máxima jurídica que dice que no se puede ser juez y parte y en realidad no se puede y no se debe, pero el Estado actual mal funciona así. Este dossier contiene cuatro artículos (Bolivia, México, Colombia, Brasil) que desde diversas perspectivas discuten esta paradoja en la que se encuentra inserta la modernidad capitalista y se plantea líneas de análisis para resolver las diferentes perspectivas.

El primer artículo que se presenta es de Álvaro Zarate Huayta Willka "Geopolitica del amazonas: muere el capitalismo o muere la madre tierra", quien hace una lectura desde Marx y las concepciones de la naturaleza, para luego hacer una crítica al rol de los estados frente a la mercantilización del entorno y los ecosistemas. Según el autor, Marx destaca que el trabajo alienado convierte a la naturaleza en algo extraño al hombre, en un "mundo ajeno", "hostilmente contrapuesto al trabajador". En este sentido, en la apropiación privada, existe una alienación respecto a la naturaleza donde los medios de vida y de trabajo no le pertenecen al trabajador y se le presentan como objetos externos, es decir, "enajena al hombre de su propio cuerpo, de la naturaleza tal como existe fuera de él, de su esencia espiritual, y de su esencia humana". La producción fundada en la capital crea, a la vez, la industria universal y un sistema de explotación universal de las propiedades naturales humanas.

En ese contexto según el autor, la "economía verde", implica, cuantificar y valorizar económicamente las distintas funciones de la naturaleza para introducirlas al mercado a través de una serie de mecanismos financieros; mercantilizar los procesos y funciones de la naturaleza a través del comercio de los servicios de los ecosistemas; crear un ambiente propicio para la inversión privada en el agua, la biodiversidad, los océanos, los bosques y desarrollar un mercado ficticio de bonos y certificados financieros. Los estados legitiman esta mercantilización y son contradictorios en su accionar.

El segundo artículo es de Lívia Ferraz da Costa Duarte "Lo que protege es lo mismo que amenaza: la actuación del Estado en contexto de extractivismo y conflicto ambiental en Minas Gerais, Brasil", la autora plantea una crítica de la modernidad y el ejercicio del poder estatal, que todavía se basa en la explotación, la dominación y la colonización, analiza las dos facetas del Estado: al mismo tiempo sirve como un instrumento de protección, se presenta como un actor fundamental para la legitimación y el permiso de la implantación de proyectos extractivos. Esta paradoja que pone en cuestión al estado como regulador social en la sociedad capitalista tiene su origen en la dominación, explotación y conflicto. Según ella, estos tres elementos son arreglos fundamentales que se entrelazan para la constitución del fenómeno del poder en Occidente que tienen su expresión en la práctica del Estado nación en nuestro continente.

La figura del estado como forma de imponer el control geopolítico y la dominación; el capitalismo como patrón de explotación social y ambiental; Eurocentrismo y la colonialidad del poder, con la idea de la raza como el principio organizador de las jerarquías, marcaron profundamente el proceso de colonización europea de América. Pero aun que la conquista terminó, los estados que surgieron no se desentendieron de esa herencia colonial. La colonialidad se configura como el lado oscuro y necesario de la modernidad.

La modernidad introduce un orden basado en las construcciones de la razón, el conocimiento individual, especializado y los mecanismos administrativos vinculados al estado. Es así que, según el estudio de caso realizado por la autora en Minas Gerais, la explotación y la dominación están enmascaradas "por estructuras de autoridad institucionalizadas", a través de ciertos mecanismos, como los procesos de licencias ambientales para explotación de recursos naturales otorgados por el Estado. Esto que es el sentido mismo con el que se construyó la modernidad capitalista, persiste y se mantiene como mecanismo civilizador, permite y otorga una aprobación positiva para la implementación de grandes empresas, que causan cambios y desplazamientos significativos. La figura de la Ley surge para mantener este orden y razón propuestos por el Estado.

Por otro lado, Heidi Smith Pulido Varon y Nicolasa Duran Palacio, analizan el conflicto minero desde otra arista, desde aquellos que trabajan y viven de la extracción informal del oro en Colombia. El estudio que ellas hacen "Representaciones sociales del minero en el Bajo Cauca Antioqueño: construcciones subjetivas de un lugar en disputa", empieza analizando la literatura sobre el tema en la región y encuentran que en Perú, Ecuador y Bolivia, desde diferentes lentes que destacan asuntos como resistencias indígenas y campesinas, los vínculos del extractivismo latinoamericano con procesos e intereses de países del Norte, narrativas de exclusión y discriminación, los elementos distributivos y políticos que se expresan en territorios mineros, los impactos en el medio ambiente de las practicas neoliberales que se expresan en la minería, entre otros asuntos. Sin embargo de todos estos estudios, ellas encuentran que se omiten perspectivas relacionadas con las representaciones sociales, las experiencias cotidianas frente a la actividad minera, los procesos intersubjetivos que definen referentes para la acción de las personas en el territorio, entre otros elementos que son para esta investigación, elementos centrales.

Se asume entonces que las representaciones sociales, permiten las relaciones sociales, porque procuran marcos para la acción, desde los cuales el sujeto puede organizar el mundo, cuestionarlo y tomar decisiones. Asimismo, participan de construcciones simbólicas que median los vínculos con otros sujetos y las condiciones sociales que se imponen desde lugares hegemónicos.

Desde esa perspectiva, los mineros informales perciben su accionar desde la presencia de dos actores: El Estado, que supone un ente de garantías para sus ciudadanos, se convierte en sinónimo de persecución y arbitrariedad, especialmente para aquellos mineros que no logran cumplir con los estándares de formalización exigidos. Asimismo, los marcos regulativos, se perciben con desconfianza, situados a favor de otros actores con mayor capacidad económica. El otro actor frente al cual aparecen sentimientos de amenaza son los grupos al margen de la ley, sin embargo, frente a estos se identifica cierta naturalización de su presencia y accionar, lo cual se liga a la ausencia estatal y a las trayectorias del conflicto que se han vivenciado históricamente en la subregión. "lo que somos es víctimas, del gobierno y de los grupos porque por ambos lados nos joden" (E12, 24 años).

Esta situación en sí misma, aboca a la defensa de la minería porque los mineros, tanto aquellos jóvenes como otros de mayor edad, no visualizan otras posibilidades de trabajo lo cual se asocia con su momento evolutivo y poca o nula preparación para el mundo laboral "no es ilegal, porque ¿cómo va a ser ilegal algo que le da trabajo a uno?... yo y otros que no estudiamos no podemos hacer algo diferente, menos a esta edad" (E7, 50 años). Las necesidades básicas insatisfechas, autorizan a los mineros formales e informales a explotar la naturaleza. Aquí aplica bien el concepto minería que viola derechos por ausencia del estado, pues deja territorios en los cuales múltiples violaciones se vuelven cotidianas.

El último artículo desde México, César Eder Alanís de la Vega La Teoría Socialista del Derecho y el ecologismo jurídico profundo. Una respuesta a la paradoja del Estado Violador/Protector, Postula a la Teoría Socialista del derecho como punto de partida para un nuevo ejercicio de resistencia al extractivismo, parte de entender el postulado del sistema de la praxis económica de Marx, entendiendo al derecho, no como parte de la superestructura del capitalismo, sino como una praxis jurídica de los pueblos, estructurada en un sistema dialéctico articulado en producción, circulación y apropiación, de satisfactores de su sistema de necesidades/capacidades, en limite con el sistema de capacidades del Sistema-Tierra.

Para la TSD, hace más de 500 años, los españoles no solo expropiaron las tierras y los bienes comunes ahí contenidos, también el derecho. En consecuencia, se puede hablar de una expropiación originaria de la producción del derecho. La expropiación de su justicia consiste en despojar a la justicia de todo contenido material. En su lugar, "se abre la puerta a la injusticia, llenando los ordenamientos normativos con cualquier contenido al servicio del imperio y dotándolos de con el poder de la violencia" (Salamanca, 2011a:133), pues aquellos pueblos que busquen la liberación del sistema para su autodeterminación les nace el contraderecho de

matarlos o intervenir "humanitariamente"

El ambientalismo jurídico, fundamenta al derecho medioambiental dentro de las concepciones clásicas de ciudadanía y derechos, y se mantiene dentro de los esquemas de una ética antropocéntrica y utilitarista. Por esto, está orientado primordialmente a garantizar el bienestar humano, tomando la protección de la naturaleza para conseguir ese fin. Así los derechos a un ambiente sano están comprendidos dentro de los derechos humanos, reproduciendo la lógica de dominación de la naturaleza por el hombre. Esto significa que se protege al medio ambiente en la medida en que los daños a él causados puedan afectar a los seres humanos y sus derechos. En estos casos cuando hay daños ambientales y afectan de manera directa o indirecta a los seres humanos, estos pueden ser indemnizados, reparados y/o compensados, bajo criterios económicos, reduciendo a la naturaleza en mercancía que puede ser valorada para los fines humanos.

Para la TSD, frente a la vorágine del despojo de los bienes naturales y comunitarios, impulsado por las grandes corporaciones, una salida a esta paradoja es transitar del ambientalismo jurídico a un ecologismo jurídico profundo, que es utilizado como contra estrategia jurídica dentro de la legalidad hegemónica del SID. En ese sentido, los pueblos utilizan los instrumentos jurídicos que circulan en el SID, y su infraestructura jurídica, en sentido contrahegemónico, para hacer circular jurídicamente como "derechos", aquellas necesidades materiales que son relevantes para asegurar comunitariamente el florecimiento de la vida.

Este Dossier profundiza la crítica desde la crisis ambiental, a la Modernidad capitalista y al Estado como instrumento normativo orientado a la garantía de derechos. Es urgente pensarse otras formas de Estado y de su accionar, desde diversas epistemologías que resuelvan la paradoja actual: El Estado que nos protege es el mismo que permite el daño y es el mismo que debe repararlo.

Aquele que protege é o mesmo que ameaça: a atuação do Estado em contextos de extrativismo e conflito ambiental em Minas Gerais, Brasil

The threat comes from the protector itself: the action of the State in contexts of extraction and environmental conflict in Minas Gerais, Brasil

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RESUMO

O presente trabalho, a partir da tecitura de uma crítica à modernidade e ao exercício do poder estatal que se formula ainda em moldes de exploração, domínio e colonização, tem como objetivo analisar as duas facetas do Estado: ao mesmo tempo que este serve como instrumento de proteção, ele vem como um ator fundamental para a legitimação e permissão da implantação de projetos extrativistas. A chegada do empreendimento minerário Minas-Rio, na região da Serra do Espinhaço, em Minas Gerais, Brasil, é bastante representativa dessa figura ambígua que é o Estado. Neste tocante, analisarei as transformações socioambientais provocadas pela mineração e algumas reflexões sobre a lógica que sustenta o licenciamento ambiental do projeto.

Palavras-chave: Modernidade, Estado, Mineração, Conflitos ambientais

ABSTRACT

The present work, based on a critique of modernity and the exercise of state power, that is still based on exploitation, domination and colonization, aims to analyze the two facets of the State: at the same time it serves as an instrument of protection, it comes as a fundamental actor for the legitimation and permission of the implantation of extractive projects. The project of mining Minas-Rio, in the Serra do Espinhaço region of Minas Gerais, Brazil, is quite representative of this ambiguous State figure. In this regard, I will analyze the socio-environmental transformations caused by the mining and some reflections of the logic that sustains the environmental licenses of the project.

Keywords: Modernity, State, Mining, Environmental conflicts

RESUMEN

El presente trabajo, está basado en una crítica de la modernidad y el ejercicio del poder estatal, que todavía se basa en la explotación, la dominación y la colonización, tiene como objetivo analizar las dos facetas del Estado: al mismo tiempo sirve como un instrumento de protección, se presenta como un actor fundamental para la legitimación y el permiso de la implantación de proyectos extractivos. El proyecto de minería Minas-Río, en la región de Serra do Espinhaço de Minas Gerais, Brasil, es bastante representativo de esta figura ambigua del Estado. En este sentido, se analizará las transformaciones socioambientales causadas por la minería y algunas reflexiones de la lógica que sustenta las licencias ambientales del proyecto.

Palabras clave: Modernidad, Estado, Minería, Conflictos ambientales.

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A modernidade e suas margens

Dominação, exploração e conflito. Esses três elementos são arranjos fundamentais que se entrelaçam para a constituição do fenômeno do poder no Ocidente. A figura do Estado, como uma forma de impor controle e dominação geopolítica; o capitalismo, como padrão de exploração social e ambiental; o eurocentrismo, que se coloca enquanto forma hegemônica de controle de conhecimento, subjetividades e intersubjetividades; e, por fim, a colonialidade do poder, tendo a ideia de raça como princípio organizador das hierarquias, fundamental para a colonialidade e formação do capitalismo moderno, marcam o atual padrão histórico de poder mundial (Quijano, 2002). Esta última característica marcou profundamente o processo de colonização europeu da América, expressada na exploração e dominação dos povos que aqui viviam e de seus territórios historicamente construídos. A atividade extrativista aparece, neste momento, como uma modalidade de acumulação fundamental para a estruturação da economia mundial, determinada pelas metrópoles, dentro de uma lógica de modernidade (Acosta, 2011).

A Modernidade e a Colonialidade estão relacionadas ao genocídio e exploração deste continente. A colonialidade se reproduziu não somente na dimensão do poder, mas, também, do ser e do saber, vide a construção do nacionalismo latino-americano, criado e imaginado a partir de um paralelismo com a Europa, atravessada por uma perspectiva eurocêntrica (Anderson, 1983; Quijano, 2002). A Colonialidade configura como o lado obscuro e necessário da Modernidade: é sua parte constitutiva. A Modernidade, por outro lado, aparece como um "mito que oculta a colonialidade", e que justifica a práxis da violência, interpretada, muitas vezes, como um "ato inevitável" do caráter "civilizatório" da Modernidade (Ballestrin, 2013:102). É no fundamento destas duas ideias que está a conquista e a invenção da América, sendo a América Latina a primeira periferia do sistema-mundo (Ballestrin, 2013) onde aqui foram reproduzidos os padrões europeus hierárquicos de poder. A invenção do Eu pela sombra do Outro, homogeneizando e totalizando as diversas ontologias, epistemologias, cosmologias e histórias.

A modernidade introduz uma ordem baseada nos construtos da razão, do indivíduo, do conhecimento especializado e dos mecanismos administrativos ligados ao Estado. A ordem e a razão são tidas como fundamentos para a igualdade e liberdade, possibilitando, dessa forma, a linguagem dos direitos (Escobar, 2003). A figura da Lei surge para manter essa tal ordem e razão propostas pelo Estado, e a legitimidade emerge então como resultado da demarcação de limites, definindo aquelas práticas e espaços que são "parte do estado" e aquelas que são excluídas do mesmo (Das e Poole, 2008:23). Assim, as lutas destes que são excluídos e a reivindicação de seus direitos foram sempre "interpretadas como una expresión de las facetas de la naturaleza humana que no han sido domesticadas por la racionalidad" (Das e Poole 2008:23). As autoras apresentam essa argumentação ao tratar da concepção europeia de Estado a partir das teorias de Weber, que retomava aspectos da filosofia de Hegel e Kant. Conforme esses autores clássicos, o Estado é concebido sempre como um projeto incompleto que deve ser constantemente imaginado e criado, tratando os "selvagens" como uma ameaça que vem de dentro. Por isso, suas demandas por justiça foram sempre interpretadas como advindas de um estado natural que não fora domesticado pela modernidade, considerado ilógico, irracional. Até hoje, as reivindicações dos grupos localizados nas margens da vida social, a saber, povos indígenas, tradicionais, rurais, periféricos, etc, são, assim, sempre consideradas ilegítimas, são estrategicamente desqualificadas e suas mobilizações criminalizadas.

O "destino" rumo à modernidade se constrói às sombras de um curto-circuito entre natureza e cultura, entre o Nós e os Outros (Latour, 1994). A natureza permaneceu longínqua e dominada. "Os ocidentais carregam a história nos cascos de suas caravelas e canhoneiras. Algumas vezes carregam este fardo do homem branco como uma missão gloriosa, outras vezes como uma tragédia, mas sempre como um destino" (Latour, 1994:96). São por essas dualidades que assenta-se a exploração da natureza e de certos coletivos, a (neo)colonialidade e os padrões históricos de exercício do poder no Ocidente. Essa exploração, por sua vez, implementa *geografias de terror* (Garzón, 2008), marcada por deslocamentos forçados, impossibilidade de encontros e surgimentos de paisagens de medo, transformando de maneira significativa os lugares e as relações sociais.

A exploração e o domínio são encobertos "por estruturas institucionalizadas de autoridade", como, por exemplo, a figura do Estado (Quijano, 2002:9). Através de certos mecanismos, como os processos de licenciamento ambiental, o Estado permite e dá o aval positivo para a implementação de grandes empreendimentos, que provocam significativas transformações e deslocamentos. Adiante, buscarei demonstrar como se construiu essas geografias de terror no contexto da exploração mineral em terras tradicionalmente ocupadas na região da Serra do Espinhaço, em Minas Gerais, no sudeste brasileiro. Tentarei discorrer, também, sobre como o Estado possui duas facetas que reverberam na sua atuação ambígua: ao mesmo tempo que ele é o instrumento de proteção, ele também é aquele que ameaça, ou ao menos permite que esta violência se concretize.

Estado de garantia, Estado de terror: (des)responsabilidade social e ambiental em contexto de extrativismo em terras tradicionalmente ocupadas

As relações de colonialidade econômica e política não acabaram, entretanto, com o colonialismo que marcou a conquista da América. Elas se reproduzem nos aparatos institucionais e burocráticos do Estado, nas relações de exploração do neoextrativismo, do neoliberalismo e do capitalismo moderno. Como coloca Guattari (1990), a instauração das zonas de miséria, zona e morte, fazem parte de um sistema de estimulação do Capitalismo Mundial Integrado, em nome de um modelo de desenvolvimento, que favorece e enriquece o Norte Global. Os Estados veem seu tradicional papel de mediação reduzir-se cada vez mais e se colocam, na maioria das vezes, a serviço do mercado mundial. Assim, os projetos desenvolvimentistas, trazidos por grandes empreendimentos, geralmente por empresas

internacionais ou transnacionais, são legitimados pelo Estado, mesmo diante de práticas violentas e alegais[1] de apropriação do território, por deslocamentos e expropriações forçadas e violações de direitos humanos.

De acordo com Acosta (2011), o extrativismo na América Latina e no Sul Global tem sido um mecanismo de saqueio e apropriação colonial e neocolonial que assumiu diversas roupagens ao longo dos anos. Por extrativismo, entende-se aquelas atividades que removem grandes quantidades de matéria-prima da natureza, como o extrativismo florestal, agrário, os pequenos garimpos de ouro, legal ou ilegal, monoculturas de soja, exploração de petróleo e gás natural, até empreendimentos a céu aberto da grande mineração (Acosta, 2011; Gudynas, 2016). Para Gudynas (2016), os extrativismos podem ser ordenados em uma miríade de gerações, de acordo com os volumes e intensidade da remoção dos recursos naturais e dos usos tecnológicos. A primeira e segunda geração se caracterizam pelo uso de tecnologias limitadas, enquanto a terceira e a quarta geração, caracterizam os extrativismos da atualidade, como a megamineração, fomentada por governos liberais e neoliberais, que utilizam de uma tecnologia avançada, removendo grandes volumes de recursos da natureza.

Ao longo das últimas décadas, o mercado globalizado e os interesses econômicos fizeram expandir o setor extrativo mineral, caracterizando o fenômeno da reprimarização da economia, em que há uma grande demanda do mercado internacional por produtos de baixo índice tecnológicos, as chamadas *commodities* (Zhouri, *et al*, 2016). Os olhos do mundo se voltaram para a América Latina, que se subordina novamente aos países de Primeiro Mundo, e a mineração mais uma vez começa a transformar e pressionar seus territórios e seus povos. O Brasil experienciou novamente a mineração a partir dos anos 2000, sendo a atividade hoje um pilar para a economia do país. Conforme o Departamento Nacional de Produção Mineral (DNPM, 2016), em 2015, as substâncias metálicas responderam por cerca de 76% do valor total da produção mineral comercializada do país. O valor da produção das substâncias comercializadas totalizou 67,5 bilhões de reais, "com destaque para a expressiva participação do ferro nesse montante, cuja produção é concentrada, principalmente nos estados de Minas Gerais e Pará" (Dnpm, 2016:1).

O empreendimento minerário Minas-Rio, que "abastece o mercado mundial de pelotas de minério de ferro" (Anglo American, 2017), constitui um exemplo do avanço da mineração no estado de Minas Gerais e apresenta características que respondem à recente conjuntura global. Pertencente à transnacional britânica Anglo American, o complexo minerário, situado nos municípios de Conceição do Mato Dentro, Alvorada de Minas e Dom Joaquim (MG) é constituído por uma mina, uma barragem de rejeitos, um sistema de captação de água e estruturas adjacentes na área rural dos municípios de Conceição do Mato Dentro, Alvorada de Minas e Dom Joaquim, em Minas Gerais; além de um mineroduto de 529 km de extensão perpassando 33 municípios entre os estados de Minas Gerais e Rio de Janeiro; e o Porto do Açu, estrutura final, no município de São João da Barra, no Rio de Janeiro.

A região em tela está situada na Serra do Espinhaço, entre o Cerrado e a Mata Atlântica brasileira, tombada pela UNESCO em 2006 como Reserva da Biosfera. Para subirmos a Serra, desde a capital Belo Horizonte, em Minas Gerais, percorremos cerca de quatro horas, ao longo da estrada da Serra do Cipó, com vista para as muitas montanhas verdes que compõe a geografia local. O município de Conceição do Mato Dentro[2] é conhecido nacionalmente pelas tantas cachoeiras e quedas d'água, considerada a capital mineira do ecoturismo, e por patrimônio histórico material, a Igreja Matriz, uma das marcas no município, tombada pelo Instituto de Patrimônio Histórico Artístico e Nacional, o IPHAN, que miramos logo ao chegar, ao pé da montanha. A pequena cidade, com as estreitas vielas de ruas de pedra, com as antigas igrejas e a simplicidade do povo, receptivo, hospitaleiro e curioso com a chegada de "pessoas de fora", nos fazem lembrar e respirar as tão típicas e singulares características dos interiores mineiros.

As comunidades rurais localizadas nos arredores do empreendimento possuem uma antiga história de ocupação. É com os desdobramentos da "febre do ouro", com a mineração de ouro e diamante ao longo dos séculos XVIII e XIX e com a posterior desintegração do sistema escravista, que se formaram os grupos familiares de ex-escravos, alforriados e trabalhadores livres, os quais se movimentaram e se fixaram no interior ou nas fímbrias das grandes fazendas (Carvalhosa, 2016). Este campesinato é marcado por uma pluralidade de regimes de uso e de posse, mediados por antigas relações de agregação, parceria e trabalho estabelecidos com os fazendeiros da região que se estendem até os dias de hoje; e por laços de parentesco, troca de serviços e de reciprocidade, formando arranjos e uma organização social e espacial particulares, marcados pelos direitos costumeiros estabelecidos ao longo de sua história (Santos *et al.* 2019).

As comunidades constituem, como aponta Woortmann (1990), uma ética e moral camponesa, na qual terra, trabalho e família são valores centrais para o modo de vida rural. As atividades realizadas pelas famílias, de maneira geral, estão centradas na lavoura, no *botar* roçado de milho, feijão e mandioca, por meio dos regimes de meia e terça[3] com os fazendeiros; na criação de pequenos animais, como porcos e galinhas e, em algumas

1 Gudynas (2016) aponta que os extrativismos se assentam sobre práticas ilegais, as quais apelam para a corrupção a fim da concessão das licenças ambientais para os projetos de interesse, e também sobre práticas alegais, as quais são formalmente legais, mas que se aproveitam de brechas nas leis e normas para conseguir benefícios que estão contra o espírito do marco jurídico.

2 A pesquisa é focada, principalmente, em duas comunidades rurais pertencentes ao município de Conceição do Mato Dentro, a saber, Água Quente e Passa Sete, e a comunidade de São José do Jassém, pertencente ao distrito de Alvorada de Minas, em Minas Gerais. Todas elas estão localizadas à jusante da barragem de rejeitos do empreendimento.

3 No regime de parceria de "meia", uma metade do produto colhido é destinada ao fazendeiro e a outra metade fica com o agricultor. No regime de "terça", a terça parte da colheita fica com o fazendeiro e o restante, com o agricultor.

situações, algumas poucas cabeças de gado; e à produção artesanal de alimentos, como queijos, biscoitos, quitandas e farinha de mandioca. Elas desempenham, em conjunto, crucial importância para a manutenção e reprodução deste sistema produtivo e para as despesas e renda dos grupos domésticos (Santos *et al.* 2019). Esses trabalhos envolvem uma específica administração do tempo, do uso da terra e dos recursos naturais, sobretudo, da água. O calendário agrícola é, por exemplo, essencialmente, baseado nos ciclos das chuvas, que define os tempos da capina, do plantio e da colheita.

Apesar de compreender um projeto integrado, o processo de licenciamento ambiental do empreendimento foi estrategicamente fragmentado em três esferas administrativas e em diversas fases distintas[4]. No ano de 2008, antes da concessão da Licença Prévia referente ao complexo minerário, o então governador de Minas Gerais, Aécio Neves, assinou um decreto oficializando ser de *utilidade pública* a faixa de trinta metros de largura ao longo do trajeto do mineroduto (GESTA, 2019). A concessão da licença ambiental para a instalação do mineroduto foi estrategicamente dada antes da licença da mina, cuja concessão se tornava inexorável, imprescindível, pressionando, dessa forma, o processo de licenciamento das demais estruturas do projeto. Neste momento, foi feito um pedido de suspensão do licenciamento em caráter liminar, que foi negado, contudo, pela Justiça Federal (Zucarelli e Santos, 2016).

Desde o início do processo de licenciamento, as comunidades atingidas pelo empreendimento denunciam a forma como vem sendo conduzido este processo e as negociações fundiárias; as transformações socioambientais causadas pelas obras e o subdimensionamento dos impactos no meio ambiente, principalmente em relação à água, fundamental para o sistema produtivo rural; e a definição sobre o universo sociocultural afetado. A definição de quem seriam os atingidos pelo empreendimento foi e ainda é objeto de disputa política que emergiu desde as primeiras fases de atividade da mineradora[5]. O primeiro Estudo de Impacto Ambiental (EIA/RIMA) produzido pela empresa de consultoria Ferreira Rocha, em 2007, definiu o universo sociocultural atingido a partir de áreas espaciais definidas pela própria empresa[6], a partir de sua lógica territorial-patrimonialista, baseado no cálculo de custo-benefício da obra (Vainer, 2008). Dessa maneira, apenas duas comunidades – Água Santa e Ferrugem – situadas dentro das áreas do complexo minerário foram efetivamente consideradas atingidas e posteriormente reassentadas. As outras comunidades, não consideradas atingidas, se manteriam nas terras, mesmo tendo suas condições de vida e produção dificultadas e ou impossibilitadas, submetidas à medidas mitigatórias impostas pela empresa. A concessão das Licenças de Operação para a mina e para o mineroduto, em setembro/outubro de 2014, chancelou o (des)conhecimento dos atingidos e a operação do complexo ampliou e agravou a deterioração das condições ambientais a que se encontram submetidas as comunidades no entorno (Santos *et al.* 2019).

O poder de classificação e categorização neste contexto se faz também na definição do que é impacto e o que não é. Diversas estratégias são criadas pelo empreendedor para se desresponsabilizar das transformações causadas pela mineração: naturalização dos impactos, a negação do elo causal entre o empreendimento e seus efeitos e a própria utilização de categorias *impacto*, *suposto, pontual, temporário* (Anglo American, 2010; Ferreira Rocha, 2015), suavizando aquilo que pode ser irrecuperável, e que ultrapassa os limites claros no tempo e no espaço, simplificando a violência que se faz enquanto um processo no tempo e no espaço (Nixon, 2011). Neste ponto me refiro particularmente à questão da água, em que discutimos detalhadamente em um artigo anterior (Santos, *et al.* 2019) acerca da desresponsabilização ambiental ao longo do histórico do licenciamento, das disputas e controvérsias entre as denúncias dos atingidos vis-à-vis os discursos da empresa e da produção de um deslocamento *in situ*[7] nas comunidades que, sem sair do lugar, tiveram suas condições de vida totalmente modificadas e usos múltiplos e tradicionais da água reduzidos e dificultados pela grave falta d'água, secamento, assoreamento e poluição dos córregos e nascentes.

Se tornaram impossíveis e raros os encontros de lazer entre as famílias, a pesca artesanal e sociabilidades construídas em torno do rio. A quantidade de água para o consumo doméstico e das pequenas criações reduziu drasticamente, para além da diminuição da produção dos cultivos de legumes e verduras nas hortas, afetando na dieta alimentar e na autonomia dos moradores, que antes se alimentavam do que a terra oferecia, sem a necessidade de recorrer aos mercados e às redes comerciais locais. Na contramão dos discursos da empresa, que tendem a negar e ou minimizar a responsabilidade em relação aos efeitos nas águas, as comunidades afirmam que a falta d'água e diminuição das vazões ocorrera após a chegada da empresa, como mostra a narrativa de um morador, contrastando as memórias de tempos de abundância com os tempos atuais de escassez e sofrimento:

> É só sofrimento, num tem alegria, num tem nada. Porque alegria que a gente tinha era a água do rio e a água do rio cabô tudo. Hoje a água do rio é cinzenta e hoje mesmo ela tá bem cinzenta. É direto, porque a cor não acaba. E num tenho alegria como antigamente. Antigamente a gente

4 O mineroduto foi licenciado pelo Instituto Brasileiro de Meio Ambiente e Recursos Naturais Renováveis (IBAMA); o Porto do Açu pelo Instituto Estadual do Meio Ambiente do Rio de Janeiro (INEA) e as demais estruturas – mina, linha de transmissão de energia e adutora de água – foram licenciadas pelo Sistema Estadual de Meio Ambiente de Minas Gerais (SISEMA). As licenças ambientais foram também fragmentadas por etapas distintas. Em 2008, foi concedida a Licença Prévia (LP) do empreendimento. Em 2009 foi concedida a Licença de Instalação (LI), Fase I e, no ano seguinte, a LI Fase II. Em 2015, foi concedida Licença Prévia, concomitante à Licença de Instalação, da segunda etapa – a chamada Otimização da Mina ou "Step 2" –, e, em 2016, foi concedida a Licença de Operação. Atualmente, ocorre o processo de licenciamento ambiental da terceira etapa – a expansão da mina ou "Step 3".

5 Para um histórico mais detalhado sobre a luta dos moradores em torno do reconhecimento como atingidos, ver: https://conflitosambientaismg.lcc.ufmg.br/conflito/?id=582.

6 A saber, Área Diretamente Afetada (ADA), Área Indiretamente Afetada (AIA); Área de Influência Direta (AID).

7 Em "Objetivos móviles: desarraigo, empobrecimiento y desarrollo", Feldman et al (2003) apontam que os deslocamentos não ocorrem somente quando há uma realocação física, no sentido de haver uma expulsão da população de seus territórios. As comunidades também podem experimentar um processo de deslocamento sem que necessariamente saiam do lugar, configurando o que a autora chama de deslocamento in situ.

> tinha as nascentes todas. [...] Só que nossas águas são nossos trabalhos[...] Eles [empresa] falaram que não é eles, massa empresa que acabou com a nascente das águas. Choveu, teve essa chuva, que eles falaram que era falta da chuva, e as águas não voltaram (trecho de conversa com morador da comunidade de Água Quente, 2017).

Em 2015, a Anglo American deu início à primeira fase de expansão da Mina do Sapo que previa, além da expansão das estruturas, o alteamento da barragem de rejeitos. Por outro lado, as comunidades rurais atingidas deram início a uma série de mobilizações e manifestações na rodovia de acesso ao complexo minerário, contra a expansão da atividade e em denúncia ao descaso da empresa e às diversas transformações socioambientais trazidas pela mineração na região. Entretanto, ao invés de serem ouvidas, as lideranças foram criminalizadas por ações judiciais de interdito proibitório (GESTA, 2019). O ano seguinte foi marcado por uma mobilização ativa e intensa dos atingidos, principalmente após desastre do rompimento da barragem de Fundão, no município de Mariana, em Minas Gerais, que concretizou e tornou ainda mais real o medo daqueles que vivem à jusante da barragem da Anglo American. Não obstante, no final de 2015, o órgão licenciador do estado de Minas Gerais votou e concedeu as licenças referentes à Fase 1 e 2 da otimização do empreendimento.

Em 2017, o processo referente à Fase 3 foi iniciado. A audiência pública em que a licença seria votada foi suspensa devido a irregularidades no processo de divulgação do EIA/RIMA, através de uma liminar concedida por meio de Ação Popular. Com efeito, a repercussão desta suspensão e a divulgação dos nomes dos cinco signatários da Ação Popular, criou um clima de tensão e conflito na região, tendo em vista as recorrentes graves ameaças de morte e agressões físicas e psicológicas aos atingidos envolvidos. O Ministério Público Federal, então, interviu, solicitando a inclusão destas cinco lideranças no Programa de Proteção aos Defensores dos Direitos Humanos do Estado de Minas Gerais. Além disso, a Coordenadoria de Inclusão e Mobilização Social do Ministério Público do Estado de Minas Gerais (CIMOS/MPMG) elaborou uma recomendação ao Estado de Minas Gerais que obrigara a Anglo American a retirar os atingidos das três comunidades localizadas à jusante da barragem de rejeitos, por meio de negociação ou de reassentamento, garantindo a participação dos atingidos na elaboração dos critérios, levantamentos e planejamentos necessários; os parâmetros de recomposição de direitos já estabelecidos em etapas anteriores do licenciamento do Minas-Rio; e, por fim, a implementação de uma assessoria técnica independente aos atingidos, a ser custeada pela empresa (GESTA, 2019).

Ademais, para dar seguimento ao processo de licenciamento da Fase 3 da expansão da mina, seria necessária a concessão de novas outorgas para usos da água pelo empreendimento. Mesmo que as comunidades denunciassem incessantemente a escassez dos mananciais e mesmo com pedidos para a suspensão das solicitações das três outorgas, a Secretaria do Estado de Meio Ambiente de Minas Gerais (SEMAD) votou e deferiu a concessão das mesmas. Ainda assim, em dezembro de 2017, foi concedida, concomitantemente, as Licenças Prévia e de Instalação desta fase de otimização do empreendimento (GESTA, 2019).

Mesmo diante deste cenário, todas licenças foram concedidas pelos órgão licenciadores mesmo havendo no processo de licenciamento ambiental centenas de condicionantes sem serem cumpridas pela Anglo American, pois as medidas mitigatórias e demais responsabilidades são sempre postergadas para as fases posteriores. O Estado se coloca ao lado das empresas ao permitir a instalação dos megaempreendimentos. Os Conselhos, que votam para as concessões das licenças, possuem um capital específico "caracterizado pela formação e reputação técnica e/ou científica dos agentes, 'representatividade' de determinado segmento da sociedade e, finalmente, pelas relações pessoais" (Zhouri, 2008:100). A partir desse poder, os conselheiros assumem a representação dos interesses parcelares e privados. Há, portanto, um jogo para fazer valer os projetos políticos de interesse, anulando a realidade sociocultural do local, as complexas e várias dinâmicas sociais e ambientais e de produção do lugar.

Conforme Zhouri, Laschefski e Pereira (2005), os conflitos que surgem ao longo do processo de licenciamento ambiental são tratados pelas instituições governamentais e pelos órgãos ambientais como interesses divergentes que podem ser solucionados através de uma resolução negociada instrumentalizada pelo Estado, através de mecanismos de diálogo, consenso e participação entre os atores envolvidos. Esse modelo político configura a gestão da Governança, baseado na ideia de desenvolvimento sustentável, permite a criação de espaços, em teoria, democráticos e transparentes voltados à mediação de conflitos. Contudo, conforme a autora, falta um mecanismo institucional que verdadeiramente considere as demandas e o real conhecimento das comunidades atingidas por grandes empreendimentos. Na maioria dos casos, as decisões e acordos são de antemão estabelecidos entre a empresa e o poder local/estatal e as comunidades só são comunicadas sobre o projeto quando este já está em uma fase avançada do processo de licenciamento.

Como analisado, as práticas e estratégias comuns utilizadas pelo Estado e pela empresa ao longo do processo de licenciamento favorecem o empreendedor à despeito das comunidades que possuem seus direitos violados, suas vozes apagadas e suas vidas invisibilizadas. A condução do processo se dá por meio de alianças hegemônicas e de jogos de poder e interesses entre o Estado e a multinacional (Antonelli, 2009), que permitem e facilitam a entrada de capital transnacional e a atuação dos empreendimentos, através da flexibilização das leis ambientais e da concepção de que as atividades extrativistas são de interesse público. O processo de licenciamento deixa de ser um instrumento de avaliação da viabilidade legal, ambiental e social do projeto, a partir do qual o Estado garante a efetivação dos direitos e do bem viver das gentes que lá constroem seus lugares e territorialidades, e passa a ser

"um mero instrumento viabilizador de um projeto de sociedade que tem no meio ambiente um recurso material a ser explorado economicamente" (Zhouri *et al.* 2008:101).

A análise fragmentada do licenciamento inviabiliza a real dimensão dos efeitos sociais e ambientais do empreendimento no território e nos corpos atingidos, subdimensionando os impactos e a indefinição do real universo sociocultural atingido. O licenciamento é taticamente concedido, portanto, através de "zonas de sombra", que constituem, conforme Santos (2014:155), em arenas de intervenções que ocultam as territorialidades locais, advindas de um conjunto de agentes direta ou indiretamente associados ao empreendedor, emoldurando um processo de *encurralamento* que se faz na concretude das violências que sofre o encurralado. A autora argumenta sobre a impossibilidade de serem reconhecidos os diferentes regimes de uso e de posse, baseado em direitos costumeiros, em um processo de licenciamento ambiental de um projeto de mega extração e, consequentemente, da desconstrução de sujeitos coletivos de direito. Violentas práticas de apropriação e expropriação territorial formaram o *modus operandi* da empresa, além de processos individualizados de negociação, que representaram, conforme a autora cria "a instrumentalização de uma reserva de legalidade, que passa a legitimar o exercício extralegal da violência, na apropriação e esvaziamento concretos do território" (Santos, 2014:161).

Reconhecer diferenças, tecer críticas, buscar alternativas

Um Povo, Uma Nação, Um só mundo. Unificar visões, unificar histórias, unificar o multiverso, é o projeto principal da modernidade. Implicada numa ideia de uma "conquista épica da natureza", e pensando num mundo como "transcendentalmente heterogêneo ao Homem, os Modernos o pensaram empiricamente como 'grátis', como coisa infinitamente apropriável e inesgotável" (Danowski e Viveiros de Castro, 2014:152). Enxergar apenas Um mundo possível – O mundo moderno, absoluto – é ocultar, negar, amputar todas as outras formas de pensar e viver outros mundos. Esse projeto, como coloca Escobar (2015), chega a sua máxima expressão com a globalização e o capitalismo.

A megamineração, vista como um projeto modernizante, pode ser entendida como uma "máquina de devastação do território" (Escobar, 2015:93), que devasta o espaço, as relações e arranjos sociais que ali são produzidos, como tentei chamar atenção ao trazer como exemplo as *geografias de terror* implicadas com a chegada do empreendimento Minas-Rio no município de Conceição do Mato Dentro. A implementação do projeto se dá as custas das outras cosmologias e do modo de viver das comunidades campesinas que tradicionalmente ocupam aquele território, que não se baseiam em concepções não dualistas de natureza e cultura, ao que Escobar (2015) chama de mundos ou ontologias *relacionais:* o mundo se faz em relação, em associação, em composição entre a terra, o humano e o não humano. A modernidade nega a alteridade, por vias legais, ilegais ou alegais, com o consentimento e atuação do Estado que se pretende sob uma imagem de "progresso". Conforme o autor, a pressão sobre as territorialidades pela mineração pode ser vista como uma "verdadeira guerra contra os mundos relacionais e uma tentativa mais de desmantelar todo o coletivo" (Escobar, 2015:93).

Pensar em andar para trás, em regredir, é absolutamente repulsivo nessa "era moderna". Ora, ir de contra tais projetos, ir de contra ao crescimento econômico, à acumulação do capital, ao desenvolvimento, é ir de contra a si mesmo. O Estado, então, surge como uma figura principal para trazer a "evolução" da sociedade. Em alianças e acordos com as empresas, ela permite que novos projetos sejam implementados, através de diversas estratégias que facilitam o licenciamento ambiental. Este deveria ser um instrumento para proteger os coletivos atingidos, mas funciona como um jogo político que evidenciam as redes de interesses construídas ao redor dos projetos. Uma atuação completamente paradoxal: o Estado permite a entrada deste capital transnacional, flexibiliza normas ambientais, acelera e facilita o processo de licenciamento ambiental e até mesmo criminaliza as lutas e reivindicações das comunidades atingidas. Quando os conflitos começam a se agravar, como no caso das ameaças e das violentas pressões sofridas pelos atingidos, o Estado atua apenas como "mediador", através de meras recomendações que servem mais "para inglês ver". No fim, o aval é sempre positivo para os empreendimentos. Por outro lado, amputa-se todas as possibilidades de manutenção e reprodução social daqueles campesinato.

Se faz urgente lutar por um multiverso. Um mundo que se constitui de diversos outros. É necessário reconhecer a pluralidade de corpos, de formas de existência, de manter a vida, de relação com o território nas políticas que se constroem hoje. Ainda que pareça bastante utópico, é importante pensar em alternativas a esta "modernidade". Como coloca Danowski e Viveiros de Castro (2014:157), "não dá para achar graça muito tempo de quem continua com o chicote na mão; a fúria, somada à cobiça, dos que necessitam da inexistência da alteridade". É preciso reconhecer os *territórios de diferença* (Escobar, 2015). É urgente que o Estado incorpore e reconheça as diferenças. É urgente essa urgência.

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Geopolítica del Amazonas, muere el capitalismo o muere la madre tierra: Reflexiones en torno al Pensamiento de Álvaro García Linera sobre los derechos de la Madre Tierra

Geopolitics of the Amazon, die capitalism or die mother earth: Reflections on the thought of Alvaro García Linera the rights of Mother Earth

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RESUMEN

El presente artículo tiene como propósito explicar desde el marxismo, los problemas de destrucción de la naturaleza por parte del Capitalismo que se están dando en el mundo, como la destrucción en la Amazonia, por parte de una Geopolítica Imperialista, sera partir del pensamiento de Alvaro Garcia Linera la política de derechos de la Madre Tierra que encara el Estado Plurinacional de Bolivia como propuesta al mundo por parte del Presidente Evo Morales como alternativa ante la crisis ecológica que viene sufriendo el planeta quien denuncio la contaminación y en el agotamiento de los recursos y la mercantilización de la naturaleza. La destrucción de la Amazonia como política de intereses de gobiernos neoliberales, será a partir de la resistencia y la propuesta de los movimientos sociales e indígenas contra el capitalismo.

Palabras clave: Geopolítica de la Amazonia, Capitalismo, Madre Tierra, Alvaro Garcia Linera, Bolivia

ABSTRACT

The aim of this article is to explain from Marxism, the problems of destruction of nature by Capitalism that are occurring in the world, such as destruction in the Amazon, by an Imperialist Geopolitics, will be based on Alvaro Garcia Linera's thinking the rights policy of Mother Earth that faces the Plurinational State of Bolivia as a proposal to the world by President Evo Morales as an alternative to the ecological crisis that the planet is suffering, who denounced pollution and the depletion of resources and the commodification of nature. The destruction of the Amazon as a policy of interests of neoliberal governments will be based on the resistance and the proposal of the social and indigenous movements against capitalism.

Keywords: Amazon Geopolitics, Capitalism, Mother Earth, Álvaro García Linera, Bolivia

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INTRODUCCION

Apocalíptica parece ser la visión del mundo… cuando la Amazonia uno de los bosques más importantes del planeta está siendo calcinado. En medio de una crisis global ambiental sin precedentes, el mundo mira con temor la pérdida de uno de los biomas fundamentales para la vida de las especies, incluida la humana.

La estrategia neoliberal no solo se sostiene sobre la conquista de estados, sus mercados sino esencialmente en la entrega y la organización de la entrega de la excedente realizada por las clases dominantes y el sistema de partidos de los países dominados. Mediante reformas del estado y la economía se inicia una organización sistemática de entrega del excedente local o nacional. Será esta organización de las condiciones legales e institucionales de la soberanía de otros sobre el país y sus gentes. A diferencia de la conquista y colonización española quienes llegan a imponer sus instituciones y sus condiciones de un nuevo orden colonial utilizando parte de la estructura de desigualdad, autoridad y conflicto preexistentes. La dominación neocolonial e imperialista de hoy a sido organizada por agentes internos que preparan la entrega del excedente y del gobierno a través de la denominada reforma de estado, que en la medida que entrega el excedente el cómo un aparato represivo que entrega las condiciones de poder a un soberano externo para que luego cumple las tareas de un conjunto de burocracias mercenarias.

El colonialismo clásico es una cancelación externa de las soberanías locales, el neoliberalismo se monta en la cancelación interna de la soberanía por parte de las clases dominantes subalternas, en lo que está ausente la guía del poder externo. En este sentido, el neoliberalismo no resulta de la conquista de mercados como discurso épico del liberalismo quiere hacer creer, sino es la entrega organizada y política de los excedentes. En esto aparece un nuevo orden económico tributario, en el que las clases dominantes entregan como tributo lo sustancial del excedente local para ocupar o mantenerse en esas posiciones intermedias de un sistema más mundializado de dominación.

Las reformas del estado son procesos de adecuación institucional a los requerimientos de entrega de excedente demandado por los capitales transnacionales y las instituciones meta nacionales de regulación de economías y de ejercicios del poder político. Estas reformas también son de carácter conflictivo por existir formas y fuerzas de resistencias y defensa de los derechos de la apropiación y consumo local del excedente. Las reformas estatales son procesos de lucha de clases y la redefinición de las formas y márgenes de la apropiación y consumo del excedente. Las reformas estatales conllevan una privatización de la soberanía que en cierto punto es el debilitamiento o cancelación del Estado – Nación.

El Eje de explotación – exclusión – dominación neoliberal es la apropiación transnacional de los recursos con un uso improductivo del excedente que circula a nivel del Estado. Este eje neoliberal articula el orden de los monopolios económicos estableciéndose la secuencia capital – partido – estado a lo Zavaleta Mercado llama una ***situación instrumental del estado***, cuando la clase dominante ocupa en persona el gobierno del estado y ejerce el poder político en beneficio de sus intereses particulares. La *delimitación simbólica del mundo*, quienes luchan por otra forma de globalización tiende a enfatizar desde la mitología o la pachamamizacion ritualizada que simplifica la complejidad de la Madre Tierra en aras de una comunicación y de movilización política de las mayorías se pretende avanzar para enfrentar a quienes quieren controlar la vida. (Tapia, 2001; 217).

1. MARX Y SU CONCEPTO DE LA NATURALEZA

Marx analizó los vínculos entre el mundo social y el mundo natural en una *concepción materialista – dialéctica de la naturaleza* que es una comprensión del desarrollo sostenible y de la fractura metabólica entre los seres humanos y la tierra, y desarrollar una crítica sistemática de la explotación del suelo; con un enfoque co – evolucionista de las relaciones entre los humanos y la naturaleza, lo que le proporcionó una base histórica–natural para la teoría del papel del trabajo en la evolución de la sociedad humana.

Marx define: "La naturaleza es el cuerpo inorgánico del hombre, es decir, la naturaleza en cuanto no es ella misma el cuerpo humano. El hombre vive de la naturaleza; esto quiere decir que la naturaleza es su cuerpo, con el que debe permanecer en un proceso continuo, a fin de no perecer. El hecho de que la vida física y espiritual del hombre depende de la naturaleza no significa otra cosa si no que la naturaleza se relaciona consigo misma, ya que el hombre es una parte de la naturaleza"; concepto que hace evidente que no existe dicotomía entre el ser humano y la naturaleza: "El hombre no está en la naturaleza, sino que es naturaleza". (Marx, 1844/2005; 120)

También hizo referencia a la naturaleza en la medida que ésta se entrelazaba en la historia de la humanidad a través de la producción, como extensión del cuerpo humano. La relación humana con la naturaleza está mediatizada no sólo a través de la producción, sino también, por medio de las herramientas, que ha permitido a la humanidad transformar la naturaleza. Esta relación trabajo – naturaleza es el punto de partida de la producción de valores de uso: "En este trabajo de conformación, el hombre se apoya constantemente en las fuerzas naturales. El trabajo no es, pues, la fuente única y exclusiva de los valores de uso que produce, de la riqueza material. El trabajo es el padre de la riqueza, y la tierra la madre" (Marx, 1861-1863/2005; 109). El trabajo es el momento de intercambio con la naturaleza, es la actividad con la cual el hombre se apropia de su entorno y lo transforma para satisfacer sus necesidades básicas por los medios brindados por la naturaleza.

Sin embargo, en el sistema capitalista, este proceso crea una separación del hombre con la naturaleza y campo. Marx destaca que el trabajo alienado convierte a la naturaleza en algo extraño al hombre, en un "*mundo ajeno*", "*hostilmente contrapuesto al trabajador*". En este sentido, en la apropiación privada, existe una alienación respecto a la naturaleza

donde los medios de vida y de trabajo no le pertenecen al trabajador y se le presentan como objetos externos, es decir, "enajena al hombre de su propio cuerpo, de la naturaleza tal como existe fuera de él, de su esencia espiritual, y de su esencia humana". La alienación de la humanidad y de la naturaleza tiene como resultado no sólo la renuncia al trabajo creativo, sino también la renuncia a los elementos esenciales de la vida misma. "Feuerbach, sostienen Marx y Engels, postula 'el hombre', en vez del 'hombre histórico real'. Y, del mismo modo, postula la naturaleza en vez de la historia natural. Reconoce la desarmonía existente entre la humanidad y la naturaleza; de ahí la alienación respecto a ésta… No ve a la naturaleza como algo que cambia al paso de la historia. No ve que el mundo sensible que le rodea no es una cosa que viene dada directamente desde toda la eternidad… [sino] un producto histórico, el resultado de la actividad de toda una sucesión de generaciones". (Bellamy, 2000; 135).

Marx planteo las bases para una sociedad futura e hizo alusión al comunismo como la "verdadera solución del conflicto que el hombre sostiene con la naturaleza y con el propio hombre". Para Marx, la sociedad comunista "es la unidad esencial plena del hombre con la naturaleza, la: resurrección de la naturaleza, el naturalismo consumado del hombre y el humanismo consumado de la naturaleza". La formación económica superior debería estar fundada en la "asociación" reconstruiría la unidad esencial plena del hombre con la naturaleza, o recompondría la fractura metabólica, en su enunciación posterior, lo hace evidente la eliminación de la propiedad privada y la disolución de la contradicción entre la ciudad y el campo como condiciones elementales para armonizar al hombre con la naturaleza (Marx, 1857/1979; 21).

El horizonte crítico- revolucionario de Marx, Darwin y Vico que "(…) las fuerzas productivas sólo pueden ser concebidas como totalidad y cada una como parte integrante de una totalidad debido a que su suerte está echada en el seno de la vida y la sirven, son sus instrumentos. Son valores de uso de la vida y es sólo como tales que contienen un telos, una finalidad, un sentido inmanente. Su carácter orgánico significa que son objetivamente teleológicas (adecuadas a fines vitales)". (Veraza, 2012; 65)

2. LA AMAZONIA Y LA MERCANTILIZACIÓN DE LA NATURALEZA: CAPITALISMO, CRISIS ECOLÓGICA Y "ECONOMÍA VERDE"

Habermas nos recuerda que en la medicina como en la dramaturgia el término crisis se refiere al "punto de inflexión de un proceso fatal" el curso de la enfermedad o del destino se imponían, la noción de crisis "es inseparable de la percepción interior de quien la padece", de la existencia de un sujeto cuya voluntad de vivir o de ser libre están en juego. "Dentro de la orientación objetivista no se presentan los sistemas como sujetos; pero sólo éstos pueden verse envueltos en crisis. Sólo cuando los miembros de la sociedad experimentan los cambios de estructura como críticos para el patrimonio sistémico y sienten amenazada su identidad social, podemos hablar de crisis" (Habermas, 1975: 18).

El capitalismo como formación socio económica, se asienta en la propiedad privada de los medios de producción y en la explotación del trabajo asalariado. La finalidad de la producción capitalista y la fuente de enriquecimiento de los capitalistas es la apropiación de la plusvalía que genera el trabajador, por lo que al generar y acumular riqueza/capital el capitalista destruye las fuerzas productivas, lo que crea miseria en la humanidad y destrucción del medio ambiente. "La creación de plusvalor absoluto por el capital obliga a que el círculo de la circulación se amplíe constantemente. La producción dominada por el capital implica, pues, 'un círculo sin cesar ampliado de la circulación, sea que ese círculo sea ampliado directamente, sea que en un mayor número de sus puntos se transformen en puntos de producción'. La tendencia a crear el mercado mundial, así, está 'inmediatamente dada en el concepto del capital'. La producción de plusvalor fundada en el incremento de las fuerzas productivas exige, por otra parte, 'la producción de consumo nuevo', en primer lugar, a través de la 'ampliación cuantitativa del consumo existente'; en segundo lugar a través de la extensión de las necesidades existentes hasta un círculo más amplio, y en tercer lugar, a través de la 'producción de nuevas necesidades' y la 'creación de nuevos valores de uso'.

De ahí la "*explotación de la naturaleza entera*", 'la búsqueda de nuevas cualidades útiles en las cosas', 'el intercambio a escala universal de productos fabricados bajo todos los climas y en todos los países', y los nuevos 'tratamientos (artificiales) aplicado a los objetos naturales' para darles nuevos valores de uso. De ahí, finalmente, 'la explotación de la tierra en todos los sentidos, tanto para descubrir nuevos objetos utilizables como para dar nuevas propiedades de uso a los viejos, y utilizar como materias primas sus nuevas cualidades; el desarrollo máximo de las ciencias de la naturaleza; el descubrimiento, la creación y la satisfacción de las nuevas necesidades salidas de la sociedad misma. La producción fundada en la capital crea, a la vez, la industria universal y un sistema de explotación universal de las propiedades naturales humanas. Ya nada parece tener valor superior en sí… Por tanto, sólo el capital es el que 'crea a la sociedad civil burguesa y desarrolla la apropiación universal de la naturaleza y de la conexión social misma por los miembros de la sociedad'. De ahí su 'gran influencia civilizadora'.

El capital genera un nivel de desarrollo social en relación con el cual todos los desarrollos anteriores aparecen como una idolatría natural local y limitada. Con la producción capitalista propiamente dicha, 'la naturaleza se vuelve un puro objeto para el hombre, un puro asunto de utilidad, deja de ser reconocida como un poder para sí; e incluso el conocimiento teórico de sus leyes autónomas no aparece más que como un ardid que contempla someterla a las necesidades humanas, sea como objeto de consumo, sea como medio de producción" (Bensaïd,

2009; 325).

El capitalista no va a renunciar a la acumulación de la riqueza no va a dejar de explotar a los trabajadores y expoliar la naturaleza, construye mecanismos engañosos para dar respuestas a la crisis ecológica. Como el "Protocolo o Acuerdo de Kyoto, Cancún o Durban" sobre el cambio climático, en el que predominan aquellos "acuerdos" que, a simple vista, son los de las multinacionales, transnacionales y de los grandes capitales.

La "*economía verde*", implica, cuantificar y valorizar económicamente las distintas funciones de la naturaleza para introducirlas al mercado a través de una serie de mecanismos financieros; mercantilizar los procesos y funciones de la naturaleza a través del comercio de los servicios de los ecosistemas; crear un ambiente propicio para la inversión privada en el agua, la biodiversidad, los océanos, los bosques, etc.; y desarrollar un mercado ficticio de bonos y certificados financieros que se negociaran a través de los bancos. Los países ricos esperan la autorización de las Naciones Unidas para empezar a desarrollar un conjunto de indicadores y mecanismos de medición que creen las bases para un mercado mundial de servicios ambientales y de los ecosistemas.

3. DERECHOS DE LA MADRE TIERRA: UNA PROPUESTA REVOLUCIONARIA Y SOCIALISTA

Será Bolivia a partir del gobierno del Presidente Evo Morales Ayma, quien pone en la mesa internacional de Tierra, Territorio, Recursos Naturales ante la profunda crisis del sistema capitalista con la consecuente amenaza nuclear que amenaza en destruir no solo al ser humanos sino a la Madre Tierra bajo le consigna "*La tierra no nos pertenece, sino más bien nosotros pertenecemos a la Madre Tierra*" (Morales, 2010; 51)

En Tiquipaya, Cochabamba, en abril de 2010 se realizó Conferencia Mundial de los Pueblos sobre Cambio Climático y los Derechos de la Madre Tierra que es un llamado Pueblos del Mundo somos hijos e hijas de una sola Madre Tierra, pero el modelo capitalista que promueven la guerra, muerte, violencia por la explotación y acumulación de riquezas a costa de destrucción y contaminación y de la muerte de millones de seres humanos y otros seres que ahora pretenden globalizar su infinita codicia tratando de modificar la relación con la Madre Tierra. La agresión que significa el cambio climático es una de las consecuencias de la lógica irracional de vida donde el sistema capitalista convierte al ser humano en la peor de las bestias imaginadas. Esto es lo que debemos cambiar. Parte esencial de la propuesta de una Declaración Universal de los Derechos de la Madre Tierra por parte de la ONU.

1.- Llegar a un compromiso colectivo para trabajar juntos para asegurar tierra y recursos para todos los seres humanos del planeta, y permitir vivir entre todos con dignidad y transformar sus propias vidas, instituciones y comunidades.

2.- La provisión de un acceso seguro a la tierra y los recursos naturales para los productores más pobres es un paso fundamental para encontrar soluciones pacíficas duraderas para abordar la pobreza, la persistencia del hambre y de los conflictos armados en torno a los recursos naturales.

3.- El Cambio Climático está aumentando la inestabilidad y pone en riesgo los medios de subsistencia de aquellas personas que dependen de la tierra y los recursos naturales. Al mismo tiempo los medios por los cuales se accede se utilizan y posee la tierra están cambiando rápidamente en el mundo, creando nuevos desafíos para reducir el hambre y la pobreza.

4.- La Madre Tierra se está convirtiendo en una mercancía cada vez más globalizado, tendencia que es alimentada por la creciente demanda de alimentos y biocombustibles minerales, del turismo y para servicios ecosistemas, lo que incluye el secuestro del carbono. Los usuarios de la tierra que son pobres en recursos están confrontando una creciente competencia por la tierra por parte de otros usuarios, elites nacionales e inversores globales.

5.- La necesidad de Reformas Agrarias y de la las grandes desigualdades en el acceso a la tierra alimentan la conflictividad, la inestabilidad política, la alineación social, la exclusión, niveles de violencia y constituyen una barrera para el desarrollo económico de las naciones.

6.- Los esfuerzos liderados por los Estados en las reformas agrarias han generado igualmente interrogantes sobre su papel y capacidad para ser reformador y activista. Mientras que el Estado debe continuar jugando un papel central en todos los aspectos de los procesos de reforma, los movimientos sociales, pueblos y naciones indígenas y organizaciones de la sociedad civil deben jugar un papel complementario en la formulación e implementación de políticas y asegurar la rendición de cuentas en la implementación de las mismas.

7.- Las mujeres juegan un papel clave como agricultoras y garantes de la seguridad alimentaria, tanto en el ámbito familiar como nacional. Por lo tanto, sus múltiples roles y responsabilidades ejercidas deben reflejarse en un derecho a la tierra efectiva.

7.- Las Comunidades de Naciones y Pueblos Indígenas, las Minorías Étnicas se encuentran entre los millones de personas en el mundo que dependen de los bosques, pastos y otras formas de propiedad colectiva para su alimentación y medios de subsistencia. Ellos también sufren en mayor medida la discriminación, exclusión, intimidación, violencia, genocidio, muerte y guerra. Los derechos de los moradores y usuarios pobres de bosques, especialmente de los originarios pueblos indígenas deben ser reconocidos por todo el pueblo del mundo.

El Presidente Evo Morales, declaro en Copenhague que esta Humanidad no puede ser construida sin el reconocimiento de la Madre Tierra como sujeto de derecho, y no pude darse una Paz duradera y prosperidad sin una distribución justa y equitativa de la tierra y los recursos naturales. sin la armónica complementariedad entre ser humano y naturaleza.

Al situar la reforma del problema de la Madre Tierra como parte integral del proceso de reestructuración del Estado, el gobierno del Estado Plurinacional de Bolivia no solo ha expresado sino a constitucionalizado asegurando el acceso y la propiedad comunal de la tierra para incluir a amplios sectores de los sin tierra arrendatarios, mujeres, campesinos, originarios de pueblos y naciones indígenas marginalizados en más de 500 años. Estas medidas son indispensables para la justicia social, la democracia y la paz duradera.

4. ACUMULACIÓN CAPITALISTA EN LA GLOBALIZACIÓN

Bajo el concepto de ***acumulación por desposesión***, que es el uso de métodos de acumulación originaria para mantener el sistema capitalista, mercantilizando ámbitos antes cerrados al mercado, a partir del despojo o del pillaje de recursos, fuerza de trabajo y hasta dinero que están todavía bajo relativo control de algunas clases, grupos o, como en el caso de la Amazonía, de las nacionalidades/etnias indígenas. La expansión nacional de las fronteras agroforestales, mineras y petroleras produce el despojo de los territorios indígenas porque es allí donde se encuentran los bosques, las aguas, la riqueza biótica, los minerales, y desafortunadamente el petróleo. La raíz del despojo es la privatización de la propiedad comunitaria. Las prácticas del despojo siguen un protocolo de privatización, financiarización, gestión y manipulación de las crisis y redistribuciones estatales de la renta (Harvey, 2005; 110).

Alvaro García Linera plantea en su libro Geopolítica de la Amazonia plantea la tesis de que cada *proceso revolucionario* provoca una *contra revolución* a la que debe enfrentarse. Esta *contraofensiva,* protagonizada por los enemigos del proceso de cambio, quienes luego de una *ola revolucionaria* se reagrupan, organizan y protagonizan esta reacción, genera la necesidad en el proceso revolucionario de defenderse y avanzar en función de lograr consolidarse, influjo ante el cual, se genera una nueva reacción contrarevolucionaria, frente a la cual nuevamente el *campo revolucionario* se defiende y avanza, continuando este proceso progresivo y a través de él consolidando la revolución.

La relación entre propiedad hacendal de la tierra y producción capitalista en el oriente y la Amazonía boliviana, ha dado lugar a una manera específica de subsumir formalmente el trabajo no-capitalista de los pequeños campesinos y productores indígenas a las relaciones capitalistas, mediante la imposición de un tipo específico de renta de la tierra. El núcleo capitalista agro–industrial–agroquímico–comercializador, subordina los modos de producción agrarios no-capitalistas a través de la imposición de los precios a la hora de la siembra, el acopio y comercio de los productos cultivados o recolectados, y por medio del monopolio del procesamiento (madera, castaña) y del crédito. (García Linera, 2012; 33)

Establece dos modalidades reaccionarias. Por una parte, las clases dominantes actúan utilizando consignas, personalidades y formas de organización propias. Y otra, donde estos sectores actúan indirectamente, pues, la contradicción se da dentro del campo popular, en el cual un sector opera funcionalmente a las fuerzas conservadoras, complejizando las posibilidades de respuesta del *campo revolucionario*.

Primer Elemento, el proceso encabezado por Evo Morales es una revolución político – cultural y económica, que modificó la naturaleza social y la estructura orgánica del Estado, consagrando los derechos de los pueblos indígenas, hecha de la mano de movimientos sociales del mundo indígena-popular, y que en pocos años modificó la estructura de propiedad de la riqueza boliviana.

Segundo Elemento es la *excepcionalidad de la Amazonía boliviana*. En primer lugar, por sus características y valor ambiental, lo que explica en parte la importancia geopolítica y el interés desde diversos rincones del mundo en esta zona. En segundo lugar, la relación de esta región con el resto del país. A lo largo de la historia republicana, el Estado no ha tenido la capacidad de ejercer realmente su *soberanía* sobre este *territorio*.

Tercer elemento. Pues, ese vacío de poder dejado por el Estado, ha sido tradicionalmente ocupado por una *elite empresarial - hacendal*, ganadera y extractora de goma y madera. Una burguesía regional que controla el flujo de las relaciones comerciales y económicas dentro de la región y hacia el exterior, beneficiándose de una asimetría en la que se han apropiado de la renta de la tierra, comprando recursos dentro de la región y vendiéndolos en su exterior a un precio varias veces más elevado, y pagando por la fuerza de trabajo, ejercida principalmente por indígenas, a un nivel por debajo de lo necesario para la reposición de las condiciones de vida. El Estado tradicional en Bolivia, como una prolongación de estas familias que ejercen lo que él denomina como *poder patrimonial hacendal*.

Cuarto lugar, el "***Arco de poder y dominación amazónica***", el poder en esta región, además de los actores recientemente descritos, es ejercido por empresas extranjeras, gobiernos de los países capitalistas más desarrollados y un conjunto de ONGs que operan en la Amazonía.

Quinto lugar, el concepto de "*plusvalía medioambiental extraterritorial*", el que articula en torno suyo a estos tres tipos de actores. *las empresas trasnacionales* operan en distintos lugares del planeta con sus mecanismos productivos

tradicionales, los cuales tienen efectos depredadores para el ecosistema y sus procesos de reproducción. Mientras simultáneamente, se vinculan con organismos ambientalistas, y aparecen "protegiendo" determinadas áreas de zonas boscosas como la Amazonía, a cambio de "*bonos de carbono*" y exención de impuestos. Con lo cual, elevan su tasa de ganancia y eluden la responsabilidad de invertir en técnicas de producción menos dañinas para el medio ambiente. Es decir, mientras en un lugar del mundo contaminan y depredan, en el otro financian proyectos de conservación ambiental que les permiten obtener compensaciones económicas, rebajas impositivas y otros mecanismos de acumulación "*ambiental extraterritorial*". De la misma forma, gobiernos de los países más desarrollados se hacen parte de estos mecanismos utilizando un discurso ambiental. Por una parte, financian y promueven proyectos de conservación, mientras en realidad están ejerciendo control sobre zonas con una alta concentración de diversidad biológica. Al controlar espacios de la región amazónica, empresas y gobiernos cuentan con un enorme reservorio de recursos naturales como petróleo, uranio, oro, bienes estratégicos como el agua o el aire, y material genético para la industria de la biotecnología, sin tener que pagar impuestos o patentes. En este contexto, emerge un nuevo tipo de actor en la región amazónica boliviana. Las ONGs, principalmente ecologistas, las cuales han logrado establecer, al decir del autor, una dinámica de relaciones clientelares con la dirigencia indígena. Para García Linera, estos organismos profundizan las relaciones de dominación y acumulación capitalista, a través de su cruzada ecologista financiada por empresas y gobiernos de países capitalistas desarrollados, defensora de la preservación y conservación ambiental, y opositora de la presencia del Estado en los bosques y llanos amazónicos.

De esta manera, el poder y control de la región amazónica boliviana, no ha estado ni en manos de los pueblos indígenas ni del Estado, sino que, por una parte, de una elite hacendal empresarial, y de otra, de empresas trasnacionales y gobiernos que están en la búsqueda de acumulación a través del cuidado y conservación de bosques amazónicos y el control de su biodiversidad y bienes naturales estratégicos.

Sexto lugar, el Gobierno de Evo Morales ha buscado desmontar ese *poder hacendal patrimonial* y de *acumulación capitalista*, y ejercer la *soberanía del Estado* llevando hasta esa región del país el *proceso revolucionario* que encabeza. Es decir, establecer el control estatal sobre una región geopolíticamente estratégica de su país y terminar con la dominación ejercida sobre ese territorio y esas comunidades por parte de la elite hacendal, empresas trasnacionales y gobiernos extranjeros.

Séptimo Lugar, en esta disputa, las organizaciones ecologistas, grupos indigenistas y sectores de izquierda que se oponen a la construcción de la carretera y que han entrado en conflicto con el Gobierno a partir de esta coyuntura de conflictividad, operan funcionalmente a aquellos mecanismos de dominación y de acumulación capitalista.

En cierta medida, se puede decir que desde el año 2006, con el Gobierno de los movimientos sociales y el Presidente Evo, en la Amazonía se ha dado una especie de Revolución Democrática desde "abajo", a partir de las iniciativas de los sectores campesinos, indígenas y urbanopopulares; y desde "arriba", desde el Estado, que está ayudando a destrabar el despliegue de las energías vitales de los pueblos y clases sociales populares de una región —donde prevalecía un régimen de poder despótico y hacendal— caracterizada hasta hace poco por ser la más conservadora del país. (García Linera, 2012; 51)

5. NO ES FUEGO ES CAPITALISMO

"No es fuego, es capitalismo" es la consigna del mundo ante el desastre ecológico en el Amazonas. Brasil al contar con el 60 por ciento de los 7.000 millones de hectáreas de selva amazónica es el principal responsable. Bolsonaro a meses de asumir la Presidencia de Brasil con decisiones irresponsables, hace una catástrofe ambiental sin precedentes en el Amazonas, Jair Bolsonario quien afirmo: "Me solían llamar capitán Motosierra y ahora *soy Nerón incendiando el Amazonas*".

A diferencia de la política del Estado Plurinacional que desmonta este poder hacendal: El punto de quiebre de este sistema de poder regional amazónico ultra-conservador, construido en más de 100 años, se ha dado recién desde el año 2006. Al ser desplazadas las antiguas clases dominantes del control estatal nacional por los movimientos sociales indígenacampesino populares, el sistema patrimonial sufrió una herida de muerte. Se rompió la alianza entre tenencia hacendal de la tierra/economía extractivista empresarial y poder político, que era la base material del despotismo regional amazónico, creándose una suerte de "dualidad de poderes" regional: por una parte, las clases hacendales-empresariales, y por otra, la estructura gubernamental con poder de decisión sobre recursos económicos y tierras. Desde entonces, una creciente pugna y lucha social se ha desatado en todaslas tierras bajas. El Estado revolucionario detuvo la entrega de tierras a las clases hacendales, revirtió tierras a latifundistas y una buena parte las entregó en propiedad a las comunidades y naciones indígenas. En el periodo de 1996 hasta el 2005, se entregaron 5 millones de hectáreas a los pueblos indígenas de tierras bajas; pero entre el 2006 al 2011, la cantidad nueva ascendió a 7,6 millones de hectáreas y además se expropiaron 1,4 millones de hectáreas a los hacendados, trastocando radicalmente la estructura de propiedad de la región amazónica. Así, a diferencia de hace 20 años, cuando las empresas privadas medianas poseían 39 millones de hectáreas, ahora solamente poseen 4,1 millones de hectáreas. Sin embargo, esta modificación estructural de las relaciones de propiedad sobre la tierra no ha sido suficiente para desmontar el poder despótico hacendal-empresarial, pues falta desmantelar los mecanismos de acopio y procesamiento empresarial que asfixian a la economía indígena. De ahí que el gobierno revolucionario, a la par de la modificación de la estructura de tenencia de la tierra, que disocia la rutina de la hacienda de la acción del Estado, ha impulsado mecanismos estatales de gobierno regional que actúan autónomamente respecto del bloque dominante territorial (García Linera, 2012; 51)

Las elites gobernantes tienen el reto de construir un discurso cohesionador que de sentido y legitimidad al proyecto nacional, como es el proceso de cambio. Entender las dimensiones de la gran crisis civilizatoria, en la pluralidad de dimensiones que la conforman, que incluye la crisis social y ambiental, su carácter sistémico y no coyuntural y la insostenibilidad de un modo de producir y consumir que devora más de lo que la naturaleza puede reponer y junto a ello las relaciones geopolíticas que se entrejen a nivel mundial, es imprescindible para comprender como nos insertamos en esa geopolítica a nivel regional.

El incendio en la Chiquitania donde 750.000 hectáreas de bosque, pastizales y cultivos destruidas por los incendios donde una oposición pretende restituir su Poder Hacendal patrimonial y acumulación capitalista en la Amazonia y en Bolivia. Los incendios tiene un claro mensaje: expulsan a las poblaciones originarias de sus tierras y les permiten a hacendados y terratenientes hacerse presentes en zonas vedadas hasta años atrás. Mientras el negocio avanza de la mano de Bolsonaro y sus aliados, la reserva verde más grande del planeta sigue en llamas, y las consecuencias del fuego alcanzan ya centros urbanos. No se trata simplemente de la codicia de un dirigente de derecha, es un sistema que alienta la destrucción del ambiente para acrecentar ganancias y generar nuevos negocios

"Como en todo proceso revolucionario, el Estado no sólo condensa la nueva correlación de fuerzas político-económicas de la sociedad emergente, de las luchas sociales exitosas, sino que además deviene en sujeto material e institucional que ayuda a promover nuevas movilizaciones sociales que transformen las estructuras de dominación aún presentes en determinadas regiones y esferas de la sociedad. El actual papel del Gobierno de los movimientos sociales en la Amazonía, Chiquitanía y Chaco, donde anteriormente existían modos de dominación patrimonial asentados en la propiedad de la tierra, es justamente ése: ayudar a desbrozar el camino para que las fuerzas populares e indígenas locales desplieguen sus capacidades emancipatorias frente a los poderes regionales prevalecientes. Esta creciente revolucionarización de las relaciones de poder regional en la Amazonía, la Chiquitanía y el Chaco, ha desatado una oleada contrarrevolucionaria violenta y agresiva. En el caso de la Chiquitanía y el Chaco, dueños de tierras que han participado directamente en el apresto de golpe de Estado de septiembre del 2008. Y de hecho, estos mismos actores, en complicidad con poderes externos que no quieren perder el control extraterritorial de la Amazonía" (García Linera, 2012; 52)

Ante el insistente pedido para politizar el incendio del Bosque Chiquitano, la Presidenta del Senado Adriana Salvatierra, "Se está trabajando planes de contingencia, vamos a continuar trabajando todas las labores que sean necesarias para garantizar la recuperación de la zona sin entrar en una politización de este conflicto, sin entrar a politizar con el dolor de la gente. Inmediatamente desactivada esta crisis ambiental procederemos con todos los planes necesarios para garantizar que pueda restaurarse el ecosistema"

Seran estos movimientos, con sus diferentes variantes, eco-reformistas del capitalismo que, más allá de cierto sermón anticapitalista, que no son alternativa que enfrente la crisis ecológica que está generando el capitalismo, mas que crear la ilusión de un "*capitalismo verde*", al proponer reformas capaces de controlar los "excesos" del capitalismo, con cierta narrativa 'pachamamista' como lectura indigenista de la realidad social de manera utópica, ahistórico e idealista. Esre discurso simbólico de la cultura indígena, en la exaltación de lo comunitario y en un amplio sentido animista de la vida natural que trata de tapar con un dedo la verdad compleja de un capitalismo que refuncionaliza las características de organización étnicas a los fines del capital. O la debilidad de las corrientes ecologistas "fundamentalistas" llegan a plantear, bajo el pretexto de luchar contra el antropocentrismo, una objeción al desarrollo de las fuerzas productivas no establecen una distinción entre los seres humanos como seres naturales y como seres sociales, y no entienden que el trabajo, a través del cual la humanidad ha transformado la naturaleza y las relaciones sociales, es la esencia del proceso histórico humano.

MUERE EL CAPITALISMO O MUERELA MADRE TIERRA

La cuestión ecológica, en mi opinión, representa el gran desafío para una renovación del pensamiento marxista a comienzos del siglo XXI. Exige de los marxistas una ruptura radical con la ideología del progreso lineal y con el paradigma tecnológico y económico de la civilización industrial moderna. Es verdad que no se trata de poner en entredicho la necesidad de progreso científico y técnico, y de elevar la productividad del trabajo: se trata de condiciones irrenunciables para dos objetivos irrenunciables del socialismo: la satisfacción de las necesidades sociales y la reducción de la jornada de trabajo. El desafío estriba en reorientar el progreso de manera que se torne compatible con la preservación del equilibrio ecológico del planeta. Michael Löwy (Harribey, Löwy, 2003; 96)

Fredric Jameson solía decir que "***es más fácil imaginarse el fin del mundo que el fin del capitalismo***". El debacle ambiental, alimentaria, energética y migratoria, a la que hoy se añade la depresión económica, conforman una crisis sistémica que ven en ella el fin de la fase neoliberal del capitalismo. Pero en este diálogo se escuchan igualmente las voces de quienes pensamos que la devastación que nos rodea resulta del pecado original del gran dinero: la conversión en mercancía de un orden humano-natural que no puede reproducirse con base en la lógica de la ganancia; de quienes creemos que si para salvarse de sus propios demonios el capitalismo asociada, el sistema científico tecnológico y la visión prometeica del progreso en que deriva, el sentido fatalista y unilineal de la historia que lo sostiene... Si, a la postre, éstas son las percepciones dominantes, entonces –y no antes– estaremos ante una crisis civilizatoria (Bartra)

El llamado del Presidente Morales "si los Estados industrializados asimilan las iniciativas aprobadas en abril en la Conferencia Mundial de los Pueblos sobre el Cambio Climático y los Derechos de la Madre Tierra de Cochabamba". Esa cumbre ratificó el principio de responsabilidad compartida y diferenciada sobre el calentamiento global, demandó a los países ricos que paguen las deudas por contaminar el medio ambiente; propuso crear un Tribunal Internacional de Justicia Climática y Ambiental; y convocó a un Referéndum Climático. El Presidente Evo Morales fue el que denuncio que "la humanidad ha excedido en un 40 por ciento la capacidad de regeneración del planeta. El 30 por ciento de las especies animales están en peligro de extinción; cada año se desforestan 13 millones de hectáreas; en Bolivia es preocupante la muerte de peces en la Amazonía, y en los lugares donde hay sequía. Si continuamos el camino trazado por el capitalismo, estamos condenados a desaparecer" (Morales, 2010; 109) "Hasta ahora los humanos hemos sido prisioneros de las fuerzas del capitalismo desarrollista que coloca al hombre como el dueño absoluto del planeta. *Ha llegado la hora de reconocer que la tierra no nos pertenece, sino que mas bien nosotros pertenecemos a la tierra*." (Morales, 2010; 69)

Alvaro García Linera entiende que "Vivir Bien" es "manejar la tensión entre la protección de la naturaleza y el desarrollo productivo" (explotación y extracción de recursos naturales y materias primas destinadas a la exportación) con el fin de "generar recursos públicos que garanticen a la población las condiciones básicas mínimas" y; "¿Estamos como bolivianos teniendo problemas con la protección de la Madre Tierra? Es probable. Pero son dificultades que nosotros mismos sabremos corregir; no aceptaremos jamás el principio de soberanía compartida en ningún pedazo del territorio boliviano. Quienes en este momento se oponen a la presencia del Estado en la Amazonía, en los hechos defienden la presencia norteamericana en ella. No existe punto intermedio: ése es el dilema en el que se juega hoy el destino del control sobre la región amazónica boliviana, peruana, ecuatoriana, colombiana, brasilera". (Garcia Linera, 2012; 67)

Los pueblos del mundo cantan su agonía con voces que no alcanzan eco en el corazón del mundo, son cánticos asordinados que a ratos les queda en la garganta o mueren ahogados en el silencio. La selva duerme y quizás no despierte más, ni con el estrépito con que avanzan el fuego y las gigantescas hormigas mecánicas que devoran y arrasan cuanto encuentran a su paso, porque una flor o un grillo son tan dignos como un ser humano, aunque esto parezca una aberración pero la dignidad humana en su mas amplio sentido quiere decir también *Dignidad Vegetal* y *Dignidad Animal*. Por que no se puede sacudir una flor sin perturbar una estrella.

Un Socialismo Comunitario debe aproveche racionalmente los recursos que brinda la naturaleza, y destruye es la voz del bosque y de los seres humanos… *O Muere el Capitalismo o la Madre Tierra*… **¡¡Pachamama o Barbarie¡¡**

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La Teoría Socialista del Derecho y el ecologismo jurídico profundo. Una respuesta a la paradoja del Estado Violador/Protector

The Socialist Theory of Law and deep legal environmentalism. A response to the Violator / Protector State paradox

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RESUMEN

El presente artículo, postula un ecologismo jurídico profundo desde la Teoría Socialista del Derecho, con el objetivo de transitar del *ambientalismo jurídico* al *ecologismo jurídico profundo* como contra estrategia jurídica (un derecho vivo revolucionario). Esto ha resultado en un instrumento eficaz y contrahegemónico para los pueblos, asegurándose victorias locales, frente al Estado reproductor de la vorágine capitalista. Lo anterior se demuestra brevemente con la exposición de dos casos.

Palabras Clave: Teoría Socialista del Derecho, Sistema Imperial del Derecho, Ecologismo jurídico profundo, uso contrahegemónico del Derecho.

ABSTRACT

This article, postulates a deep legal environmentalism from the Socialist Theory of Law, with the objective of moving from legal environmentalism to deep legal environmentalism as against legal strategy (a revolutionary living right). This has resulted in an effective and counter-hegemonic instrument for the peoples, ensuring local victories, against the reproductive state of the capitalist maelstrom. The above is briefly demonstrated with the exposure of two cases.

Keywords: Socialist Theory of Law, Imperial System of Law, Deep Legal Ecology, Counter-Hegemonic Use of Law.

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1.La TSD y la expropiación jurídica originaria. Hacia la estructuración de un Sistema Imperial del derecho

La Teoría Socialista del Derecho (TSD), permite entender el funcionamiento y estructuración del Sistema Internacional del Derecho, condicionado por la praxis económica capitalista. En la crítica de la economía política, Marx asumió el postulado del sistema de la praxis económica estructurado en cuatro articulaciones principales: producción, circulación, distribución y consumo. Para Marx (1978), estas articulaciones no son idénticas, sino diferentes y relacionadas entre sí, dentro de una *totalidad*. Así, "una producción determinada, por lo tanto, determina un consumo, una distribución, un intercambio determinados y relaciones recíprocas determinadas de estos diferentes momentos" (20). En este caso, la totalidad en cuanto tal es capitalista, cuya génesis fue posible gracias a la Conquista de América. El capitalismo es más que un modelo de producción económica, es un *modelo civilizatorio histórico*, que condicionará la aparición de la modernidad y colonialidad (Teoría decolonial), y que ha seguido un proceso de contradicciones internas (dialéctico). El modo de producción capitalista fue estudiado ampliamente por Marx (2006), configurando el despojo, como un patrón violento, para su funcionamiento con fines acumulatorios. Para Wallerstein (2016), lo que distingue al sistema histórico capitalista, de otros, es la búsqueda incesante de acumulación del capital, lo que condicion*ó* su autoexpansión, hoy de alcance mundial.

La TSD, toma como hecho de partida, el postulado del sistema de la praxis económica de Marx, lo que le posibilita postular una teoría del derecho desde el socialismo marxista no dogmático, entendiendo al derecho, no como parte de la superestructura del capitalismo, sino como una praxis jurídica de los pueblos, estructurada en un sistema dialéctico articulado en producción, circulación y apropiación, de satisfactores de su sistema de necesidades/capacidades, en limite con el sistema de capacidades del Sistema-Tierra, con la ayuda de la fuerza física coactiva de la comunidad (Salamanca, 2011 a y b; Alanis, 2019) [1]. La TSD no afirma que el derecho nace del capital, pero sí, permite vislumbrar la totalidad jurídica que es condicionada por el capitalismo, y estructurada por este bajo su lógica. A esta totalidad jurídica se le llama Sistema Imperial del Derecho (SID). Así, se ha ocultado y desplazado, desde la Conquista, toda tradición jurídica contraria a los fines expansivos del modelo de producción capitalista, justificado con base en los presupuestos ideológicos de la modernidad-colonialidad. Por ejemplo, con la invasión imperial portuguesa y española se da comienzo en América la hegemonía de la tradición jurídico romano-germánico, encubriendo toda tradición jurídica anterior y desplazándola por esta. Por otra parte, en el norte del continente americano, los pueblos originarios "fueron engullidos de forma inmisericorde por el fetiche del derecho burgués" con la conquista británica e irlandesa imponiendo la tradición del *common law.* Y en Europa pasa lo mismo. Los estudios histórico-jurídicos de Paolo Grossi (2003) critican al monismo jurídico contraponiéndolo con la concepción del derecho medieval, un derecho consuetudinario y pluralista (pluralismo jurídico), que la expansión capitalista e imperial fue ocultando y desplazando, principalmente con la tradición romano-germánico, dando paso a lo que Marx denominó el derecho burgués (Marx, 2016).

Para la TSD, hace más de 500 años, los españoles dan comienzo a la guerra expropiatoria imperial de las tierras, medios de producción y fuerza de trabajo de los pueblos originarios, sin embargo, no solo expropiaron las tierras y los bienes comunes ahí contenidos, también el derecho. En consecuencia, se puede hablar de una expropiación originaria de la *producción del derecho*, la apropiación de su *circulación jurídica* (*la ley de los pueblos*), y *su justicia y aplicación,* imponiendo un Sistema Imperialista del Derecho de alcance mundial.

La *expropiación o apropiación del derecho*, comienza con la desmaterialización ideológica del sistema de necesidades/capacidades de los pueblos y de la Naturaleza (el florecimiento de la vida material del Sistema-Tierra y el respeto y potenciación de sus capacidades). Para la TSD, todo derecho esta fundado en el sistema de necesidades/capacidades de los pueblos y en la materialidad que el Sistema-Tierra exige para el florecimiento de su vida y potenciación de sus capacidades. A cada necesidad material, le corresponde un derecho y análogamente a la Naturaleza (Salamanca, 2011 a y b; Alanis, 2019). La desmaterialización ideológica del sistema de necesidades/capacidades de los pueblos consiste en alienación, que el sistema capitalista hace, al expropiar la conciencia de los pueblos de su sistema de necesidades, invirtiéndolas por falsas necesidades, demandas, deseos o reivindicaciones, y formas de relacionarse con la Naturaleza, rompiendo el equilibrio del Sistema-Tierra. También, la *expropiación o apropiación del derecho* abarcan los *medios de producción jurídica* de los pueblos, como el Estado, las costumbres jurídicas, las leyes, y el instrumental técnico de positivización, y la *fuerza de trabajo jurídico* (la fuerza coactiva del pueblo). Por ejemplo, se asigna al Estado el papel productor y sancionador del derecho, y no se reconoce la participación del pueblo, fuera del Estado, en la creación del derecho como en el caso del pluralismo jurídico.

La apropiación de su *circulación jurídica* conlleva a la expropiación de la capacidad que tienen los pueblos de que los derechos subjetivos, circulen en la comunidad política local, nacional e internacional, con su valor de uso universal, es decir, "como derechos objetivos con valor de satisfacción para todos" (Salamanca, 2011a: 96). Esta expropiación recurre a una triple estrategia: 1º Eliminar "derechos" del sistema de derechos humanos quitándoles la fuerza satisfactoria, como la lucha por la apropiación y empoderamiento que el derecho les da a los pueblos (reduciéndolos a mero texto); 2º Introducir al ordenamiento jurídico *contraderechos*, que solo tienen falsos derechos; 3º Adulterando los textos de los derechos, al mezclar *contraderechos* con derechos. El imperio impone ordenamientos internacionales, nacionales y locales. La expropiación de *su justicia* consiste en despojar a la justicia de todo contenido *material*. En su lugar, "se abre la puerta a la injusticia, llenando los ordenamientos normativos con cualquier contenido al servicio del imperio [al

1 En términos generales, Salamanca afirma que la TSD, es el fruto del intento de hacer avanzar el marxismo ofreciéndole el horizonte metafísico de la realidad apuntado por la filosofía de X. Zubiri e I. Ellacuría, en lugar del hegeliano. Horizonte, este último, de cuyas limitaciones, con subversión materialista incluida, Marx no pudo deshacerse del todo. En recientes fechas la TSD ha sido repensada en términos ecológicos, postulando un iusmaterialismo ecológico.

servicio de la lógica de la acumulación] y dotándolos de con el poder de la violencia" (Salamanca, 2011a:133), pues aquellos pueblos que busquen la liberación del sistema para su autodeterminación les nace el *contraderecho* de matarlos o intervenir "humanitariamente" en nombre de los "derechos humanos" (Hinkelammert, 2018). La justicia solo se ajusta a la aplicación concreta del *contraderecho*. En cuanto a su *aplicación*, solo unos cuantos sacerdotes que tengan la llave para desencriptar las claves del sistema-jurídico, pueden interpretar y aplicar el derecho, de acuerdo con el sistema de interpretación dominante dentro de la totalidad capitalista, moderno y colonial. Por ello, la dificultad de interpretar y aplicar al derecho desde la interculturalidad, ciñéndose a una hermenéutica multicultural, pues esta no cuestiona de fondo a la colonialidad del poder (Quijano, 2000).

A lo largo del despliegue del sistema-mundo capitalista, iniciado en 1492 con la Conquista de América (Dussel, 2004), los Estados más fuertes (centro), fueron imponiendo a los Estados más débiles (periféricos), un sistema-interestatal de reglas (contraderechos), de manera violenta y mediante una guerra expropiatoria continua. Por lo tanto, la totalidad capitalista, ha estructurado un sistema dinámico y dialéctico, imperial del Derecho, que expropia constantemente la producción, circulación y aplicación del derecho que nace de los pueblos, desplazándolo por este. En ese sentido, toda la infraestructura jurídica nacional e internacional —jueces, criterios de interpretación, leyes y ordenamientos locales, nacionales e internacionales, mecanismos jurídicos para la defensa de los "derechos", contenido y pedagogía del derecho en las universidades— responden a las demandas globales y transnacionales de la totalidad capitalista, y legitiman las prácticas extractivistas y expoliadoras de las fuentes de vida que nos ofrece el sistema-Tierra.

2.La TSD y el *ecologismo jurídico profundo*

La TSD, propone repensar a los derechos humanos y medioambientales, en términos de un *ecologismo jurídico profundo*, transgrediendo los límites del paradigma antropocéntrico inserto en el *ambientalismo jurídico*, y transitando a un paradigma biocéntrico. Este último, es fundado desde la materialidad de la existencia del Sistema-Tierra y del ser humano (Alanis, 2019).

Los derechos humanos y medioambientales se encuentran insertos en la circulación jurídica del SID. Pese a la génesis emancipadora de los derechos humanos ya sea en la Tradición Iberoamericana del siglo XVI (De la Torre, 2004), o su manifestación emancipadora popular del XIX, o el fuerte impulso que desde las movilizaciones populares del tercer mundo se dio a mediados del siglo XX, la fuerza jurídica satisfactoria de estos movimientos populares terminó por ser expropiada por la totalidad capitalista, reduciéndola a meros textos normativos, que si bien reconocían "nuevos derechos", la producción, circulación y aplicación de ellos quedó en manos del Estado y sistemas internacionales, "desmovilizando" esta fuerza popular. Lo mismo sucedió con los derechos medioambientales, impulsados principalmente por los movimientos socio ambientalistas desde la década de los 60. El resultado fue el reconocimiento de líneas de acción para la promoción y protección medio ambiental, la Declaración de Estocolmo sobre el Medio Humano y sus Principios formaron el primer cuerpo de una "legislación blanda" para cuestiones internacionales relativas al medio ambiente. Con ello se funda el *ambientalismo jurídico.*

El *ambientalismo jurídico*, fundamenta al derecho medioambiental dentro de las concepciones clásicas de ciudadanía y derechos, y se mantiene dentro de los esquemas de una ética antropocéntrica y utilitarista. Por esto, está orientado primordialmente a garantizar el bienestar humano, tomando la protección de la naturaleza para conseguir ese fin. Así los derechos a un ambiente sano están comprendidos dentro de los derechos humanos, reproduciendo la lógica de dominación de la naturaleza por el hombre. Esto significa que se protege al medio ambiente en la medida en que los daños a él causados puedan afectar a los seres humanos y sus derechos[2]. En estos casos cuando hay daños ambientales y afectan de manera directa o indirecta a los seres humanos, estos pueden ser indemnizados, reparados y/o compensados, bajo criterios económicos, reduciendo a la naturaleza en mercancía que puede ser valorada para los fines humanos. De ahí que Gudynas (2016) señale que en el derecho internacional medioambiental se aplica la *justicia ambiental*, debido a que trata de precautelar (con base en el principio precautorio) los derechos humanos frente a los daños ambientales que los afecten, estableciendo mecanismos de sanción, compensación y reparación entre seres humanos, mismos que deben ser adoptados por los sistemas nacionales de protección. ¡Otro ejemplo más de como el sistema imperialista del derecho expropia la aplicación de la justicia a los pueblos!

Si bien Gudynas (2016)señala algunos aspectos positivos de la *justicia ambiental*, como "potenciar la temática ambiental, vincular las condiciones sociales con sus contextos ecológicos, reforzar el reconocimiento ciudadano, el andamiaje de derechos y del sistema judicial, abrir las puertas a formas de regulación social sobre el Estado y el mercado, y permitir el combate en situaciones concretas apremiantes"(187), este no cuestiona "de fondo" al sistema, en cuanto *totalidad* capitalista, de lo contrario, ya hubiese declarado al modelo de producción capitalista como genocida humano y ecológico.

En el último tercio del siglo XX, el derecho medioambiental adquirió relevancia, vinculándolo con el concepto de desarrollo "sostenible" o "sustentable". Se ha creado un grupo normativo que abarca el cambio climático,

2 No es extraño, que, en la Declaración de Estocolmo sobre el Medio Humano y sus Principios, se formule: "la protección y mejoramiento del medio humano es una cuestión fundamental que afecta al bienestar de los pueblos y al desarrollo económico del mundo entero, un deseo urgente de los pueblos de todo el mundo y un deber de todos los gobiernos".

vinculando las respuestas posibles a la crisis ecológica según modelos de desarrollo "sostenible" o "sustentable", con miras a transitar hacia un capitalismo o economía verde. Sin embargo, la noción de "sustentabilidad" o "sostenibilidad" nunca abandona la matriz económica productivista con fines acumulatorios, aun en su versión de economía verde impulsada en Rio+20. Se plantea compaginar el crecimiento económico con el equilibrio de la biósfera. Michael Löwy (2012) pone de manifiesto la trampa ideológica imperialista que hay detrás de esta propuesta al preguntarse ¿Cómo imaginar una verdadera solución, es decir, radical, al problema de la crisis ecológica sin cambiar de arriba hacia abajo el modo actual de producción y de consumo, generador de llamativas desigualdades y de estragos catastróficos? (102). El derecho internacional medioambiental, si bien puede proporcionar mecanismos de defensa jurídica, que son aprovechados por los pueblos afectados por un daño ambiental, este acota a la praxis jurídica en términos del sistema capitalista, dentro de los parámetros de un antropocentrismo y utilitarismo, dejando a la naturaleza a merced de ser torturada en su totalidad por el capitalismo, ahora con pretensión de tener el rostro verde.

En contraparte, el *ecologismo jurídico profundo* le reconoce personería a la Naturaleza, siendo titular de derechos propios, con independencia de lo humano. Para algunos, el fundamento de estos derechos reside en el reconocimiento de valores intrínsecos en las especies o los ecosistemas, dotándole de un "ser" (Gudynas, 2016, Acosta, 2011, Ávila, 2011). En esta línea se incluyen las distintas expresiones del biocentrismo, empezando por Aldo Leopold (1949), y se pueden caracterizar como biocéntricas algunas cosmovisiones indígenas y afros, del norte y sur global. Otros, los fundan desde la ecología feminista, en particular los promotores de la ética del cuidado (Alicia H. 2011, entre otras). Sus aportaciones giran entorno a la sensibilidad y empatía como motor de la justicia, estableciendo relaciones de reciprocidad entre todos los seres. Análogas a la propuesta de la ética del cuidado son las aportaciones que realiza Leonardo Boff (2012). Sin embargo, todas estas aportaciones si bien son valiosas y enriquecedoras para el *ecologismo jurídico profundo*, desde la TSD, se fundamentan los derechos a la Naturaleza desde la materialidad porque permite situar *en* la materialidad, las relaciones sociales entre el ser humano y el Sistema-Tierra, que Lovelock (2007) denominó (Gaia). Esto en un sistema estructurado de necesidades/capacidades de la vida material de los pueblos y del Sistema-Tierra, entendiendo a este último, como un ente complejo, único y autorregulado, con capacidades (fuerza material) de regeneración, reproducción y coevolución, que afectan a todos los ecosistemas y por ende a todas las especies. Por lo tanto, la estructuración del sistema de los derechos humanos y de la naturaleza se estructuran y articulan en función del contenido material de la vida de los pueblos en equilibrio con el florecimiento de la vida material del Sistema-Tierra y el respeto y potenciación de sus capacidades, resultando en una buena convivencia entre ellos (Alanis, 2019). Y no, desde valores inherentes como las anteriores fundamentaciones.

Al igual que el *ambientalismo jurídico*, la *ecología jurídica profunda*, postula una *justicia ecológica*. Para Gudynas (2016), el simple reconocimiento de valores inherentes a la Naturaleza formalizado en "derechos", obliga repensar a los paradigmas clásicos de justicia, entendida solo entre seres humanos, ampliándola a los animales y ecosistemas. Esto no significa, negar o subsumir, otras formas de justicia, como la social, ni mucho menos caer en posturas geocéntricas que terminan por respaldar discursos anti-humanistas. La *justicia ecológica* pone en primer plano, el florecimiento de la vida material del Sistema-Tierra y el respeto y potenciación de sus capacidades (justicia ecológica), en equilibrio con los modelos de producción de los seres humanos para el florecimiento de la vida de los pueblos (justicia social). Ambas son complementarias. No se sacrifica a la Naturaleza, por ejemplo, el extractivismo de alto impacto, en aras de asegurar el financiamiento de planes contra la pobreza, porque ocasionan efectos ambientales negativos, agravando más la crisis ecológica del planeta, la cual nos está colocando al borde de la extinción. Ni tampoco, degradar al ser humano a nivel de un microbio, porque obstaculiza la conservación de la Naturaleza, como algunas posturas conservacionistas han impulsado en la práctica (Guha,1997).

Así, la TSD propone transitar de un *ambientalismo jurídico* a un *ecologismo jurídico profundo*. Esto es posible desde el *ambientalismo jurídico* en tensión con un *paradigma Otro* de carácter biocéntrico, proveniente de los pueblos afro e indígenas, resultando en los derechos de la Naturaleza. Los avances del *ecologismo jurídico profundo* son resultados de las luchas locales que van empoderando a más pueblos. Poco a poco se ha ido reconociendo a la Naturaleza como sujeto de derechos. No solo en Ecuador o Bolivia, también en Colombia y Nueva Zelanda, los derechos de la naturaleza comienzan a circular jurídicamente por los canales formales jurídicos del SID, primero a niveles locales, que le sirven de mecanismo de defensa a los pueblos frente a la vorágine capitalista. Hoy somos testigos de cómo estos "derechos" comienzan a circular jurídicamente, pero de manera informal, empoderando a los pueblos del mundo, que los incorporan a sus luchas socioambientales, transformando sus exigencias en clave de derechos de la naturaleza.

3. Del *ambientalismo jurídico* al *ecologismo jurídico profundo*.

El modelo de producción capitalista y su lógica de despojo para la acumulación ilimitada, no consigue producir riqueza y desarrollo, sin producir simultáneamente degradación ambiental y socavar la corporalidad humana que sufre la desigualdad social. En cuanto a la crisis ecológica, el mito del progreso y el crecimiento ininterrumpido e ilimitado, el gran metarrelato moderno, ha montado una máquina industrialista-productivista y publicitaria fantástica. Se han agilizado todas las fuerzas productivas para extraer todo en cuanto se pueda de la naturaleza, y crear un culto a la mercancía, para consumirla, mediante ágiles estrategias publicitarias (produciendo falsos satisfactores). En palabras de Boff (2011), "se ha organizado un asalto sistemático a sus riquezas en el suelo, en el subsuelo, en el aire, en los mares, en la atmosfera exterior. *Se ha llevado la guerra a todos los frentes*" (88). La producción de víctimas es inaudita. Cada vez son más los grandes templos de la biodiversidad del planeta que

son transgredidos por la lógica de acumulación, despojando de manera violenta a sus guardianes históricos de los espacios territoriales, y ocasionando grandes holocaustos naturales y humanos (p.ej. el amazonas). La muerte, y no la vida, prevalece.

El despojo es algo inevitable dentro del sistema capitalista (Harvey, 2005). Roux caracteriza al despojo como un proceso de apropiación violenta o encubierta bajo formas legales de bienes naturales, comunales y/o públicos (Roux, 2015: 46-52). La persona queda desnuda frente al capital, solo con su corporalidad que prostituye al capitalista para poder reproducir su vida, mientras que la naturaleza queda dispuesta a ser torturada y convertirse en mercancía. Claro está que el despojo y su patrón de poder expropiatorio, parte estructural del funcionamiento del actual sistema de producción y destrucción de los espacios socio-territoriales, se ordenen en función de la estructuración del sistema interestatal del sistema-mundo moderno propuesto por Wallerstein (2017): centro, semiperiferia y periferia. Por tanto, es patente el despojo estructurado (p.ej. de los recursos naturales) del Norte sobre el Sur, con graves implicaciones que de forma deliberada afectan a las comunidades pobres y excluidas. No es extraño entonces, que hoy se destine el 80% de los recursos naturales, explotados principalmente en los países del Sur, para el consumo individualizado del 20% de la población mundial concentrada en el Norte. Así, el Sur además del fenómeno de la deuda externa, adquiere una *deuda ecológica*, pues es el Sur quien paga las consecuencias de las externalidades (daños a la naturaleza e injusticias sociales) provocadas por el Norte (Houtart, François, Dierckxsens, Wim, *et.al.* 2017)

Esto, para algunos ha configurado una paradoja en los Estados periféricos latinoamericanos, ya que, por un lado, el Estado permite el extractivismo por parte de las grandes corporaciones, despojando a los pueblos de sus medios y posibilidades de vida, sustento, producción y organización, a causa de los agresivos impactos al sustraer, contaminar, o destruir suelos, aguas, paisajes, bosques y selvas de los territorios (Rodríguez, 2017). Y por el otro, debe defender y garantizar los derechos de los pueblos y medioambientales, incluso como en el caso de Ecuador y Bolivia, defender los derechos de la Naturaleza.

Para la TSD, frente a la vorágine del despojo de los bienes naturales y comunitarios, impulsado por las grandes corporaciones, una salida a esta paradoja es transitar del *ambientalismo jurídico* a un *ecologismo jurídico profundo*, impulsando dentro del Estado los derechos de la Naturaleza. Esto ha tenido éxito en las luchas de los pueblos a nivel local. El ecologismo jurídico profundo es utilizado como contra estrategia jurídica dentro de la legalidad hegemónica del SID. En ese sentido, los pueblos utilizan los instrumentos jurídicos que circulan en el SID, y su infraestructura jurídica, en sentido contrahegemónico, para hacer circular jurídicamente como "derechos", aquellas necesidades materiales que son relevantes para asegurar comunitariamente el florecimiento de la vida, así como del Sistema- Tierra, pues este les posibilita dicho florecimiento. Los derechos de la naturaleza empiezan a circular jurídicamente en los niveles locales y nacionales, y se busca su alcance mundial (Evo y el derechos de la madre tierra), produciendo, como ya vimos, rupturas epistémicas dentro del paradigma dominante.

Ejemplo de lo anterior, se dio recientemente en Nueva Zelanda, cuando la comunidad maorí Whanganui iw, tras 140 años de exigencia, obtuvo el reconocimiento por parte del estado de la personería jurídica del rio Whanganui. Existe una conexión intrínseca entre la comunidad y el rio, ya que no solo les provee el sustento físico sino también espiritual. Las exigencias de la comunidad datan de 1880, cuando la Corona desarrollo proyectos productivos dañinos para el rio, como la extracción insostenible de minerales, ocasionándole graves daños ambientales (Maori Affairs Committee, 2017, p. 3). La praxis jurídica de la comunidad determinó la relevancia del río para el desarrollo y reproducción de su vida, pero, además, le otorgo, de acuerdo con su cosmovisión, un valor inherente a este, lo que implica su reconocimiento como una unidad viva e indivisible (Te Awa Tupua en lenguaje maorí), asegurando el florecimiento de la vida en general del Sistema-Tierra, y en particular de su ecosistema regional. El éxito de los maorís radica en hacer circular jurídicamente la personería jurídica del río (derechos de la Naturaleza) dentro del SID, haciendo uso de los instrumentos legales hegemónicos, en sentido contrahegemónico, en función de un *paradigma Otro* de carácter biocéntrico. Ahí radica la transición de un *ambientalismo jurídico* a un *ecologismo jurídico profundo*, en el reconocimiento de derechos a la naturaleza, como mecanismo social-jurídico para empoderar a los otros pueblos, con el objetivo de frenar la vorágine acumuladora del capital. Así, los derechos de la naturaleza comienzan a circular en la comunidad política local, nacional e internacional con su valor de uso universal, es decir, como derechos objetivos con valor de satisfacción para todos.

Un caso análogo al de Nueva Zelanda, se dio en Colombia, cuando las comunidades negras, mestizas e indígenas de las etnias Embera-Dóbida, Embera-Katío, Embera-Chamí, Wounan y Tule, se movilizaron para defender la integridad de la biodiversidad de su territorio (El choco), en especial del rio Atrato, a causa de las actividades mineras, haciendo uso de las herramientas jurídicas hegemónicas (Defensoría del Pueblo, 2014). La corte constitucional colombiana, a través de la sentencia T-622 de 2016, reconoció los derechos de la naturaleza, al otorgarle personería jurídica al rio Atrato, transitando así de un *ambientalismo jurídico* a un *ecologismo jurídico profundo*, que hoy evita que se siga expoliando la biodiversidad del territorio del Choco.

La transición del *ambientalismo jurídico* a un *ecologismo jurídico profundo* produce escenarios sociales donde mundos de vida normativa distinta entran en contacto y chocan. A esto Boaventura (2015) le denomino zonas de contacto. En el fondo, se da una coexistencia conflictiva entre dos proyectos civilizatorios, por un lado, el capitalista y por el otro, un proyecto que aboga por el florecimiento de la vida de los pueblos y del Sistema-Tierra

(biocéntrico). Los derechos de la naturaleza son resultado de esta tensión, produciendo rupturas epistémicas en el paradigma dominante.

Conclusiones

La TSD, implica una politización del derecho en la praxis cotidiana de las comunidades para su empoderamiento material. Deja a un lado al fetiche jurídico del capital (XXX), que se apropia del poder de satisfacción de la praxis jurídica de los pueblos reduciendo al derecho a un mero texto normativo. El derecho es una praxis con poder real de satisfacción, es acción, no letras muertas de un texto. El derecho está vivo, en las calles, en los barrios, en las comunidades. Como los vimos en estos dos casos, los pueblos se reapropiaron de su praxis jurídica e iniciaron una lucha movilizada, utilizando, entre sus estrategias, los instrumentos legales del Estado. Usaron al fetiche jurídico con fines contrahegemónicos, asestando un golpe al SID, pues comienza a circular por las venas de la hidra capitalista, un derecho vivo y revolucionario, para los pueblos y la Tierra. El gran reto que tienen los pueblos es en no dejar que ese derecho vivo lo mate el capital, reduciendo los derechos de la naturaleza a meros textos normativos. Se deben de crear más espacios de esperanza, que pongan de cabeza al sistema capitalista.

Finalmente, con los casos aquí expuestos, se intenta empoderar, desde la TSD, a otros pueblos con situaciones análogas, donde la vorágine capitalista intenta destruirlos. Esto exige transitar de un *ambientalismo jurídico* a un *ecologismo jurídico profundo*, que como vimos es posible desde el ambientalismo jurídico. El uso de los derechos de la naturaleza ha resultado en un instrumento eficaz y contrahegemónico para los pueblos, asegurándose victorias locales. Lo anterior implica, deslocalizar al derecho dentro del paradigma moderno en función de un paradigma Otro, de carácter biocéntrico, pues pone en primer plano el florecimiento material de la vida de los pueblos y del Sistema-Tierra. En ese sentido, se da una tensión constante entre el paradigma moderno y el paradigma Otro, ya que es característico, de los periodos de transición paradigmática la coexistencia conflictiva de las viejas y las nuevas soluciones paradigmáticas. El ecologismo jurídico profundo, brinda nuevas soluciones a problemas provocados por el paradigma moderno. Se cumple la sentencia de Boaventura, para los problemas modernos no puede haber soluciones modernas.

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Representaciones sociales del minero en el Bajo Cauca Antioqueño: construcciones subjetivas de un lugar en disputa

Social representations of the miner in Bajo Cauca Antioqueño: subjective constructions of a disputed place

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RESUMEN

La minería, visibilizada como eje del desarrollo, involucra diversidad de actores e intereses, cuyas relaciones impactan los territorios en dimensiones físicas y subjetivas. El presente texto describe las representaciones sociales de un grupo de mineros del Bajo Cauca Antioqueño, que dan cuenta las tensiones emergentes alrededor de la figura del minero. La investigación asumió una mirada cualitativa hermenéutica, desde la cual se direccionaron entrevistas a profundidad. Entre los hallazgos se destacan la deslegitimación de un lugar identitario valorado por los mineros y las comunidades, a través de políticas y acciones estatales y el influjo de los grupos armados ilegales que operan en el territorio.

Palabras claves: Representaciones sociales, Territorio, Desarrollo, Minería, Bajo Cauca.

ABSTRACT

Mining, visible as an axis of development, involves actors and interests' diversity, whose relationships not only impact territories in physical areas but also on subjective dimensions. This research article describes the social representations of a group of miners from Bajo Cauca Antioqueño, who analyze the emerging tensions concerning the role of the miner. The research process assumed a qualitative hermeneutical perspective, to collect data in-depth interviews were conducted. Among the findings are the delegitimization of an identity valued by miners and communities, through different policies and actions stated by the government and the influence of illegal armed groups operating in the territory.

Keywords: Social representations, Territory, Development, Mining, Bajo Cauca.

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Introducción

El territorio condensa tramas de poder que atraviesan todas sus dimensiones, en diferentes niveles y engranajes, en un proceso permanente de construcción-deconstrucción de prácticas y discursos (Souza, 1995). En el caso de territorios donde tiene lugar la actividad minera emergen diversos actores e intereses que solapan dinámicas geopolíticas, fundamentamentadas en racionalidades economicistas, que llegan a los territorios locales a través de figuras del desarrollo y normativas estatales para el dominio, el control y la explotación de los recursos. No obstante, los ideales del desarrollo y de la minería como su motor, adquieren matices particulares en la cotidianidad y dinámicas de los territorios locales, dando lugar a reposicionamientos y conflictos.

La minería en Latinoamerica es un renglón económico vigente desde épocas precolombinas, pero en las últimas décadas ha tomado un fuerte impulso, asociado a movimientos geopolíticos globales, cuando el consumo mundial de minerales, alcanzó niveles significativos (Silver Institute 2012). En Colombia, particularmente desde 1991 se detecta una apuesta neoliberal sobre la economía, y la explotación de minerales sujeta a orientaciones de organismos como el Banco Mundial, el Fondo Monetario Internacional y la Organización Mundial del Comercio (Idarraga, Muñoz, y Vélez, 2010). En este interés se puede reconocer lo que Gudynas (2009; 2011; 2011a) denomina como un desarrollismo extractivista, jalonado por los gobiernos latinoamericanos, en el cual se mantiene la primarización de la economía en pro de un posible crecimiento económico.

El Bajo Cauca Antioqueño, territorio considerado en la investigación, es una de las nueve subregiones que conforman el departamento de Antioquia. De esta hacen parte los municipios Caucasia, El Bagre, Nechí, Tarazá, Cáceres y Zaragoza. Históricamente, la riqueza de los recursos, especialmente oro, ha sido un elemento significativo en términos de poblamiento, identidad e hibridación cultural, pero también sus complejas dinámicas han dado un lugar relevante a los grupos armados ilegales, los terratenientes, el desplazamiento forzado y las diversas violencias y rupturas del tejido social (Instituto de Estudios Regionales —INER—, 2003; 2006).

La extracción aurífera que se da en este territorio, tanto de veta como de aluvión, convoca diversidad de pobladores y prácticas, algunas de las cuales son consideradas informales y/o ilegales. De acuerdo a la Defensoría del Pueblo (2016) "en el Bajo Cauca las minas informales ascienden a 466 y las formales a 186" (p. 24). La misma fuente señala como de los 820 títulos vigentes en Antioquia, 141 se ubican allí, siendo Mineros S. A., quien tiene el 25% del área titulada.

De ahí, la importancia de la minería en la subregión para comprender sus conflictos socio-ambientales. En efecto, Bajo Cauca se halla en el centro de interés público por ser una de los territorios del país donde los efectos de la minería se resienten en todas sus dimensiones. Además de las alertas por los abruptos cambios en el paisaje, la contaminación de fuentes hídricas y su impacto en términos bióticos y abióticos; el impacto social de la actividad minera revela disputas territoriales por el control de los recursos entre grupos ilegales y bandas delincuenciales, que observan en la minería ilegal mayores posibilidades de lucro. Esto último se articula a institucionalidades débiles, ausentismo estatal y una trayectoria socio-histórica de la subregión donde la vinculación con el territorio se ha dado en términos utilitaristas.

Así, aunque la minería en el Bajo Cauca convoca diversidad de actores, esta investigación se concentró en los mineros de la región que pertenecen a ASOMINEROS, pues su lugar en la comunidad les otorga un papel importante en la defensa de derechos como el trabajo y la dignidad, y son quienes enfrentan en su cotidianidad las presiones del Estado y los grupos armados ilegales. Estos mineros tienen procedencias, características evolutivas y de formación diversas, pero en conjunto están asentados en el Bajo Cauca, se reconocen como mineros y como gremio que protesta y resiste frente a los embates de otros actores.

La literatura académica que ha abordado la relación entre los conflictos socio-ambientales y el territorio, ha sido producida principalmente en contextos andinos de Perú, Ecuador y Bolivia, desde diferentes lentes que destacan asuntos como resistencias indígenas y campesinas (Svampa, 2011), los vínculos del extractivismo latinoamericano con procesos e intereses de países del Norte (Dalby, 2003; Bebbington, 2009) narrativas de exclusión y discriminación (Alayza, 2007). Asimismo, los elementos distributivos y políticos que se expresan en territorios mineros (Acosta, 2009; Hinojosa,2011), los impactos en el medio ambiente de las practicas neoliberales que se expresan en la minería (Echave, Hoetmer y Palacios; 2009), entre otros asuntos. En las mismas, se omiten perspectivas relacionadas con las representaciones sociales, las experiencias cotidianas frente a la actividad minera, los procesos intersubjetivos que definen referentes para la acción de las personas en el territorio, entre otros elementos que son para esta investigación, elementos centrales. Algunos trabajos cercanos a esta propuesta es el de Rodríguez, Castro y Sánchez (2013) quienes revisan los imaginarios en torno a los conflictos mineros en Perú y Bolivia.

Las representaciones sociales, se asumen aquí en los términos procesuales, lo que indica que se hace énfasis sobre procesos de construcción social en marcos históricos específicos y no en asuntos de cognición asociados a la estructura de la representación y los procesos mentales que la generan, en este sentido, hay una renuncia a posibilidades de medir y generalizar dichas representaciones. Se asume entonces, en los términos de Jodelet (1986), que las representaciones sociales sitúan una forma de conocimiento social que se da en la vida diaria, en contextos donde circula diversa información y frente a los cuales se dan procesos de negociación y acuerdo para posicionarse y realizar prácticas sociales (Morquecho y Vizcarra, 2007). Estas operan como marcos internalizados, desde los cuales los sujetos leen el mundo y actúan, aclarando que dicha lectura esta atravesada de cargas ideológicas, coyunturas históricas y políticas, que las hacen dinámicas y cambiantes (Araya, 2002). Las representaciones sociales, permiten las relaciones sociales, porque procuran marcos para la acción, desde los cuales el sujeto puede organizar el mundo, cuestionarlo y tomar decisiones. Asimismo, participan de construcciones simbólicas que median los vínculos con otros sujetos y las condiciones sociales que se

imponen desde lugares hegemónicos.

De acuerdo a Cuevas (2016), un objeto de estudio sobre representaciones sociales, debe dar cuenta de tres elementos: 1) un objeto de representación, 2) un sujeto que construye la representación social y 3) un contexto particular en el que surge la representación. En el caso de la presente investigación dichos elementos son: 1) la figura del minero, 2) Un grupo de mineros perteneciente a ASOMINEROS. B.C y 3) la subregión del Bajo Antioqueño.

Los mineros están vinculados por las prácticas mineras y por la pertenencia a la asociación, comparten preocupaciones y saberes alrededor del tema en diferentes dimensiones de su cotidianidad. El grupo depende de la minería para su sustento y el de sus familias, tienen cierta trayectoria en la misma que les permite reconocerse en el territorio como actores relevantes en sus dinámicas y se enfrentan a las tensiones que el sector devela ante movimientos socio-económicos del país y a escala global que permean la subregión e impactan dimensiones objetivas y subjetivas de la misma.

Método

La investigación asumió una mirada cualitativa de tipo hermenéutico, desde la cual se pueden reconocer miradas particulares, intimas y cercanas al fenómeno. La circularidad y flexibilidad que permite este enfoque, se nutre de la contextualización del entorno, la riqueza narrativa y las voces de los participantes.

El proceso metodológico consideró tres fases, coherentes con lo planteado por Bonilla-Castro y Rodríguez (2005) para investigaciones cualitativas y las consideraciones metodológicas de Cuevas (2016) para estudios de representaciones sociales. Dichas fases son: 1): contextualización, 2) trabajo de campo y 3) Análisis y sistematización de información.

La fase de contextualización, extendida a lo largo de seis meses, permitió un acercamiento a las categorías preliminares de la investigación para precisar elementos teóricos y conceptuales que permitieran orientar el problema. La información recolectada en esta fase fue ubicada en bases de datos y bibliotecas de Universidades de la ciudad de Medellín como UPB, UdeA, Eafit y la Sede de la Universidad Nacional. Esta información secundaria, se organizó en fichas y matrices de acuerdo a los criterios de conveniencia para los objetivos propuestos. A la par, En esta fase también se gestionaron los contactos en el municipio y el aval de la Asociación de Mineros del Bajo Cauca -ASOMINEROS-, que reúne a los mineros formales e informales de toda la subregión, siendo un canal importante para definir los interlocutores y un garante de confianza tanto para los mineros como para la investigadora en el proceso de campo.

De los encuentros y reuniones se logró vincular a 12 mineros, considerados bajo los siguientes criterios: a) mineros de tiempo completo, mínimamente en un periodo consecutivo de dos años b) vinculación a ASOMINEROS, c) residencia en el Bajo Cauca, igual o superior a cinco años. Es importante anotar, que la investigación cualitativa configura su muestra de acuerdo a los objetivos del proceso, permitiendo la flexibilidad y circularidad para definirla, de modo que no es un asunto determinado estadísticamente (Bonilla- Castro y Rodríguez, Sehk, 2005).

Identificados los participantes y contando con su disposición voluntaria para participar de la investigación se procedió a definir con ellos un cronograma para el desarrollo del trabajo de campo, en el cual se consideraron entrevistas semiestructuradas y la ejecución de dos grupos focales donde se indagaron por las concepciones de la minería y su condición de mineros, las percepciones que tenían del Estado y otros actores así como su posición como gremio frente a las dinámicas del sector minero en la región. Esta información se complementó con diarios de campo y observación directa del contexto de trabajo.

En la tercera fase, la información primaria y secundaria obtenida en los momentos anteriores, fue sometida a un proceso de reducción de datos a través de procesos de categorización y codificación que permitió la organización y análisis de la información. Para ello, se generó categorías emergentes que agruparon datos similares hasta saturarlas para luego formular expresiones más amplias que recogen significados e importancia de los datos encontrados.

Esta información, se contrastó y relacionó entre sí para llegar a una articulación de las diferentes fuentes en torno a los objetivos de la investigación, encontrando las categorías que se exponen en el siguiente apartado.

Resultados

1. *El minero amenazado y sin futuro*

La minería en la subregión del Bajo Cauca ha estado estrechamente ligada a dinámicas de poblamiento y conflicto, pues las bonanzas de este y otros recursos ha incentivado olas migratorias que tornan a la subregión un territorio para el intercambio cultural y el conflicto social (Pulido y Rojas, 2016). En este panorama la figura del minero emerge asociada a percepciones utilitaristas, es decir a posibilidades de sustento y beneficio económico, a través de diversos métodos de extracción que no necesariamente tienen que ver con lo artesanal o ancestral. Así es posible encontrar minería no mecanizada, manual y de subsistencia, practicada por comunidades étnicas como negros e indígenas, principalmente en los municipios de Zaragoza y el Bagre; y otros mineros informales y formales que

hacen minería en diferentes escalas y con mayor o menor nivel de organización y tecnificación[1].

No existe pues una homogeneidad en las practicas mineras o en la figura del minero y esto ha tornado complejo la perspectiva de un futuro prometedor para los mineros en la subregión "el minero siempre ha sido muy solitario, no ha tenido esa costumbre de asociarse, organizarse, entonces claro, si no nos organizamos como gremio pues vamos a desaparecer" *(E10, 31 años)*

Estas dificultades, que hablan de un gremio individualista y competitivo se anclan también a visiones de la minería como una inversión riesgosa en términos económicos y para la misma integridad física, que derivan una incertidumbre frecuente del minero frente a su condición y proyección en el futuro *"uno trabajando en esto no tiene si no este día" (E6, 45 años).* Este sentir, que de por sí atraviesa la actividad minera, se halla agudizado por las disposiciones gubernamentales y las presiones de los grupos ilegales que observan en los mineros, potentes financiadores de su actividad delictiva:

> "Uno qué hace? Paga la vacuna porque si no lo matan a uno. Pero para el gobierno pagar la vacuna ya es lo mismo que decir es un criminal, y lo persiguen a uno, y lo joden a uno por cosas que son casi imposibles, es que vea, llegará el día que tener un tomín ya es pecado para la ley"(E7, 31 años).

En efecto, la empresa estatal contra la minería ilegal, es sentida por los participantes de esta investigación como imprecisa y descontroladas. El Estado, que supone un ente de garantías para sus ciudadanos, se convierte en sinónimo de persecución y arbitrariedad, especialmente para aquellos mineros que no logran cumplir con los estándares de formalización exigidos. Asimismo, los marcos regulativos, se perciben con desconfianza, situados a favor de otros actores con mayor capacidad económica:

> "la ley no es clara, no la manejan todos, no se ponen de acuerdo. Es injusto que nos reseñen como criminales y que incluso lleguen y hagan asonadas cuando uno esta es trabajando, ser minero pequeño, artesanal, ya es un peligro porque las garantías no son para nosotros sino para las empresas grandes que pueden pagar todo lo que el Estado les pide" (E1, 55 años).

La deslegitimidad de un oficio realizado por años, se pone de relieve constantemente en las narrativas de los mineros. Hay un sentir de vulnerabilidad frente al derecho del trabajo y el buen nombre *"como si fuera un delincuente porque lo persigue la ley, tiene que estar escondido y con el riesgo de ser capturado en las operaciones. Ahora ser minero representa peligro cuando uno desde siempre en esta región ha tenido buena fama, de ser buena persona" (E9, 54 años).*

El otro actor frente al cual aparecen sentimientos de amenaza son los grupos al margen de la ley, sin embargo, frente a estos se identifica cierta naturalización de su presencia y accionar, lo cual se liga a la ausencia estatal y a las trayectorias del conflicto que se han vivenciado históricamente en la subregión:

> "ellos siempre han estado en estos municipios, incluso son los que han prestado seguridad por mucho tiempo porque el Estado le ha quedado grande. Apenas ahora es que ya nos acusan de pagarle, eso ha sido así siempre, en toda Antioquia, si queremos trabajar nos toca pagar pero ahora nos tiran esa bola a nosotros" (E10, 31 años).

Puede situarse un minero amenazado desde dos lugares distintos: el Estado y los grupos ilegales, ambos actores tienen demandas al gremio y exigen relacionamientos y retribuciones que operan en dimensiones legales e ilegales, pero que son sentidas como violentas por los participantes *"lo que somos es víctimas, del gobierno y de los grupos porque por ambos lados nos joden"* (E12, 24 años). La presión ejercida no los deja en un lugar de sumisión, al contrario, da lugar a procesos de resistencia, especialmente frente al Estado al que perciben como un actor reciente en el territorio, desprovisto de contexto y defensor de intereses hegemónicos. Por esta razón, han sido frecuentes las vías de hecho como paros, obstaculización de vías principales y protestas.

Los grupos armados, como se dijo anteriormente, han participado de las dinámicas territoriales y de algún modo han adquirido cierta legitimidad, de modo que el asunto percibido como problemático, son las permanentes disputas por el poder que se han dado en los últimos años y la violencia directa que esto deriva.

Finalmente, en esta categoría es interesante observar como la amenaza para el minero no se evidencia frente a la finitud de los recursos naturales sino en la acción estatal o ilegal, lo cual da pauta para reafirmar el utilitarismo que media las relaciones con la naturaleza y en general el territorio.

2. *El minero por necesidad*

Ligado a la percepción y valoración del territorio desde la utilidad, se encuentra que la minería es una práctica realizada en términos de conveniencia económica y subsistencia. La subregión históricamente ha desarrollado una economía primarizada y sujeta a las bonanzas, pero adolece de fuentes de empleo que garanticen estabilidad social, lo

1 De acuerdo al Grupo de Diálogo sobre Minería en Colombia-GDIAM (2016), la diferencia entre la minería informal y la minería ilegal se halla en que la primera, es un tipo de minería a pequeña o mediana escala que no cumple con la totalidad de los requisitos legales, pero se halla en camino a su formalización. La segunda en cambio, es un tipo de práctica "mecanizada sin vocación de formalización, que no dispone del correspondiente título minero vigente o de la autorización del titular de la propiedad en la que se realiza y que, además, no cumple con al menos uno de los requisitos exigidos por la ley" (p.20) . La misma fuente indica que la actividad extractiva criminal, es aquella cuya renta se destina al financiamiento de actividades delictivas o criminales y/o utiliza medios como la extorsión, el desplazamiento y las amenazas para explotar los recursos.

que genera que la población se oriente hacia actividades vigentes en un momento particular, como la minería.

En este sentido la figura del minero, también incluye a personas que hacen este oficio por la oferta que tiene el sector y la necesidad de sostenerse económicamente: *"Yo llegué a la minería por casualidad hace unos años, no por amor a esto porque es un trabajo duro, uno está al sol y al agua, pero es que tenía que comer, pagar arriendo y mantener la familia" (*E3, 26 años).

Esta situación en sí misma, aboca a la defensa de la minería porque los mineros, tanto aquellos jóvenes como otros de mayor edad, no visualizan otras posibilidades de trabajo lo cual se asocia con su momento evolutivo y poca o nula preparación para el mundo laboral *"no es ilegal, porque ¿cómo va a ser ilegal algo que le da trabajo a uno?... yo y otros que no estudiamos no podemos hacer algo diferente, menos a esta edad" (*E7, 50 años). En esta vía el riesgo que sobre el sector minero aparece, debido al despliegue de control estatal, se sitúa como un detonante para problemáticas psicosociales en el territorio:

> *"Si la minería se acaba?, no esto se vuelve me va a perdonar usted un mierdero una cosa muy mala porque ¿qué hace toda esa gente? Echar pa´l monte, hacer cosas malas como antes […] si claro cultivar coca y hacer maldades, ¿qué más?"* (G.F9, 33años).

Las necesidades básicas insatisfechas, autorizan a los mineros formales e informales a explotar la naturaleza, sobreponiendo una visión individual, desde la cual prevalecen intereses particulares actuales, que no favorecen la reflexión sobre el impacto de sus prácticas sobre el medio ambiente, el tejido social y su responsabilización como gremio. Así, esta categoría permite perfilar a grosso modo, aunque exceda los límites de esta investigación, las relaciones que se establecen entre la explotación de minerales y las dimensiones de pobreza, inequidad y corrupción presentes históricamente en la subregión. Esto último considerando que la impronta relacional de utilidad hacia el territorio, desprovista de apego y capacidad reflexiva, se enlaza al dominio y control desplegado por diferentes actores, así como a la perpetuación de ciclos de violencia, pobreza y exclusión que se expresa en todas las dimensiones vitales de la subregión.

3. *Mineros ambiental y socialmente responsables.*

Una de las representaciones sociales producidas por los mineros participantes de la investigación se relaciona con la mirada de responsabilidad sobre sus prácticas. Como se dijo anteriormente, el gremio minero, tradicionalmente individualista, no logra asumirse como una figura que se reconozca proyectada en el tiempo y con unas prácticas mediadas por la reflexión y la crítica. Sin embargo, la presión ejercida desde el Estado y organismos ambientales, así como las dinámicas globales que sitúan la minería en el centro de los debates los ha obligado en primer lugar a organizarse como gremio y colectivo y segundo a pensarse marcos de responsabilidad socio-ambiental desde sus posibilidades.

> *"Nosotros los mineros somos personas que queremos trabajar, que queremos salir adelante el día a día, obviamente sin hacerle mal a nadie ni a la tierra porque uno como no va querer esto tan bonito, sino que toca también trabajar y se puede hacer de forma responsable*". (E11, 35 años)

La transición de un minero tradicional irresponsable, empíricamente dispuesto a explotar el territorio, se encuentra con exigencias del medio político y social y es permeado por discursos circulantes del medio ambiente, la contaminación y la protección de la naturaleza. Básicamente, los mineros consideran que pueden ser ambientalmente responsables y sostenibles, asumiendo costos que implican la recuperación de los suelos, la reforestación y el manejo de insumos químicos, al igual que un mayor cuidado en los procesos de contrataciones y de salud ocupacional. No obstante, esta disposición, destaca los formalismos estatales como limitantes para tal empresa: *"aquí hay gente que quiere formalizarse, que quiere trabajar bien, pero el gobierno no apoya, nos exige como si fuéramos multinacionales y no entiende que es otra realidad la de nosotros*". (E2, 24 años)

Aunque esta representación social condensa argumentos, que denotan posibilidades de encuentro entre el gremio minero y las batutas del desarrollo que propone el Estado, también expresan contradicción y pueden indicar que es una categoría poco elaborada en la que aún queda mucho camino para que se consolide y opere en la cotidianidad de esta población. Esto significa, que emerge ligada a la apropiación ligera de otros discursos y a la necesidad de tener argumentos para la defensa de su oficio, más que a una evaluación significativa de las practicas mineras y la finitud de los recursos, asunto que resulta omitido en las narrativas del grupo.

Conclusiones

Este texto ha presentado representaciones sociales sobre la condición de minero, identificadas en un grupo de la subregión del Bajo Cauca Antioqueño. Estas construcciones revelan un posicionamiento y un saber construido en la población, a partir de unas prácticas alrededor de la minería en dicho contexto.

En Bajo Cauca, existe un conflicto socio-ambiental minero, de carácter interno porque revela intereses de poder y

dominio sobre los recursos, que convoca a mineros formales e informales, grupos ilegales y el Estado. De ahí que se pueda identificar una permanente construcción y deconstrucción de lugares de poder, expresados en representaciones sociales que condensan una interrelación de prácticas y discursos, en términos de complementariedad y tensión. Dichas representaciones no emergen en la individualidad de los participantes ni del grupo como unidad de análisis, sino que apuntan hacia relaciones con otros actores interesados en el sector con los cuales se relacionan y tensionan en marcos geopolíticos globales.

Estas representaciones sociales, dotan de sentido las prácticas de los mineros y permiten un marco seguro para la acción colectiva desde el cual se aboca a la defensa de sus intereses como gremio, y de manera especial el cuidado de un lugar identitario que ha resultado amenazado y devaluado, principalmente por el Estado y sus políticas regulatorias para el sector minero. Como un factor importante ante estas situaciones, se identifica, el reconocimiento de la necesidad de organizarse y operar como colectivo, lo cual constituye posibilidades de emergencia como actores políticos, con un lugar común de enunciación común y mayores posibilidades de hacer resistencia. Pertenecer a la Asociación de Mineros del Bajo Cauca (ASOMINEROS B.C) y la Confederación de Mineros (CONAMINEROL) es para ellos un reflejo de lo que han podido ir logrando.

Aunque como elemento transversal aparece los términos utilitaristas en las relaciones territoriales, esto es un punto de partida para la vinculación con el mismo en términos simbólicos y afectivos, pues las prácticas de sostenimiento económico, son también dotadas de relacionamientos, afectos, valores, experiencias y reconocimientos. Así aparece como constante una necesidad de recuperar su valoración social, como actores positivos para la subregión y defender una actividad que permite acceder a una vida digna y económicamente estable.

Se hace notable también, que, al entrar en contacto con temas de desarrollo y sostenibilidad, ha permitido que el imaginario colectivo se vaya nutriendo de nuevas perspectivas frente a su hacer y se asuman como parte de un sistema, cuyo andamiaje se asocia a intereses economicistas y el poder. Esta representación es importante, porque indica una revalorización de su lugar en las dinámicas económicas y políticas del país, anuncia necesidad de cambios, de ejercicios de resistencia y fortalecimiento gremial, lo cual a su vez puede señalar un primer indicio de encuentro con posiciones del Estado frente a las ideas de desarrollo y legalización así como una mayor incorporación de la voz de las comunidades locales en los procesos territoriales.

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Young Children's Use of Manipulatives to Represent Addition Concept

Uso de manipuladores por parte de niños pequeños para representar el concepto de adición

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ABSTRACT

One of the first fundamental arithmetic concepts that young children learn in school is addition. This article explores how young children use manipulatives while working on tasks relating to number and addition. The study employed case study research design and involved six children (aged six years) in one preschool center. Observation of children's work during mathematical tasks revealed children's early understanding of the addition concept. Hence, it is important that educators value and support the early development of children's mathematical representations to facilitate their successful use in learning and understanding mathematics concepts.

Keywords: Young children, Addition concept, Manipulatives, Representation.

RESUMEN

Uno de los primeros conceptos aritméticos fundamentales que los niños pequeños aprenden en la escuela es la suma. Este artículo explora cómo los niños pequeños usan manipulativos mientras trabajan en tareas relacionadas con el número y la suma. El estudio empleó un diseño de investigación de estudio de caso e involucró a seis niños (de seis años) en un centro preescolar. La observación del trabajo de los niños durante las tareas matemáticas reveló la comprensión temprana de los niños del concepto de suma. Por lo tanto, es importante que los educadores valoren y apoyen el desarrollo temprano de las representaciones matemáticas de los niños para facilitar su uso exitoso en el aprendizaje y la comprensión de los conceptos matemáticos.

Palabras clave: niños pequeños, concepto de adición, manipulativos, representación.

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1. INTRODUCTION

Representations are inevitable in mathematics classrooms worldwide. A variety of representations are commonly used across all grade levels. Research provides substantial evidence that the use of representations has a positive influence in the teaching and learning of mathematics. Representations can support the communication of mathematical ideas, develop conceptual understanding and facilitate problem solution (Bakar & Karim, 2019; Bakar, 2017; Rosli, Goldsby & Capraro, 2015; Ainsworth, 1999; Ayub, Ghazali, & Othman, 2013). The National Council of Teachers of Mathematics highlights the use of representation in mathematics classrooms to support the understanding of abstract concepts (NCTM, 2000). As gaining understanding is critical in mathematics (Hiebert, 1997), representation can play a major function as there is a strong connection between representation and conceptual understanding (Yuanita, Zulnaidi, & Zakaria, 2018; Abdullah, Halim & Zakaria, 2014; Abdullah, Zakaria & Halim, 2012; Ainsworth, 1999).

Research on representation use indicates a positive link between representation use and students' performances in problem solving. Researchers have asserted that students who created representations managed to solve the problems successfully (e.g. Bakar, 2018; Edens & Potter, 2007; Uesaka, Manalo & Ichikawa, 2007). Through the processes of internalization and externalization during representation-creation and through making connections between the two (Goldin & Stheingold, 2001), problem context can clearly be 'seen' which in turn facilitates problem solutions.

Although researchers have been investigating students' performances as a result of representational usage and revealed useful information about the positive contribution of representation in mathematical learning, still there is a limited picture about children's understanding of the concept being explored. Furthermore, studies on young children and their use of representations are limited (Johns, 2015) specifically relating to the use of manipulatives in facilitating young children's concept formation and understanding of abstract mathematics concepts.

2. RESEARCH BACHGROUND

Researchers have confirmed that manipulatives are a powerful aid in teaching and learning mathematics. This type of representation is commonly used in mathematics classrooms worldwide and across all grade levels. Teachers included manipulatives in instruction as they believed children profited from their use (Howard & Perry, 1997). As for children, they enjoyed learning with manipulatives (Howard & Perry, 1997).

An advantage of that approach, as suggested by Manches and O'Malley (2016), is that actions on manipulatives aided problem-solving by leading children to particular procedures. Actions on manipulatives, such as grouping objects into two equal sets, swapping over groups and moving objects, corresponded to part-whole relationships leading children to produce more solutions when solving additive composition tasks compared with using pictorial representation in the absence of manipulatives.

Furthermore, manipulatives are widely used to help students to bridge concrete objects with their abstractions. Concrete materials such as counters and blocks are useful in developing students' mental images. Teachers often expect that manipulatives facilitate students' creation of an internal representation of the external concepts being taught. Students' constructions of mental imagery are either rigidly or flexibly connected to the materials used (Thomas & Tabor, 2012). Unfortunately, there is no promise that students automatically create the intended internal representation in their mind and some students are likely to 'see' different concepts in the same manipulatives (Puchner, Taylor, O'Donnell, & Fick, 2008). Indeed, the external representation is useful only after one has internally made sense of it (Goldin & Shteingold, 2001).

Despite its advantages, researchers have expressed concerns about the use of manipulatives. This is because students have used manipulatives in a rote manner without attaching meaning to the manipulatives (Puchner et al., 2008). Furthermore, even if they use manipulatives, actions encouraged by the physical materials do not always support learning. Lesh, Post & Behr (1987) propose that students use various forms of representations flexibly, instead of depending only on one type of representation (such as relying only on symbols).

Researchers emphasize the importance of developing children's arithmetic skills in the early years of instruction (Gelman & Gallistel, 1978; Patel & Canobi, 2010; Resnick, 1992). Skills learned in the early years of school are important knowledge for use in many aspects of everyday life as well as for use in future learning and life. Children's early counting experiences provide an important base towards understanding addition concepts (Gelman & Gallistel, 1978). Research relates the strong relationship between children's quantitative knowledge in the early years with success in later years of schooling (Krajewski & Schneider, 2009).

In Malaysia, preschool children (aged four to six years old) are expected to understand the addition concepts and solve problems using the operation (Ministry of Education Malaysia, 2010). This basic skill is one of the important foundations needed for later mathematical learning. For example, knowledge and understanding of addition may support learning of subtraction and multiplication (as repeated addition).

Since teachers reported that their pre-schools' children faced difficulties understanding the addition concept and continued struggling with this basic operation in Year One (Tyng, Zaman, & Ahmad, 2011), this study explored the use of manipulatives in learning addition concept. More specifically, it is important to discover if manipulatives are beneficial in facilitating the learning and understanding of the addition topic.

3. THE STUDY

The purpose of this study is to explore the use of manipulatives by young children to portray their understanding of addition concept. Specifically, this research will investigate how manipulatives support the students' understanding of mathematics concepts involving the concept of number and addition.

The study involved six children from the same 'pre-school' classroom in Malacca, Malaysia. The study was conducted during the first term of school, hence their mathematical achievement was solely based on a pre-test that focused on counting abilities and the application of counting skills to basic addition and subtraction tasks. It is important to note that despite fact that the post-test was not being presented in this paper, the children's performance in basic number skills was found improved.

The study engaged children in one-to-one tasks with no explicit teaching of addition undertaken as part of the data collection process. The researcher, who acted as the teacher with this group of children over a period of five weeks, introduced the addition process through a series of developmental steps beginning from modelling with concrete materials and finally producing the number sentence. Together, the researcher and the children explored various addition scenarios, with the use of a variety of representations actively encouraged. The children were required to represent various quantities and addition situation.

The children's creation and use of manipulatives during the tasks were examined to obtain insight into the children's understanding of the concept. Specifically, the strategies, procedures, behaviours, and discussions as they manipulated the concrete materials were analyzed in detail, as this provided evidence of their understanding of the concepts.

4. DATA SOURCES AND ANALYSIS

Several sources of data were collected during the study including observations, field notes, conversations with children, artefacts, audio and video recording. Initially, children's work was analysed. Video analysis of children working exhibited how children created their representations. Conversation with children helped to clarify the representation they created and explain what they have in mind during their engagement with the tasks. Each child's pre-test score, representation creations and associated talk, as well as events and behaviours that informed their mathematical thinking were summarised in a table. This allowed analysis of various representation forms from different children. Additionally, the table allowed for comparison of representation creations and thinking among different children. The representation created by the children, in combination with the thinking involved (identified through observations and conversations with children) revealed the children's understanding of the concept of number and addition.

5. DATA SOURCES AND ANALYSIS

The findings presented in this paper involved only a small part of a larger project investigating the variety and use of mathematical representation by children (aged 6 years). The way children created and used the representation is first described. We then report the children's understanding of the concepts, as revealed through the procedures and strategies observed during the creation and use of representations. Next, we summarize the key findings related to children's representation creation and use, as well as their understanding of the concepts.

Representations of Number and Addition

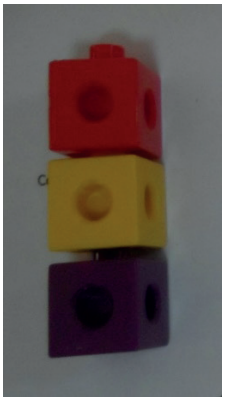
Representing Quantity

In this study, the researcher introduced the children to the addition concepts using a variety of manipulatives. Examples of concrete materials included linking cubes, coins, pegs and marbles. All these concrete materials were familiar to the children and are commonly found either in their learning or home environments where they have experienced using them or observed others manipulating the objects. The initial task involved the children's creation and representation of numbers using various concrete materials (i.e. including cubes) with assistance from the researcher. In later tasks, children were required to employ cubes independently to demonstrate their understanding of addition.

When asked to represent a quantity of a spoken number with concrete materials, the ability to associate the spoken number name with the correct quantity is essential. Given the task to represent 'three' using cubes, all children had no difficulty in getting the correct quantity of cubes from the box placed in front of the classroom. They then displayed the quantity in various forms (refer Figure 1). Some children linked the cubes together while others grouped them. They constructed the quantity easily and quickly. Using the three cubes they had on hand, Norman and Aimy linked the cubes together to form the construction in Figure 1a. Similarly, Qaisya and Deliyana connected one cube with another and continued until she reached the total (refer Figure 1b). Unlike the previous children, Nadia grabbed 3 cubes and grouped them together (refer Figure 1c). As can be seen in Figure 1d, Ali and Rozy constructed the quantity similar to the way Nadia did. None of the children commented on the quantity despite the fact that they were aware of the differences in the construction of the cubes; showing that they knew the quantity remained as 'three', despite having them displayed in various ways. This showed that the children had a stable understanding of quantity.

A stack of 3 cubes to represent the quantity '3'

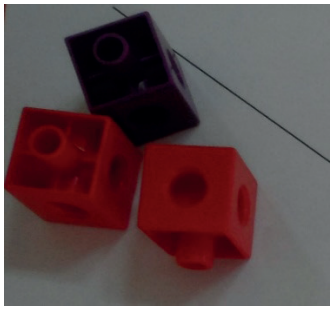
a) 3 cubes Linked (by Norman and Aimy)



3 cubes Linked (by Qaisya and Deliyana)

A group of 3 cubes to represent the quantity '3'

c) 3 cubes Grouped (Nadia)



d) 3 cubes Grouped (Ali and Rozy)

Figure 1: Examples of children's construction of the quantity 'three' using cubes

Representing Addition

Since the students had only recently been introduced to the addition concept, the researcher began with a simple addition situation to initiate children's manipulation of concrete materials. The children were then given different addition scenarios involving different quantities and were encouraged to use a variety of concrete materials to help them grasp the concept more firmly.

Representing the Addends

The initial task involved small numbers for the addends (3 and 1). The researcher asked the children to model the addition situation with the cubes and to also obtain the total. The majority of the children were able to represent the quantity and the addition situation easily (refer Figure 2). Whilst manipulating the cubes, Aimy and Rozy counted aloud. "1, 2, 3….4". "4" both said confidently and smiled. Similarly, Qaisya was observed to count softly and slowly as she constructed the first addend "1, 2, 3". "And here 1" as she simultaneously included the second addend. She then counted them all "1, 2, 3 and 4". "4' she said aloud. Note that in exhibiting the first addend, the children demonstrated different ways of presenting the quantity of the addends (i.e. linked them horizontally, grouped them together and linked then vertically).

3 (in a line) and 1 by Qaisya

3 (in a group) and 1 by Rozy

3 (in a pile) and 1 by Aimy

Figure 2: Examples of children's construction of addition using cubes, showing different ways of representing the first addend

As in Figure 2a, Norman, Nadia, and Qaisya formed a horizontal line with the cubes. As seen in Figure 2b, Rozy constructed a group of three cubes, while Aimy stacked the cubes vertically (refer Figure 2c). They continued modelling the second addend by putting one cube separate from the previous construction. They then counted the cubes one-by-one to obtain the total. By doing so, they identified addition as comprising of two groups of objects and counting all the objects in both groups to obtain the total.

Representing the Total

Given the addition situation "3+1", Ali lined all four cubes, that were very close to each other, in a straight line (refer Figure 3).

Figure 3: Ali's construction of addition using cubes (the total)

By contrast with other children who represented both the addends, Ali's construction contained no gap between the three cubes and one cube. Presumably he was not yet aware that addition comprises two separate quantities. By constructing the total (four cubes), he demonstrated that he knew how to perform addition. However, it was not clear if he understood the underlying principles in addition. He might have only followed the procedure of counting all to reach the solution rather than understanding the meaning of addition.

6. DISCUSSION OF FINDINGS

The findings from the data indicated that the young children's use of representation provided insights into their understanding of numbers and addition concepts. The exploration of numbers and addition using concrete materials had facilitated their understanding of numbers and addition.

Understanding Numbers

The children's manipulation of concrete objects during the construction of various quantities showed evidence of their understanding of quantity. When constructing groups of items using the cubes provided to them, the children showed the one-to-one principle as they touched/ pointed to each manipulative and simultaneously verbalized the given number names. Also, the children's concrete construction of quantities reflected their understanding of cardinality, in which the last number represents the total quantity (Batchelor, Keeble, & Gilmore, 2015). By presenting the quantities in various forms including as a set of objects as well as in a line (i.e. vertically and horizontally), the children provided evidence for their knowledge relating to the cardinality principle (i.e. knew that the final number of the set designates the total number of objects). Also, the children demonstrated a stable understanding of quantity, evidenced through the construction of quantities in various formation (objects in a line and in groups).

Addition Understanding Using Concrete Representations

The analysis of these data suggests that the manipulation of the concrete materials was helpful in facilitating the children's understanding. Manches and O'Malley (2016) found that the use of concrete materials (for example, by touching them) was helpful in stimulating students' senses. After constructing the cubes into two different groups, pointing to and touching the cubes while simultaneously counting, helped the children in the present study develop understanding of addition as combining the groups to obtain the total. This is particularly important for children who were introduced to the new concept who would not have been able to arrive at the total if they had not pointed to the manipulatives. Further, repeated experience manipulating concrete materials gradually assisted the children to transform their concrete knowledge into abstract knowledge. Moyer (2001) claimed that the meaning of the mathematical ideas does not lay in the physical nature of the manipulatives. This was evident in this study. After the children had reflected on their actions on the manipulatives, they were then able to make the link between manipulatives and concrete materials.

The children's ability to quickly learn the addition process through the researcher's demonstrations of addition using manipulatives supported previous research that established the contribution of such tools on students' learning (Gibbons, 2012). With the help of various manipulatives, most children succeeded in providing correct answers by counting all the quantities they constructed. Young children were more successful in performing addition problems when concrete referents were made available to them, compared with story and number fact problems in which physical referents were absent (Levine et al., 1992). As cautioned by Hiebert and Wearne (1992), students occasionally used manipulatives in a rote manner without understanding the concepts behind the procedures. Since they applied no obvious action to the concrete materials (putting the groups together), it raises concerns about the

children's ability to link the manipulatives with the addition concept being taught.

Counting-all to Add

Since counting is the key foundation in performing and understanding addition (Baroody, 1987a), and since counting and adding are interrelated when performing addition, it is equally important to differentiate between the two mathematical actions in this study to be able to identify children's understanding of the concept of addition.

The children's verbal counting that accompanied the construction was analyzed as this was helpful in inferring their thinking regarding addition concept. As both counting and adding involved finding the cardinality of a set of objects, children's verbal counting would be helpful in determining whether the children were merely counting, or whether they counted to add the objects. Most children were found to be employing *counting-all*, in which they started counting from the first group, then followed by counting the second group, and finally obtained the total. This addition strategy showed some signs of addition knowledge. Evidently, the children did not merely count, but they counted to add. As identified by Siegler and Jenkins (1989), there are eight strategies used by young children to solve addition, in which five of them involve counting. Considering that the children had only recently introduced to addition, it is possible that they began with *counting-all* and used this strategy on almost all occasions, as this is one of the simplest strategies used by young children (Baroody, 1987b). Furthermore, *counting-all* is a useful and unavoidable method for addition (Fuson, 1992) especially for young children.

7. CONCLUSION, IMPLICATIONS AND RECOMMENDATIONS

The children in this study were provided with opportunities to work with quantity and addition using concrete materials. By manipulating concrete materials related to numbers and addition, they developed their understanding of the concepts. By using concrete materials (cubes) to represent quantities as well as addition, none of the children had any difficulty in completing the tasks. They could construct the required quantities easily and accurately. They even demonstrated their stable understanding of quantity as evident by representing the quantities of the addends in different arrangements, but still resulting in similar totals. All the children demonstrated addition as comprising two groups of cubes. Also, the children in this study could easily manipulate the concrete materials to represent the required addition situation.

This study has implications for the constructivist theory of learning. The children's active manipulation of the concrete materials aided the children to make sense of the addition concept rather than knowing the knowledge simply by listening to the teacher's explanation relating to the concept. Hence, curriculum developers and educators need to practice constructivist learning theory in the development of Mathematics learning content, strategies as well as assessment for young children.

This study showing children's capability of making sense of newly introduced addition concepts by exploring and manipulating concrete materials has implications for the instruction and assessment used in mathematics classrooms. Children might be in disadvantages when instructions or assessments put emphasis only on one particular representation form (i.e. symbols) as it would be detrimental to children who have not yet transitioned to the abstract level; that still require alternative representation forms (e.g. able to explore and grasp better with the help of concrete form). Hence, teachers should attend to the differences in knowledge, skills and learning styles by promoting the use of manipulative as scaffolds to learning and understanding.

Future research should include teaching intervention that supports students utilizing various forms of representation effectively including the use of concrete materials for teaching as well as learning. It is also important that both teachers and value alternative representation forms (e.g. manipulatives and visual representation forms) particularly as it is helpful when learning new mathematics concepts.

ACKNOWLEDGMENT

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Validity and reliability of questionnaire on preschool Teachers' self-efficacy in the teaching of English as a second language

Validez y fiabilidad del cuestionario sobre la autoeficacia de los docentes de preescolar en la enseñanza del inglés como segunda lengua

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ABSTRACT

This study aims to determine the validity and reliability of a questionnaire on preschool teachers' self-efficacy in the teaching of English as a second language in Malaysia. This survey-designed study used questionnaire as the instrument. The questionnaire contains 87 items under three constructs; teachers' self-efficacy, teachers' English language proficiency, and teaching strategies. Five experts were involved in validating the questionnaire while the reliability coefficient values were obtained from 200 preschool teachers of three districts. The results have shown that the validity of the questionnaire is high with the coefficient value of .924 based on the consensus from the experts. The Cronbach's Alpha coefficient values of the reliability for self-efficacy construct was .921, English language proficiency construct was .961, and teaching strategies construct was .976. Therefore, the questionnaire has been proven to have high validity and reliability which is appropriate to measure preschool teachers' self-efficacy, English language proficiency, as well as teaching strategies in the teaching of English as a second language.

Keywords: Validity, Reliability, Self-efficacy, Preschool Teachers.

RESUMEN

Este estudio tiene como objetivo determinar la validez y confiabilidad de un cuestionario sobre la autoeficacia de los maestros de preescolar en la enseñanza del inglés como segundo idioma en Malasia. Este estudio diseñado por encuestas utilizó el cuestionario como instrumento. El cuestionario contiene 87 ítems bajo tres constructos; autoeficacia de los maestros, dominio del idioma inglés de los maestros y estrategias de enseñanza. Cinco expertos participaron en la validación del cuestionario, mientras que los valores del coeficiente de confiabilidad se obtuvieron de 200 maestros de preescolar de tres distritos. Los resultados han demostrado que la validez del cuestionario es alta con el valor del coeficiente de .924 basado en el consenso de los expertos. Los valores del coeficiente Alfa de Cronbach de la confiabilidad para el constructor de autoeficacia fueron .921, el constructor de dominio del idioma inglés fue .961 y el constructor de estrategias de enseñanza fue .976. Por lo tanto, se ha demostrado que el cuestionario tiene una alta validez y confiabilidad, lo cual es apropiado para medir la autoeficacia de los maestros de preescolar, el dominio del idioma inglés, así como las estrategias de enseñanza en la enseñanza del inglés como segundo idioma.

Palabras clave: Validez, Fiabilidad, Autoeficacia, Maestros de preescolar.

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1. INTRODUCTION

The objectives for preschool education are to instil potential in children in all aspects of development, empower basic skills, and embed good values along with positive attitudes to prepare them for future formal education. Child development can be achieved through six Learning Strands that are implemented through integration. English is one of the subjects in the Communication Strand as outlined in the National Preschool Curriculum Standard (NPSC). The objective of introducing the subject into NPSC is to enable children to communicate in English in their daily interactions in line with its status as a second language. Throughout the experience, children would eventually undergo a continuous process of acquiring second language following their age and physical development (Arina & Hasnah, 2010). Therefore, the quality of English teaching and learning should be given priority in ensuring that the children acquire better language skills.

Alexander (2015) stated that improvement in the quality of teaching and learning in school would not be possible without enhancing the quality of teachers. This is because quality teachers are those who are able to conduct an engaging and effective classroom learning. In order to achieve this goal, teachers should master appropriate and relevant knowledge, skills, as well as confidence in implementing the teaching and learning process.

Nonetheless, the reality of the English teaching environment at preschool level shows the opposite. Preschool teachers in Malaysia were found to rarely converse in English during classroom teaching due to lack of proficiency in the language (Rohaty, 2013). This statement is supported by a research done by Zuraydah and Rohaty (2014) where they found that English proficiency amongst English preschool teachers in Sepang district, Selangor was at moderate level. A study by Nur Nazuha Beevi and Nordin (2017) also reported that English proficiency amongst English preschool teachers in Larut, Matang, and Selama districts were at moderate level. These preschool teachers were reportedly avoiding to converse in English and feeling less comfortable in doing so. The latest study conducted by Ngu and Suziyani (2019) reported that one of the constraints that preschool teachers are facing in conducting English lessons is that the teachers themselves are less fluent in the language. This is causing them to be unsure of themselves to teach English effectively. When teachers fail to master the English language proficiently, the aim of introducing the basic of the language to preschool children may not be achieved successfully.

In the efforts to become an effective teacher, knowledge on lesson contents as well as pedagogy is not enough, as confidence and self-efficacy of teachers have a stronger influence towards effectiveness in teaching (Tschannen-Moran, Hoy, & Hoy, 1998). However, there is a gap in preschool teachers' self-efficacy research in Malaysia (Izzah Hanis & Suziyani, 2015). Therefore, in order to enhance the quality and effectiveness of the teaching of English at preschool level, it is necessary to explore the self-efficacy of preschool teachers. It is hoped that this study could shed light and provide preliminary views on the levels of teachers' self-efficacy, English language proficiency, and teaching strategies on the teaching of English as a second language in Malaysia. This study also provides recommendations on the improvement of teachers' self-efficacy which could enhance the quality of teaching and learning as well as English acquisition of preschool children.

The purpose of this study is to determine the validity and reliability of a questionnaire on preschool teachers' self-efficacy in the teaching of English as a second language in Malaysia. Two research objectives are formulated based on the purpose of the study:

1) To determine the suitability of items within the constructs through the validation of experts.
2) To determine the reliability value of instrument through the analysis of Cronbach's Alpha coefficients.

2. LITERATURE REVIEW

Definition and Concepts

Self-efficacy refers to the cognitive process which drives one's behaviour. According to Bandura (1977), self-efficacy is an individual evaluation on his/her ability in planning and executing tasks in order to achieve the desired outcomes. Self-efficacy is the determinant for a teacher's well-being, motivation, and achievement. A teacher could be apathetic in dealing with challenges unless the results are fruitful and promising. Among the significant factors which differentiate one teacher over another are self-efficacy, belief, confidence of one's strengths, and the capability to teach as well as influence the students (Ashton, 2009; Evertson, 1986; Gibson & Dembo, 1984).

The concept of self-efficacy is supported by several practical studies which proved how teachers' self-efficacy is significantly connected to the effort of teachers in the teaching and learning as well as their perseverance in overcoming obstacles. There is a positive relationship between teachers' self-efficacy and teaching behaviours. A teacher could perceive himself/herself as less or more skilful. Nevertheless, having the thought of being a highly skilled teacher could eventually boost the effort in realising the thought into reality based on the acquired skills and knowledge (Bandura, 1977; Tschannen-Moran, Hoy, & Hoy, 1998).

Therefore, preschool teachers need to possess high self-efficacy in the teaching of English as a second language. Teachers who are highly efficacious would be able to implement effective teaching strategies as compared to teachers with low self-efficacy who tend to disregard students' cognitive development and capabilities (Gibson & Dembo, 1984). Apart from that, high self-efficacy could motivate preschool teachers to work on a variety of teaching practices as well as maintaining perseverance in dealing with challenges.

Theoretical Framework

According to Tschannen-Moran, Hoy, and Hoy (1998), teachers' self-efficacy is the confidence of teachers in their capabilities in teaching and motivating students regardless of the students' abilities and family background. Self-efficacy is significantly related to positive behaviour and personality of teachers. Tschannen-Moran, Hoy, and Hoy (1998) added that contents and pedagogical knowledge may not be sufficient to become an effective teacher as capabilities and confidence are also crucial

and highly influential towards the effectiveness of classroom practice. Hence, they suggested that the measurement of teachers' self-efficacy should cover the components of teaching task analysis and teaching competency assessment. Both of the components are interrelated and occur simultaneously in shaping teachers' self-efficacy. Therefore, Tschannen-Moran, Hoy, and Hoy (1998) proposed an Integrated Model of Teacher Efficacy as shown in Figure 1.

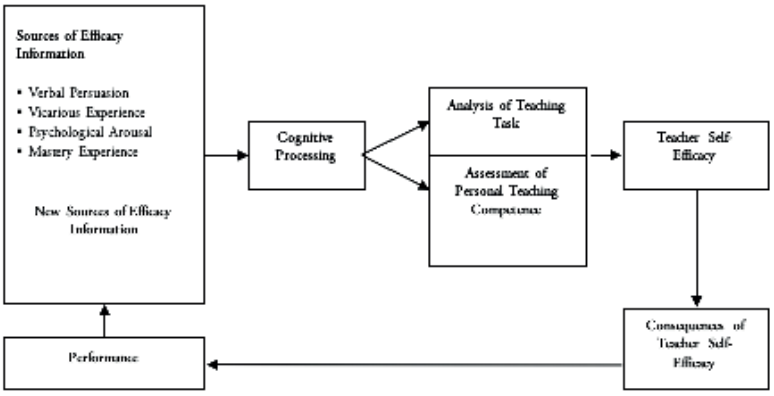

Figure 1. Integrated Model of Teacher Efficacy

Based on this model, teachers' self-efficacy is cyclical in nature. The four sources of information for efficacy; verbal persuasion, vicarious experience, psychological arousal, and mastery experience could contribute in enhancing the self-efficacy of teachers (Bandura, 1977). This information would then be processed by teachers through the analysis of teaching task and assessment of personal teaching competence. Cognitive processing would determine the strength of information source which also influences the competency of the teachers' self-efficacy. According to Tschannen-Moran, Hoy, and Hoy (1998), in cognitive processing, the most influential source of information on teachers' self-efficacy would be determined by analysing the competency of the job performance.

After analysing the information, teachers would develop efficacious judgement and use it to identify the aims, endurance, and determination in achieving the desired outcomes. Based on the teachers' effort and performance, the mastery of new experience would be created thus, becomes the indicator of efficacious judgement in the future.

In regards to the purpose of this study, the researcher referred to the Integrated Model of Teacher Efficacy developed by Tschannen-Moran, Hoy, and Hoy (1998) as the foundation model. The English language proficiency of the teachers acts as the assessment of the teaching competence while the teaching strategies would be the analysis of teaching task.

Development of Questionnaire on Preschool Teachers' Self-Efficacy in the Teaching of English

Based on the Integrated Model of Teacher Efficacy proposed by Tschannen-Moran, Hoy, and Hoy (1998), a questionnaire on preschool teachers' self-efficacy in the teaching of English as a second language in Malaysia was then developed. The questionnaire contains three constructs: self-efficacy, English language proficiency, and teaching strategies.

The self-efficacy construct refers to the belief and confidence of teachers of their strengths, capabilities, and competencies in teaching (Gibson & Dembo, 1984). This construct was adopted from the Teacher Efficacy Scale (TES) questionnaire by Gibson and Dembo (1984) to suit the context of this study. TES was developed based on the theory of social cognitive proposed by Bandura (1977) which stated that one's performance is determined by the confidence and capabilities to perform the desired tasks. Based on this theory, Gibson and Dembo (1984) developed the TES questionnaire which contains two subconstructs: i) personal teaching efficacy (PTE) and ii) general teaching efficacy (GTE). PTE refers to the belief that one has the skills and abilities to bring about student learning. As for GTE, it refers to the belief of teacher's ability to bring about change as to be significantly limited by external factors such as home environment, family background, and parental influences.

The construct of English language proficiency refers to the teachers' competency assessment in four English language skills: listening, speaking, reading, and writing. This construct was adopted from the Teachers' Reported English Language Proficiency Questionnaire by Ghasemboland (2014) which suits the context of this study.

The construct of teaching strategies refers to the practical techniques applied by teachers during the teaching and learning process which could enhance knowledge, skills, and comprehension of the children in terms of the learning contents. This construct also exhibits the initiatives taken by teachers in creating an engaging learning environment, providing guidance, using appropriate teaching materials, conducting suitable activities, as well as building well-rounded characters of the students (Moore, 2015). This construct was adopted from the questionnaires on the Use of Strategies to Improve Emerging Literacy by Hawken, Johnston, and McDonnell (2005) and the Instructional Practices in Teaching English to Malaysian Primary Pupils by Juliana (2010).

3. METHODOLOGY

Research Design

This study employed survey as the research design to investigate the coefficient values of the validity and reliability of the questionnaire. The type of survey used in this study is cross-sectional in which the data collection occurs once and is taken from one sample at a particular time (Creswell, 2008). This study aims to determine the validity and reliability of items in the questionnaire. This study applied simple random sampling method. According to Mohd Majid (2005), simple random sampling is used to ensure that each and every individual receives equal chance to be selected as respondents in representing the population.

Research Participants

The questionnaire was validated through the assessment of five experts with doctorate degrees in Preschool/Early Childhood Education, Teaching English as a Second Language (TESL), and Counselling. These experts have vast experience and knowledge in this field of study. This type of validation was used as Mohd Majid (2005) recommended researchers to seek reviews from external assessors who are experts in the field in order to ensure that the domains in the measuring tool represent the field of study. The experts' reviews and suggestions were taken into consideration in improving the research instruments. A pilot test was then conducted to test the questionnaire to 200 preschool teachers from three districts in Selangor. The teachers are of various races, genders, ages, academic qualifications, as well as teaching experiences.

Analysis of Statistical Data

Data were retrieved manually based on validation made by the experts. Score 1 to 5 was given for each item. Indicators of each item score are presented in Table 1.

Table 1. Indicators of the Item Score

SCORE	*INDICATOR*
1	***Unaccepted*** *(require major correction)*
2	***Below Expectation*** *(require several correction)*
3	***Meet Expectation*** *(require minor correction)*
4	***Achieve Expectation*** *(no minor correction required but simple amendment is recommended)*
5	***Beyond Expectation*** *(no correction required)*

In determining the validity of the questionnaire, the researcher used the validity content formula by Sidek and Jamaludin (2005) as shown in Figure 2. In this formula, the total score of experts' views (x) is divided by the overall total score (y) and multiplied by 100. The end-value from this operation is in percentage. A questionnaire that scores 70% and above is considered to have a high validity content (Sidek & Jamaludin, 2005; Tuckman, 1988).

$$\frac{\text{Total score of experts' views (x)}}{\text{Overall total score (y)}} \times 100 = \text{Validity content score (\%)}$$

Figure 2. Validity Content Formula

For the reliability value, it was retrieved from the questionnaire data of 200 preschool teachers in three districts. For classification purposes, the Cronbach's Alpha coefficient values were classified based on the reliability index by Sekaran (2003) as shown in Table 2.

Indicator	*Cronbach's Alpha Coefficient Values*
Good	*> 0.80*
Average (accepted)	*0.60 – 0.79*
Low (unaccepted)	*< 0.6*

Table 2. Cronbach's Alpha Coefficient Values

4. RESULT

The validity of the questionnaire on preschool teachers' self-efficacy in the teaching of English as a second language

In order to determine the validity of the questionnaire, the researcher sought for the assistance of five experts to review the content of the questionnaire before conducting the pilot study. The five experts have Doctorate degrees in Preschool/ Early Childhood Education, Teaching English as a Second Language (TESL), and Counselling. Table 3 presents the background and reviews of each expert.

Table 3. Background and Reviews of Experts

Position	*Field*	*Review*
Senior Lecturer	*Early Childhood Education & TESL*	*The content of the questionnaire has fulfilled the requirements to conduct this study. Some suggestions are provided for researcher's consideration.*
Vice Director of Academic Development Centre, Teachers Training Institute of Malaysia (IPGM)	*Early Childhood Education*	*This questionnaire has fulfilled the requirements for pilot study and real study after necessary amendment has been made as stated in the review form. The researcher should also consider the local culture.*
Senior Lecturer	*TESL & Second Language Acquisition*	*The accuracy of the instrument content has been examined and compared with the constructs of the questionnaire.*
Senior Lecturer	*Counselling, Self-Concept and Children Counselling*	*There are several items with ambiguous meaning in one statement. The overall instrument content is clear and relevant with the construct/ sub construct.*
Teacher, Kindergarten Advisor & Preschool Coach	*Early Childhood Education & TESL*	*This questionnaire has fulfilled the requirements for pilot study and real study. The acceptance of review would depend on the agreement of the supervisor.*

Based on the analysis, the questionnaire on preschool teachers' self-efficacy in the teaching of English as a second language has a high value of validity with the coefficient index of .924. This value was retrieved through the operation of dividing the total score of experts' views with the overall total score which was then multiplied by 100 in order to get the percentage value. The end-value of this operation is the validity value for the questionnaire as shown in Table 4.

Table 4. Validity Value of the Questionnaire

	Percentage / Validity Coefficient	*Experts' Review*
The Questionnaire on Preschool Teachers' Self-Efficacy in the Teaching of English as a Second Language	*92.4% (.924)*	*Accepted*

Table 5 shows the content validity of the questionnaire based on each construct. For the construct of teachers' self-efficacy, its coefficient value is .93 while the value for teachers' English language proficiency construct is .898. The construct of teachers' teaching strategies has the highest value of .934.

Table 5. Content Validity of the Questionnaire Based on the Construct

Construct	*Percentage / Validity Coefficient*	*Experts' Review*
Teachers' self-efficacy	*93.0% (.93)*	*Accepted*
Teachers' English language proficiency	*89.8% (.898)*	*Accepted*
Teachers' teaching strategies	*93.4% (.934)*	*Accepted*

The indicator for a high content validity is based on Davis (1992) which is at 80% and above. Therefore, all the three constructs in the questionnaire are considered good and suitable to be used in the study as the values are above 80%. Based on the analysis, it is proven that the questionnaire has conformed to the accurate process of content validity.

The reliability of the questionnaire on preschool teachers' self-efficacy in the teaching of English as a second language

Reliability refers to the consistency of assessment scores (Guilford & Fruchter, 1978). Reliability test is performed on a factor that has been developed in order to determine the capability of an instrument to measure the construct that needs to be measured. The instrument needs to have the consistency and stability to measure the construct in order to obtain similar values when measured repeatedly for the second time, third time, and so on. The reliability value of Cronbach's Alpha was used to measure the internal consistency of the questionnaire.

The coefficient value of reliability for this questionnaire was .975. According to Mohd Majid (2005), the accepted coefficient value of reliability should be .80 or above. Thus, the coefficient value of the questionnaire for this study is considered as good. Table 6 shows the reliability values of the questionnaire based on each construct.

Table 6. Reliability Values of the Questionnaire

Construct	*No. of items*	*Cronbach's Alpha value, (α)*	*Interpretation*
Teachers' self-efficacy	*13*	*0.921*	***Accepted***
Teachers' English language proficiency	*24*	*0.961*	***Accepted***
Teachers' teaching strategies	*50*	*0.976*	***Accepted***

Based on Table 6, the coefficient value for the construct of self-efficacy is .921 which is the lowest as compared to the other two constructs. For the English language proficiency construct, its coefficient value is .961 while the highest value is the construct of teaching strategies which is .976. Hence, this analysis indicates that the questionnaire has a high value of reliability and is appropriate to be used for this study.

5. DISCUSSION

Based on the evaluation made by the experts, the analysis shows that the questionnaire on preschool teachers' self-efficacy in the teaching of English as a second language had a high validity value of 92.4% or the coefficient value of .924 and accepted by the experts. For all the three constructs, the overall achievement level of validity was between 89% to 93%. As recommended by Sidek (2005), Jamaludin (2002), and Mohd Majid (2005), the instrument with high validity is suitable and appropriate to be used in the research.

A measuring tool is considered to have a high validity value when it is able to measure all the contents and variables in the study effectively. In order to ensure the content validity of a measuring tool, it must fulfil five conditions: 1) items in the questions should illustrate the targeted behaviour with distinct meaning; 2) items are clearly presented; 3) items are connected with the objective of the measuring tool; 4) sufficient sample to measure the validity of the measuring tool; and 5) the response for each item is evaluated consistently (Sidek, 2005). Based on the evaluation made by the experts, the questionnaire used in this study has fulfilled all the five conditions. The questions in the questionnaire are clear and comprehensible by the respondents as well as aligned with the objectives of the study. Apart from that, the questionnaire allows the respondents to provide appropriate feedback.

The analysis also shows that the questionnaire has a high value of reliability. The coefficient value for the construct of teachers' self-efficacy was .921. For teachers' English language proficiency construct, its coefficient value was .961. The highest value is the construct of teachers' teaching strategies which was .976. Hence, this analysis indicates that the questionnaire has a high value of reliability and is appropriate to be used for this study.

Therefore, the questionnaire used in this study is proven to have high validity and reliability as the items were adopted from TES (Gibson & Dembo, 1984), Teachers' Reported English Language Proficiency (Ghasemboland, 2014), Use of Strategies to Improve Emerging Literacy (Hawken, Johnston, & McDonnell, 2005), and Instructional Practices in Teaching English to Malaysian Primary Pupils (Juliana, 2010). This study also confirms that the approaches used by the researcher in determining the validity and reliability of the questionnaire are appropriate and suitable. Hence, this study could benefit other researchers in terms of the validity and reliability measurement of the measuring tool. The questionnaire of this study could also be replicated for future study.

6. CONCLUSION

In conclusion, the questionnaire used in this study has been proven to have high validity and reliability which is appropriate to measure the constructs of preschool teachers' self-efficacy, English language proficiency, and teaching strategies in the teaching of English as a second language. Therefore, the development of this questionnaire could benefit the field of study on teachers' self-efficacy as self-efficacy could significantly influence the teaching of English as a second language. Highly efficacious teachers are directly correlated with the quality of English teaching and learning at preschool level as well as the enhancement of English language skills of the children.

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The Impact of On-The-Job Pilates Exercise on Job Satisfaction among the Female Employees of Urmia Electricity Distribution Company

El impacto del ejercicio de pilates en el trabajo sobre la satisfacción laboral entre las empleadas de Urmia Electricity Distribution Company

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ABSTRACT

This study intends to investigate the effect of on-the-job pilates exercise on job satisfaction. The study follows a quasi-experimental design with a pre-test and post-test method with a focus on control and experimental groups. The statistical population comprises of all female employees working at Urmia Electricity Distribution Company. The experimental group received 8 weeks of exercise doing sessions (3 sessions per week, 30 minutes per session) in Electricity Distribution Company gym while the control group did not receive any treatment. According to the results obtained, one can conclude that on-the-job Pilates exercise as sports technology had an effect on the job satisfaction of female employees at Urmia Electricity Distribution Company.

Keywords: Pilates exercise, job satisfaction, female employees

RESUMEN

Este estudio intenta investigar el efecto del ejercicio de pilates en el trabajo sobre la satisfacción laboral. El estudio sigue un diseño cuasiexperimental con un método previo y posterior a la prueba con un enfoque en el control y los grupos experimentales. La población estadística se compone de todas las empleadas que trabajan en Urmia Electricity Distribution Company. El grupo experimental recibió 8 semanas de ejercicio haciendo sesiones (3 sesiones por semana, 30 minutos por sesión) en el gimnasio de Electricity Distribution Company, mientras que el grupo de control no recibió ningún tratamiento. Según los resultados obtenidos, se puede concluir que el ejercicio de Pilates en el trabajo como tecnología deportiva tuvo un efecto en la satisfacción laboral de las empleadas de Urmia Electricity Distribution Company.

Palabras clave: ejercicio de Pilates, satisfacción laboral, empleadas

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Introduction

One can understand from a meticulous attention that the world is full of machine-based and computer-based lifestyles which itself emphasizes that employees at different management and execution levels, based on the type of task they accomplish, are prone to be infected by different diseases such as the excessive obesity, overweight, neuropsychiatric disorders, types of arthritis, blood pressure, blood lipids, (Ramezan, 2015) and various cardiovascular diseases and heart attacks. In addition, serious diseases might be experienced by less active employees, and the aforementioned problems can have a negative impact on job satisfaction and working performance which subsequently lead to absenteeism, inefficiency, and ineffectiveness (Dayang, 2012)

Concerning job satisfaction, unsatisfied employees are subject to various diseases including the headaches to the heart problems (Tojari, 2010). United States Psychology Association has reported a 300- milliard dollar cost of lack of job satisfaction due to the absenteeism, poor working performance, and health cares (Dayang, 2012). Considering these statistics, less attention has been directed toward the working context programs which trigger the psychological and physical health of employees (Kull, 2013). The concept of job satisfaction reveals positive emotions and attitudes of an individual with respect to his job (Mehrabian, 2013). What is meant by high levels of job satisfaction is that the individual likes his job, values his job, and holds positive attitudes towards his job so that he privileges of good and optimal senses towards it (Tojari, 2010).

The Pilates exercising method is a mixture of sports which concentrate on improving the flexibility and strength across all body organs without bumping or eliminating muscles (Abdol, 2013). The goal of Pilates concerning physical strengthening is to provide a healthy physical status for performing the daily tasks and other relevant physical activities. Since such an exercise is done in erected and resting positions without the need for jumping and leaping, possible injuries are reduced (Shafi, 2010). Positive job-related feelings are correlated to the physical and psychological health, and increased physical readiness results in increased satisfaction of individual toward his job and work context and decreased absenteeism (Bernaldo, 2013). Kol (2013) and Dehkordi et al. (2016) reported in their studies that Pilates exercise doing offers beneficial uses both physically and psychologically which leads to a strengthening of muscles, flexibly of joints, stimulation of blood circulation, and reduction of stress (Badran, 2013). Positive job-related feeling is associated with the physical and psychological health, and increased physical readiness results in increased job satisfaction of an individual and decreased absenteeism. Chrisy and Arnold (2016) indicate that a majority of employers seek solutions o improve the health, efficiency, spirit and job satisfaction, and explore ways to reduce the care costs and workers' absenteeism which are all achieved by increasing the physical activity (Beehr, 2012).

Since previous studies in the field of sports management have not concreted on generalizing and leading the sports in organizations or have not examined the effects of sports on organizational behavior, and that most of studies have been undertaken in the field of sports community and not the non-sports community, as well as the fact that the influences of physical activity on job satisfaction of employees have not been investigated so far, the current study was developed to examine if Pilates exercise has any effects on job satisfaction among the female employees at Urmia Electricity distribution Company. This was achieved through considering the physical and psychological benefits of the aforementioned sport, considering the closed-space of the gym in which the employees were asked to do the exercise, and considering the notion that the researcher was a professional Pilates coach who was also fluent on all benefits and techniques of this exercise.

Methodology

Since the results of the study attempt to increase job satisfaction, one can say the present study is applied in terms of the goal. Also, the study follows a quasi-experimental design in which the effect of Pilates exercise on job satisfaction of female employees at Urmia Electricity Distribution Company is examined. Therefore, two groups were considered with a focus on the pre-test and post-test design. The statistical population comprises of all 54 female employees working at Urmia Electricity Distribution Company.

The conditions for the experimental and control groups were the same and purposeful non-random sampling method was used. 40 individuals were ready for taking part in the study, thus 40 individuals were determined as the available sample among whom 20 subjects were assigned to control group since they did not meet the conditions for taking part in Pilates exercising sessions and the other 20 subjects were assigned to experimental group who were interested in participating in Pilates exercising sessions.

The present study made use of Minnesota's (1970 Job Satisfaction questionnaire. The demographic section involved the personal information, namely, age, level of education, working experience, and the questionnaire included 22 items concerning job satisfaction. The questionnaire comprised of seven subscales, namely, payment system, type of job, occupational interest, organizational climate, leadership style, physical conditions of working context, and physical status. Also, the questionnaire was developed on Likert-seven-point scale. To determine the validity of the questionnaire, content analysis and factor analysis were used. To this end, the questionnaires were initially sent to 10 experts who were mainly he university professors and researchers of the sports management field. Subsequently, in order to finalize the factor analysis, the questionnaires were distributed randomly among 20 participants. Since the extraction subset of all factors in job satisfaction questionnaire is greater than 0.05, the validity of the questionnaire was confirmed (as 89%) in terms of all evaluation indexes of factor analysis. Using Cronbach alpha coefficient and the pilot study (questionnaire was distributed among 30 participants and recollected subsequently0 was estimated as 92%.

In November 2018, Job Satisfaction questionnaire was distributed among experimental and control groups, and the data obtained were used as the pre-test. Afterward, the experimental group took part in Pilates exercising sessions which were held 8 weeks (3 sessions per week, 30-minute length per session) at 14:30 in Electricity Distribution Company gym while the control group received no treatment. The first four weeks were followed using the Pilates Level 4 (elementary) exercise and the following four weeks were pursued using the Pilates Level 3 (intermediate) exercise with an aim to exert additional exercise effect on employees. Having completed 8 weeks of treatment, the job satisfaction questionnaire was distributed among the experimental and control group as the post-test. Ultimately, the results obtained were analyzed using SPSS software.

The statistical methods were followed using descriptive and inferential dimension. Descriptive statistics included the demographic data and the inferential statistics were concerned with examining the research hypotheses. Predictable inferential method followed in this study was the use of Kolmogorov-Smirnov test (to determine the normal or non-normal distribution of data). Considering the effect of Pilates exercise effect on job satisfaction of female employee working at Electricity Distribution Company and that the study follows a quasi-experimental design with a focus on pre-test and post-test method, one-variable covariance test (ANOVA) was used.

Results

Descriptive results: The maximum frequency of age was related to the age range of 36-40 years (37.5%) and the minimum frequency of this type was related to the age range of less than 25 years (5%). Also, the majority of participants held Bachelor of Arts degree (52.5%) and only 3% of subjects held the Ph.D. degree. Furthermore, 17 participants had 15-25 years of job experience and 5 subjects reported less than 5 years of job experience.

Table1. Kolmogorov-Smirnov test

Pre- test		Control group		Exam group	
		Post- test	Pre- test	Post- test	
Health condition	Statistics	0.979	1.20	0.844	0.766
	Significant	0.293	0.111	0.474	0.600
Organizational climate	Statistics	0.872	1.06	0.683	0.975
	Significant	0.432	0.203	0.739	0.298
Leadership style	Statistics	1.45	0.885	0.913	1.31
	Significant	0.029	0.414	0.375	0.980
Payment system	Statistics	1.18	0.874	0.802	0.111
	Significant	0.122	0.429	0.701	0.510
Job Type	Statistics	1.29	1.20	0.913	0.471
	Significant	0.069	0.064	0.375	0.980
opportunity of progress	Statistics	1.09	0.712	0.410	0.842
	Significant	0.112	0.690	0.880	0.522
physical condition	Statistics	1.27	1.32	1.09	0.894
	Significant	0.079	0.059	0.185	0.400
Job satisfaction	Statistics	1.09	0.712	0.410	0.842
	Significant	0.112	0.690	0.880	0.522

The results of Kolmogorov-Smirnov test (shown in Table 1) indicates that the level of significance for both experiment and control groups is less than 0.05 (P<0.05), thus confirming the normal distribution of data.

Table2. Covariance analysis (Pilates exercise is considered as independent variable)

dependent variable	source	Average squares	DOF	F	sig	Eta
Job satisfaction	Between subjects	3.04	1	4.36	0.044	0.106
	group	3.99	1	5.75	0.022	0.135
	Error	25.7	37	0.695		

Organizational climate	Between subjects	3.049	1	3.049	0.042	0.107
	group	4.78	1	6.03	0.019	0.014
	Error	3.04	37	0.792		
Job Type	Between subjects	4.42	1	7.50	0.009	0.169
	group	6.43	1	11.4	0.02	0.236
	Error	20.8	37	4.78		
Leadership style	Between subjects	7.54	1	18.1	0.001	0.329
	group	0.184	1	0.442	0.51	0.012
	Error	15.0	37	0.416		
Health condition	Between subjects	2.40	1	6.45	0.015	0.289
	group	8.90	1	23.9	0.001	0.067
	Error	28.6	37	0.775		
physical condition	Between subjects	25.7	1	0.695	0.001	0.003
	group	13.5	1	0.695	0.001	0.018
	Error	13.5	37	0.365		
Payment system	Between subjects	6.235	1	11.4	0.02	0.236
	group	0.168	1	0.308	0.582	0.008
	Error	20.1	37	0.545		
opportunity of progress	Between subjects	3.03	1	6.26	0.044	0.145
	group	3.99	1	1.66	0.022	0.043
	Error	25.7	37	0.698		

According to Table 2, the level of significance for covariance analysis for the experimental group was obtained as 0.022. Since P value was reported less than 0.05, the research hypothesis is confirmed which emphasized that on-the-job Pilates exercise has an impact on job satisfaction of female employees working at Urmia Electricity Distribution Company. Also, the level of significance for the subscales were obtained as follows: organizational climate (0.019), job type (0.02), and physical status (0.001) which are all less than 0.05, representing that Pilates exercise has an impact on the afore-mentioned subscales. Additionally, the level of significance for other subscales were obtained as follows: leadership style (0.51), physical conditions (0.410), payment system (0.308), and development opportunity (0.22) which are all greater than 0.05, thus emphasizing that Pilates exercise does not have any impact on the afore-mentioned subscales.

Discussion and Conclusion

Most of the jobs including the employees lack the element of mobility (Dayang, 2012). The physical activity not also improves the performance and health of employees but also leads to job satisfaction an improvement of job performance quality and results in reduced absenteeism (Etal, 2013). Pilates exercise is composed of controlled movements which make harmony between the body and brain and increases the capability of the body in every age (Kull, 2013).The objective of the current study was to explore the effect of on-the-job Pilates exercise on job satisfaction of female employees working at Urmia Electricity Distribution Company. The finding, indicating that Pilates exercise had an effect on job satisfaction, is consistent with the one reported by Berand et al. (2013), Robert et al. (2012), and Tejari et al. (2011). Also, the result obtained concerning the effect of Pilates exercise on organizational climate corresponds to the findings of Nazari et al. (2013). It is argued that interpersonal relations among employees, communications and relation in general, is one of the most important variables of organizational climate (Robert, 2013). Greetings and social interactions among employees are the prerequisite and necessary conditions for creating a positive organizational climate. Thus, interpersonal relations are one of the important variables for evaluating the organizational climate. According to Henzelman et al. (2012, workplace physical activity leads to increase cooperation and improvement on interpersonal relations among the employees, leading to the creation of a suitable organizational climate which supports the finding of the present study.

It was also found that Pilates exercise in the workplace has an effect on the type of job among the female employees of Urmia Electricity Distribution Company. This is supported by Biher et al. (2012) who emphasized that physical activities in the workplace increase the job-related capabilities and job satisfaction which directly influence the physical and psychological health. Such a finding was confirmed in the current study, manifesting that increased physical and psychological health in employees influences the type of job and that employees get positive attitudes towards their job.

Another finding illustrated that on-the-job Pilates exercise does not have any effect on leadership style as one of the dimensions of job satisfaction. Thus, one can infer that leadership style is defined as behavioral characteristic concerning the leading, motivation, guidance and management of a group, and according to the findings of Bikoi Mogadam et al. (2014), suitable leadership style is considered as one of the most important organizational factors and that manager opts for a leadership style with an aim to represent the most effective charisma. Choosing a suitable leadership style which is congruent to the extrinsic motivation can lead to the fulfillment of belonging, resect, position, performance improvement, job promotion and job satisfaction needs, thus bringing about individual and organization purpose attainment. As indicated by the same researchers, choosing leadership style is mostly related to the time requirement and conditions which rule the organization, and physical activities do not have to do with the leadership style choosing on the part of managers. Therefore, there was no relationship between these two variables as reported by the participants of the current study.

As for the other findings reported in this study, Pilates exercise does not influence the development opportunity as a dimension of job satisfaction which is supported by Atal (2010). One can determine that development opportunities emphasized the establishment of equal opportunities for personnel development. Tejari (2008 believes that when the employer provides development opportunities in technical, management and leadership skills for employees, the employees feel much more supported. Pilates exercise would not have any effect on technical instructions of job and required technical skills. Findings of the study confirmed the lack of relationship between these two variables.

The results also indicated that Pilates exercise does not have any effect on the payment system as one dimension of job satisfaction which is consistent with the one demonstrated by Dayang et al. (2012). It is feasible to mention that the payment system is directly tied to the payment and income. Dessler (20060 believes that the fundamental and ultimate goal of individuals who are employed is their financial privilege and this is one of the effective strategies of organizations to attain their goals and increase the efficiency of employees. Accordingly, no association between these two variable was found in the current study.

One can declare that increased physical readiness in workplace results in increased psychological and physical readiness. In other words, employees hold better spirits in their workplace, thus enjoying higher levels of motivation for extended work challenges and accepting various responsibilities. Considering the motivation theories, people experience motivational factors while accomplishing a take and these factors can have positive impacts on their job-related feeling, and consequently, increase their job satisfaction an overall efficiency capability. In addition, increasing physical readiness results in increased tendency of individual toward accepting added responsibility, effort-exerting tasks, and extended development and growth. Therefore, concerning Maslow's hierarchical needs, respect and self-actualization needs of individual are fulfilled in organization which brings about increased job satisfaction. Accordingly, the researcher found the similar results highlighting that Pilates, as a suitable physical activity for the body and psychological dimension, has a positive effect on increasing the job satisfaction among female employees at Urmia Electricity Distribution Company. Since job satisfaction is one of the important factor pertaining to the performance of individual and increasing the organizational efficiency, managers and supervisors should gain knowledge of the factors which give rise to employees' job satisfaction and offer effective solutions through establishing sports spaces in the workplace and designing extra-curriculum programs such as Pilates.

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Social Mobility of Farsi Women Based on Economic Components in the Period of 1921 to 1953

Movilidad social de las mujeres farsi basadas en componentes económicos en el período de 1921 a 1953

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ABSTRACT

Social mobility is one of the social science concepts to measure the degree of development and progress of a country. Some factors of social mobility such as education, job promotion, marriage, migration, etc., demonstrate the dynamics of society and the equality of status of people in the use of opportunities to obtain social benefits. The most important barriers to social mobility are the traditions and cultures of society, as well as the bureaucratic structure of government. This article seeks to show social mobility among Farsi women in the period 1921-1953. The study findings confirm that there is a wide range of vertical mobility among Farsi women during this period. The information in this study was based on libraries and documentary sources. And the method is historical research with a descriptive-analytical approach.

Keywords: Social Mobility, Economic Activity, Fars, Women.

RESUMEN

La movilidad social es uno de los conceptos de ciencias sociales para medir el grado de desarrollo y progreso de un país. Agunos factores de la movilidad social como la educación, la promoción laboral, el matrimonio, la migración, etc., demuestran la dinámica de la sociedad y la igualdad de condición de las personas en el uso de oportunidades para obtener beneficios sociales. Las barreras más importantes para la movilidad social son las tradiciones y culturas de la sociedad, así como la estructura burocrática del gobierno. El presente artículo busca mostrar la movilidad social entre las mujeres farsi en el período 1921-1953. Los hallazgos del estudio confirman que existe un amplio rango de movilidad vertical entre las mujeres farsi durante este período. La información en este estudio se basó en bibliotecas y fuentes documentales. Y el método es la investigación histórica con un enfoque descriptivo-analítico.

Palabras clave: movilidad social, actividad económica, Farsí, mujeres.

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Introduction

At the beginning of the fourteenth century there were changes in the country. The literacy movement, industries flourished, and agricultural activities improved compared to the Qajar era, and various schools for boys and girls were established to study science and social readiness. Women who were excluded from the social and economic activities of society due to the traditional and patriarchal context of society and who were not present in the public, especially in the administrative and economic spheres, became active. Milespo about the presence of women in office in that day, Iranian society says: "They never had the opportunity to meet and talk with an Iranian woman because they had no role in the social and administrative environment in which I was living, except for a few women who served as girls' school teachers or police officers. "There is no woman in the employment of offices" (Milespo, 1977: 128). Of course, this changed with modernism, and women became very prominent in the social realm. Women have come more into the social field than ever before, and this coming out enables them to play a more active role in socio-economic trends in society, to open new schools ... to work in industries and His social presence in the health care of the country to be effective in the health of the community "(Salah, 2005: 88). Therefore, the author of this paper attempts to first define and explain social mobility and its types and then to examine the case of Farsi women in this period to determine what social mobility occurred during this period. During this time, there was significant social mobility at the level of women in the country in general and Persian women in particular, in line with the modernist policies of the time. The sources of research are library and documentary and their method is historical with a descriptive-analytical approach. First of all, there are several topics to be introduced:

A) Social mobility: The word "mobility" literally means mobility (Aryanpour, 2006: 1424). Social mobility observes changes in the status of class belonging to individuals in societies and studies the context, causes, and types of these changes. This term does not include geographical and spatial motion (Taghavi, 2010: 55). From the time of Sorokin who first seriously discussed social mobility to the present day various definitions of the concept of social mobility have been proposed. Overall, the similarities between these definitions are more than their differences, in other words, there is little difference in terms of content. In general, these definitions emphasize the position of individuals or groups and social strata in the hierarchy and social and economic structure, with the assumption that there is some kind of hierarchy in societies. However, they have used somewhat different meanings and definitions to define social mobility (Malek, 2009: 185). Sorokin defines social mobility as the movement of the individual within the social space (Tonekaboni, 2013: 4). Social mobility appears in many ways. Including inter- and intra-generational mobility, job mobility and:

- Intergenerational mobility: It is a type of mobility that children receive above or below the social base of their parents.
- Intra-generational mobility: A change in the social status of an individual or group in the same generation.
- Mobility: A change in the social status of a group or a group of individuals that usually occurs in major social upheavals such as political and social revolutions.

B) External and internal inequalities and social mobility in society: External inequalities were first raised by Durkheim. Durkheim distinguishes two types of inequality. Internal inequality and external inequality. External inequalities apply to the individual on the basis of birth conditions. Like her family's class background, their income, and their social base. On the contrary, internal inequalities are based on the needs of social divisions and on the basis of individual talents (Chalabi, 1996: 192). Internal inequalities are more specific to industrial societies, and external inequalities refer to pre-industrial societies. Our research focuses on external inequality in women's social mobility. Because the society we surveyed during this period imposed many external inequalities on women.

C) Social Mobility Factors: There are several factors that contribute to social mobility, some of which are titled.

- Job and job changes
- Ethnicity and religion
- Social Transformation
- Social communication
- Educational Facilities
- Family size
- Gender (Rasekhi Bakhshaysh, 2016: 72)

D) Effects and Results of Social Mobility: Social mobility in different societies has a variety of reflections, but with some neglect, one can have a commonality between these consequences:

- One of the effects of social mobility is to increase social and economic efficiency.
- Social mobility destabilizes social stratification. In a society with high social mobility, members,

strata, and social bases change regularly.

- Social mobility has a direct impact on political organizations and parties in society (Matras, 1948: 39).

Research Background

There has been no research on the subject before, but research has been carried out close to our goal. Among them are Zahra Ghaffari and Mansour Haghighat's research on social mobility based on Bourdieu's view of Gorgan's 30-54-year-olds (Ghaffari and Haghighat, sophomore year). Or refer to the research by Abolghasem Rasekhi, who was published at the 10th Congress of Progressives, which focuses on social mobility and the factors affecting it, relying on the Iranian people (Rasekhi Bakhshaysh, 75-66). Also refer to the article by Samad Kalantari and Mohammad Salman Ghaemizadeh, about social mobility with a case study of Hamadan, published in the Journal of Sociology in Winter 2002 (Kalantari and Ghaemizadeh, 76-100). And finally, Shirin Mahdavi's article should be mentioned, which was published in October 1994 in a study entitled Social Mobility in the Qajar Period in the Journal of Political-Economic Information (Mahdavi, 99-85). There is a lot of research into the concept of social mobility, but research that specifically addresses this issue has not been done so far.

As mentioned earlier, during this period many changes were made in the country and social strata were transformed. Women were the most important group affected by these changes in adolescence. Although the discovery of the veil took place in 1935, civil society activists and activists have long sought to establish the context. The Taj al-Saltanah has cited hijab as the root of many problems in his material. He argued that a man's meager earnings from the working class would never meet the needs of his family. Especially since many of the members of this family were usually women. The hijab is removed and women can be employed in various professions, can earn a decent living, and the whole family can live in comfort and honor (Shuster, 51). In her excursions, Taj al-Saltanah sees the effects of the lack of veil and openness of women in doing and participating in economic affairs, and in some of her memoirs she describes it as:

> While traveling in Tabriz, across the road and in the countryside, I saw men and women working together without a veil. In all one in ten, there is no unemployed person. One servant wanted to take me on the road; none of the farmers came and sold their free wild life (Atehadiyh, 1982: 101).

Studying women in the world of knowledge was another case that opened the door for women to work and social activities. Prior to the Pahlavi era, girls and women generally did not attend school or, if there were any exceptions, girls were aristocrats and princes who did not generally see the need to participate in economic affairs. The absence of girls in the educational environment was influenced by two family and social problems. Family bias and discrimination and lack of intellectual and social development in the Qajar period. The number of female students in the year 1301 coincided with the coming of Reza Shah 7592 people that in 1941, the end of Reza Shah's government reached 88195 and this number in 1934, a year before the discovery of the veil 45542 (Menashri, 1992: 169) This figure shows that the number of female students in the First Pahlavi government has almost tripled. This growing trend continued under the reign of Mohammad Reza Shah, with many women attending primary, secondary, and higher education, earning high degrees, and entering into economic activities in support of their education.

Women's economic activity in nomadic and rural communities

Large-scale agriculture for the purpose of commerce is one of the things that are naturally included in the Jirga of economic activity. The role of women in this field, though not as bold, is found in texts and documents. For example, during a series of documents on non-payment of taxes on opium in Fasa, a woman is also mentioned as belonging to the same farmer who, incidentally, is taxed and her products released (National Library Documents, Document No. 230 / 2721).

After the reign of Qajar, with the beginning of Reza Shah's rule, the first attempt to consolidate central power was to suppress tribes and tribes that were expanding power and extermination in Iran. This move from the north to the south, with the presence of the Shah, was so practiced that it also changed the color and smell of nomadic and nomadic millennia in Iran. The Khanin were forcibly settled in cities, some were exiled and some were executed. From Qashqai Turks to Bakhtiari and Sheikh Khazel in Khuzestan. As the process progressed, bans were soon banned and nationwide efforts to resettle in and around the city began. The general proclamation also forced all the tribes to abandon the tribes until a certain date.

In addition to leveraging the pressure to integrate the nomads, a historical factor also came to the peasants to push them out of their traditional form. Migration In the present century, more than all of Iran's history, migration has played a role in the demise of the tribal and tribal structures. The immigration of Bandar Abbas

to Fars and Khuzestan in the early 1930s was a major concern for the then government. From this period there has been no clear correspondence documenting the worsening immigration situation. Often hungry and poor in Bandar Abbas, they were moving to oil-rich and industrialized areas to find a job and provide for their basic needs. The outlook for these people is clear in the letter from Fars Inspector General Brigadier General Amir Parviz to the Fars governor:

> Dear Governor of Seventh Province, dated 1951/12/20
>
> Respectfully 220/30, 51/12/20 states: Bandar Abbas is an independent and separate area of Fars and the best way to prevent the emigration of residents is to prevent and prevent Bandar Abbas himself and its functions. But the livelihoods and livelihoods of life where there are limits are not supposed to be prevented as they deserve. I have personally observed in my travels around the world that these people are moving in the bitter, hungry, miserable, miserable condition that I can expressly lack, the basic conditions of living in these bare, desolate deserts. Be that as it may, the heart of every stone is watered, with the extent of the area and no means of containment within that boundary impossible and fundamental action must be taken in this regard (Documents on Internal Migration, 41).

The migration of people who lack specialization and expertise, from societies that do not have a variety of jobs, to a source of income and to various occupations, has little impact on economic growth in the country. Immigrants from areas such as Bandar Abbas to Shiraz were not unintentionally carriers of the profession that boosted the Persian economy. Port women were also generally housewives who, in their most active form, had learned sea-related tasks such as cleaning and drying fish and such as mat-making, which were not applicable in Fars and Shiraz.

The same issue of widespread migrations to Fars and Khuzestan and the causes of these migrations is a clear indication of the stagnation of economic activity in those areas for both men and women. Women in parts of Minab and Bandar Abbas were able to spend their life on the mat by exporting it to large cities such as Shiraz. But the subject of poverty in the major areas of Bandar Abbas until the early 1960s was that the same small rural handicrafts continued to decline until little by little, with the boom in business and commerce and the resurgence of Bandar Abbas, as an important region, life was restored to its people. The economic activities of rural women in the post-Qajar period until the early 1930s were strongly influenced by these migrations. Economic activity in the countryside and among the tribes did not earn much, and many who thought that by migrating to the city could prosper or find a better job, they had lost little rural and nomadic economic activity, and in the city, They generally worked in jobs such as labor, gardening, grocery, homestead, counter, prostitution, and so on.

In general, no new profession or activity was produced by the villagers and tribes during the Pahlavi period, and what was also a continuation of the decline of pre-Pahlavi works. In the Persian Gulf, women used to clean cheap fish and shrimp, as in the past. The apples were busy. In the rice fields in areas such as Mamasani, Biza, Kamfiriz and Marvdasht, young girls were always used in the cultivation phase. Such activities were cross-sectional and related to the time of planting or harvesting. So many women in need for the rest of the year were either unemployed or doing laundry and housework. The situation was much worse in the southern parts of Iran, especially in the Persian Gulf, so that some of those areas became deserted due to the destruction of agricultural land and the lack of water. In a detailed report from different parts of the Persian Gulf in 1945, Razmara writes: Considering the relevant statistics, we find that about 26,000 inhabitants of Iran are concentrated in the southern islands of the country and occupy a relatively large space at sea (with 126,000 Bahraini islands). Although these islands are remarkable in size, they are not economically valuable, as they are not well developed due to the lack of fresh water, the lack of agricultural and agricultural land, so that even for living and livelihoods. The current ones also have to provide their own grain from outside. Among the islands of the Persian Gulf, the only islands that are susceptible are Kish Island, whose land is relatively better and has more agricultural and agricultural potential. So, these islands are not agricultural in importance and even need to be supplied from the adjacent coasts. The lives of men in these areas are provided by pearl fishing, fishing, boating and boating. Since these parts are also small and insignificant compared to the past, so the livelihoods of the inhabitants are greatly impaired, and as a result they have largely migrated north and south (Razmara, 1945: 117). The removal of nomadism and the tendency for homogeneity for the Iranian nomads has also been better in areas economically perhaps the most positive. Il Inanloo According to local knowledge, the Inanloo came to Iran in the Mongol era and the Baharloo in the Seljuk era and were divided into the Bollordi, Slamloo, Bayat, Ghore. In 1916, before the reign of Reza Shah, they left the country to live in cotton, opium and tobacco farming and made a living there (Vaez, 2009: 165).

The shift in nomadic and migrant women's employment has led to a downward social movement in most cases and an upward social mobility in some areas. So the nomadic women, moving to the city, lost their previous social

status and diminished their jobs, as mentioned. But in a general sense, this migration can be seen as a ground for the upward social mobility of nomadic women, their later generations. Although emigration to the city, although their first generation had disadvantages and difficulties, in the next generations due to access to educational and welfare facilities, their growth in society and their vertical social mobility.

Women's economic activities in urban communities

Urban communities as the source of knowledge education naturally have the advantage of rural communities in this field. With the advent of Pahlavi rule and the generalization and expansion of knowledge gained, women have become more open to this new field. With the acquisition of knowledge, and interest in the field, a formal job as a teacher and secretary entered the cultural market, which also increased the number of enthusiasts each year. In addition to the income that teachers received, it also added a social dimension to the personality. For this reason, in addition to meeting the financial need, there was also a cultural and personality competition among individuals to achieve this job.

Entering the Qajar fanaticism, in which patriarchal and fanatical views of women were inflamed, we entered a new era in which we sought to position ourselves as a member of the progressive world by modeling on Western cultural and economic models. This comparative patterning began years before the discovery of the veil from France and England, and in the second decade of Pahlavi's rise to power in Turkey. After the discovery of the veil, women's activists sought far more cover to open the role of women than men in economics, politics, and culture. This can be seen in the remarks made by Ms. Shayesteh Sadegh, son of Mostashar al-Dawlah Sadegh in the Women's Association, which was published in a booklet in 1936. The rhetoric explicitly compares Iranian and Turkish women and undermines the freedom and participation of Turkish women in the face of the shortcomings and isolation of Iranian women. He then mentions occupations such as medicine, judging, the post and telegraph, etc. that there are several thousand women in Turkey (Sadegh, 1936: 113). The effect of Pahlavi rule changes on women is mainly due to 1935. The sabotage of literate and literate women gradually made Iranian women find themselves in the men's jirga. The start of propaganda and the publication of Western features in the publications can hardly be considered as one of the most important factors in women's growth. Women who were literate and had little knowledge of the language were translating news and stories from Western women to bring more Iranian women into the fold. Of course, women began translating articles and publishing them in publications from the late Qajar period and matured into the Pahlavi era.

During this time, women have always been working under the pseudonym to make sure that this culture is not stopped so that the country's economic, social and cultural ship will once again accommodate women and move across the country's rivers. Highly read and interesting translations drawn from Quarterly periodicals such as "Pars" and "Pars" and Farsi's will in the Pahlavi period. Translates and publishes an article titled "The Importance of Jobs in America" (Pars Newspaper, February 4, 2008). This article, which was deliberate in its selection and translation, first highlights the importance of the subject and then goes into women's jobs and the presence of women in the American economy. The publication of this article in a well-known and important journal such as Pars in Shiraz and the south of the country naturally created a spark in the minds of women who have been through the Qajar era and are openly waiting for modernity and modernity. In June 1925, Ms. Jaleh Alp, the daughter of a well-known and educated militant in Shirazi, gave a detailed lecture at the Iranian-British Cultural Association titled "Women's Participation in the World" on various topics such as the history of women's participation. In the community, women in the military arena, women doctors and nurses, women in the industry and women volunteering. On this day, the main audience and most of the participants were women, and a few days later, the text of her lecture was published in five consecutive issues in the Fars Newspaper (Fars Newspaper, June 1946). This was in spite of his increasingly progressive, scholarly and motivating ideas in society. Thus, during this period, we witnessed the rise of women in the social arena and the rise of upward social mobility in the class. This began during the first Pahlavi period and intensified during the second Pahlavi period. We will now refer to some of this social presence and mobility.

Culture and Economics

With the reign of Reza Shah, the country had a different color in education. The new way of building schools, practically begun in the mid-first decade of the present century, enabled Bobby to enter the field as well. The first Farsi girls' school in the Pahlavi era should be called the Aftiyya School, which was actually the beginning of the final years of Qajar life. Cheers of Sakineh Efat Beghazi, mother of the poet Dr. Hamidi in 1960 AH. AH, with the encouragement of the late Rahmat the Head of Education, established a four-grade school for girls in his home. But the establishment of that school had created an emotional crowd that was eliminated with the support of education and the perseverance of its principal.

In the year 1924, due to the seriousness of Haj Seyyed Mohammad Soltani (Sultan al-Alma), he became head of the Persian school of education at the public school, holding fifth and sixth grades, and in 1925, 12 volunteers took the final exams in June. This was the first time girls' school volunteers took the final exams (Emdad, 2006: 331).

With the expansion of this school and the increase in the number of students, the need for an assistant as a teacher and principal naturally increased. At the beginning of the academic year 1928-1929 the first grade of secondary school and by the end of the academic year 1932-1933 the fifth grade was held at that school (Same). In the year 1927 in Estahban, a class called Miss Hemmat School was established under the management of Mrs. Betul Wareh with 19 pupils from the Fars Cultural Department. This elementary school gradually became six classes (Ibid, 642).

In September 1928, the Fars Education Office established a school for girls under the leadership of Mrs. Fatemeh Begum Salami in the Masli neighborhood. Determined. The number of students in that school was over 75 per year (Same, 655). The Fars Education Office established a girls' school in Jahrom in 1928 under the leadership of Mrs. Esmat al-Sadat Korey. The school was transformed into three classes in the academic year 1936-37 and was managed by Ms. Zahra Alaviyeh Yoohi with two teachers and 37 students (Ibid, 645).

In 1928, the Fars Education Office established a school for girls called Zenahari in Abadeh, and gradually added to its classes, and in the school year 1936-37, it had sixteen elementary schools (114, 638). Unfortunately, the exact number of staff and teachers at the school, all naturally female, is unknown. In the year 1930 Solar, a person named Talat Khan Abadei, founded a two-grade girls' school in Abadeh and gradually added four classes to form a six-grade primary school but was dissolved in 1935 (the same). According to statistics compiled by the Adaptation Bureau for the academic year 1931-1932, there were six schools in Shiraz where 48 male and 12 female teachers were employed (Adaptation Bureau for the academic year 1931: 9). The Larestan Girls' State Primary School was established by the Fars Education Department in three classes in 1934-35, and was administered by Ms Resam Pushoon and two other teachers with 45 students in 1335-36(Emdad, Ibid, 653).

In 1934, based on the available documents (Archives of National Library and Documentation Organization, no. 98-293-4231), correspondence regarding the establishment of a girls' school in Shiraz was made. The head of the school was a woman named Alajard, who did not know exactly what her nationality was. But the school seems to have been set up in 1312 and correspondence is set to launch its second round. Its location and number of students and teachers are not known precisely, but in any quality and quantity, there may have been some female teachers or maids. The following document is the latest in a series of documents that actually authorize the school to operate in the second round, issued on September 26, 1934. In Nairiz and Abadeh there are reports of girls' schools being established along with the recruitment of female staff. During this period, there was a stir among Farsi women to study and to choose teaching jobs, especially among urban women, which helped to promote their social status.

Decoration

One of the jobs that became popular in Iran after the discovery of the veil was hairdressing, which had previously been done in homes and in a very unprofessional way. With the discovery of the veil and the launch of publicity campaigns, which made the western and free form of women more popular, the attitudes and needs of women began to shift. Farsi women were no exception, and with the choice of a hairdresser, sought to improve their social status previously held by the man as a housewife or "sex object."

There was no evidence from the first years of the establishment of a hairdresser in Fars, but in a public announcement in the Pars newspaper, this documentary and despite the usual type of announcement, it can be assumed that several years have passed since such a job. The statement reads: "A golden earring of one of the ladies is left in the process of curling her head. The owner can receive it by giving an address. Hairdresser of Lady Pishdadian" (Pars Newspaper, March 18, 1949). In addition to hair styling for a variety of day-to-day hairstyles, nail decoration and possibly facial makeup have also entered Iran in the early Pahlavi period. In the text of a report from the Shiraz Lawyer's Market, quoted in the Pars newspaper in 1942, it refers to a woman who had her nails manicured (Pars Newspaper, October 23, 2011). So it's definitely not a hairdresser job, a casual job for anyone to get into with enthusiasm and need without training.

Hairdressing for women, especially since the release of the veil and the appearance of the hair, had a lot of prosperity, along with facial and body adornment. Due to its importance, especially for the noble or wealthy family, it also provided the hairdresser with a good income, so many men and women would later take up the job. Add more jobs to the country.

Government employees

Most women in Fars culture departments may have used women as employees, but the documents and writings of this period have only briefly referred to employees of small-town culture departments. Ms. Houri Tajbakhsh, for example, has been working as an education inspector in Abadeh's Cultural Department in 1328-1989 (Fars Cultural Yearbook, 75). On the same side, the name of Lady Mahin Ban is also mentioned in the Jahrom Culture Bureau, which was its technical inspector in 1950 (Jahrom Cultural and Sports Yearbook, 50).

In the Fars Yearbook, while praising the employees of Abadeh Cultural Bureau who have agreed to spend one percent of their monthly salary on building the culture building, the names of the staff include: Lady Pourmazeh, Lady Malek Soltani, Lady Iran and Manijeh Riahi, Lady Zari Tajbakhsh, Talat Chubineh Dana, Fatemeh Khalili,

Tabandeh and Hakimeh Arabi, Ezat Judah, Honorable Masrour, Lady Blessed Shariatmadari, Akhtar Firouzi (Yearbook of Fars Culture, 84). After the phone arrived in Iran, the industry gradually entered the big cities. In Shiraz, by early 1922, all telecommunication or telephone workers were men, and by the middle of this year, Shiraz women had entered the telephone as employees. Their name, amount and type of work did not provide any evidence. But they are thought to have worked in the telecommunications sector. In a short piece in the Pars newspaper, their activity is reported in a humiliating way to women:

Strike the housework staff

This morning the city phones were out of order. I think the housekeepers have all gone on strike because neither the center nor, as our friend Mr. Tully, the "Mrs. Center" would answer, would answer. It is as if the hiring of the lady did not improve the housekeeping business, and even increased the cause and has caused more discontent among the housekeepers. We expect the head of the telephone company and their male and female employees to complete their task and the people as soon as possible (Pars Newspaper, August 3, 1943). The use of women in telephones may have been imitated by Britain and the United States because they used men in those countries at first, but after some problems, particularly with regard to telephony conflicts with subscribers, they used women with even greater patience. And they had a pleasant voice and a kind voice in the word.

Medical and Medical Services

With the rise of the Pahlavi government and the coronation of Reza Shah, medical services and health promotion were expanded and, with the help of Western science, tried to abolish the traditional and dangerous methods of treating the patient. In 1928, when the School of Medicine and Compatibility and Schooling Regulations were published, midwives were also required to undergo modern courses in order to obtain a legal work permit.

With the establishment of the University of Tehran, in 1933, according to the necessity of the community, they started the first faculty with the subject "Medicine" to educate the new generation of physicians and nurses with Western knowledge and Eastern traditions. The Qajar Period and earlier, all relied on traditional medicine for medical science, and, except for the experience of new plants, did not bring any particular innovations in improving the treatment. The disease was highly prevalent among the people and most of the deaths were due to the often-contagious diseases. In a quarterly report on the city of Tehran in 1925, the legacy of the Qajar era and the general state of the country can be well understood and compared to other cities. In the first quarter of this year, a total of 1053 people died, of which 11 died as a result of aging and 4 committed suicide, but the rest died entirely from a variety of illnesses such as tuberculosis, cancer, smallpox, measles, etc. (Baldiyeh Magazine, No. 23, 8)

The first Fars clinic of the Imperial Plan was the one in Lar, which was opened on July 15, 1948. Thereafter, the Abadshapur clinic was in the city of Khafr, which was opened to the public on October 14, 1948. By 1929, Darab's clinics were in operation on December 18, 1929, Arsanjan III in December 1927, Nourabad Mamasani on December 18, 1928, and Awes on December 20, 1929 (10-year journal of the Imperial Social Service Organization, 10).

In all these centers, from the first day, in addition to employing non-Iranian physicians, they also employed women as nurses, gradually increasing in number and benefiting in the later years from Iranian midwives. In the 20s, what is notable is the use of women as midwives or nurses. The inclusion of women in Fars clinics and hospitals has been at the forefront of the process, with the trend of bringing women into the medical field in the coming years and further education. Since every movement requires far-reaching prerequisites, the lack of a female physician in Fars in the early decades of Pahlavi does not seem so strange. If women had not been in the nursing and midwifery realms, it would have been difficult and even impossible to accept them as traditional physicians. Dr. Christ Agah set up a hospital in Shiraz in 1942, which employs women in nursing at the initial announcement of the request for force (Pars Newspaper, March 13, 1942).

Until 1949, there was no information on the existence of a woman as a physician in Fars. The physician in this section is the women who came up with modern education, not traditional therapists. With the establishment of the Organization of Iranian Jewish Women in July 1947 and the establishment of various branches of this organization in areas of Iran, several job opportunities were provided for often Jewish women in the country. The organization was initially set up by Parvin Hakim and Iran Navi. But it gradually expanded and established branches in cities such as Tehran, Isfahan, Ahvaz, Arak, and so on. A branch in Shiraz was also established in the south of Iran, which reportedly named Lady Zarrin Farivar as a guest at a seminar (Iranian Jewish Women's Bulletin, 21). In the 1951s, there was an ad in the Pool newspaper in an ad that was jointly run by a man and a woman. Dr. Hashmi, who is a leading scientist in obstetrics and gynecology. This is perhaps the first time a woman has entered the field of modern medicine (Pool Newspaper, July 10, 1985). Of course, except for the medical jobs that Persian women entered the field too late in the period, they had a hand in other medical careers such as midwifery and midwifery, and reports appeared in newspaper pages in the 1941s and 1951s.

Conclusion

As we have seen, during this period in Iran, there was an uproar between the class of infirmaries for entering into social activities and promoting our social dignity. Prior to this period, Iranian women did not play an important role in society and in economic activities. But during this period, with the changes that took place in Iranian society, there was a significant upward movement of vertical social mobility between Iranian and Persian women. Women were not allowed to leave their homes before that date, but after that, women entered the community, received education, and gained many jobs. Most of the growth in social mobility in contemporary history belongs to this period. During this period, women gradually and slowly entered the community, but this momentum intensified during the reign of Mohammad Reza Shah. Of course, after the 53's and 61's and 71's, Fars women had a significant presence in commercial and commercial activities, which we are not aware of. It should be noted, of course, that these changes were unintentional and that the global atmosphere of the twentieth century and women's liberation movements had exerted additional social pressure on statesmen. They had no choice but to accept these changes and to empower women and not to give the Pahlavi dynasty a more than real role. However, according to the definitions we have put in the theoretical framework, social mobility has grown dramatically and vertically in our time period. This vertical social mobility can be seen in different layers of women, even in traditional segments. Prior to that, women only had a role in the interior of their homes, but after that they turned to jobs such as hairdressing, teaching, nursing and medical care, and in some cases, government employees, indicating widespread vertical mobility and in some areas mobility. We have seen a horizon where few educated women have improved their social status before the breeze. As a result, widespread social mobility occurred during this time period, and this was mainly vertical social mobility.

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Inter-budget relations as a form of federalism

Las relaciones interpresupuestarias como una forma de federalismo

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ABSTRACT

We analyzed the existing experience of foreign federal states (USA, Switzerland, Canada, India, and Germany) and establishes that the most interesting for the Russian Federation is the experience of building a federal budget of Germany. In our review we described that in the considered legal orders similar principles and criteria of inter-budget equalization are applied, the choice of which depends on national peculiarities, financial policy, goals pursued by the legislator and specificity of the territorial structure of the country. We noted that the Russian Federation is characterized by an asymmetrical federation, which generates imbalance in the financial provision of the constituent entities. We proposed to carry out budget equalization of the constituent entities of the Russian Federation by means of value added tax and to implement the principles of solidarity and mutual assistance of the constituent entities with horizontal equalization.

Keywords: Budgetary federalism, inter-budgetary relations, budget equalization of the subjects of the Russian Federation, asymmetric federalism.

RESUMEN

Analizamos la experiencia existente de los estados federales extranjeros (Estados Unidos, Suiza, Canadá, India y Alemania) y establecemos que lo más interesante para la Federación Rusa es la experiencia de construir un presupuesto federal de Alemania. En nuestra revisión, describimos que en los órdenes legales considerados se aplican principios y criterios similares de igualación entre presupuestos, cuya elección depende de las peculiaridades nacionales, la política financiera, los objetivos perseguidos por el legislador y la especificidad de la estructura territorial del país. Observamos que la Federación Rusa se caracteriza por una federación asimétrica, que genera un desequilibrio en la provisión financiera de las entidades constituyentes. Propusimos llevar a cabo la igualación presupuestaria de las entidades constitutivas de la Federación de Rusia mediante el impuesto al valor agregado e implementar los principios de solidaridad y asistencia mutua de las entidades constituyentes con igualación horizontal.

Palabras clave: federalismo presupuestario, relaciones interpresupuestarias, igualación presupuestaria de los sujetos de la Federación de Rusia, federalismo asimétrico.

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INTRODUCTION

Inter-budgetary relations are an integral part of, or an element of, a complex legal relationship involving complex, multi-sectoral relations. The closest inter-sectoral relations and interaction of budget and legal norms with constitutional norms, principles and values. Inter-budgetary relations are an important aspect and, at the same time, an indicator of relations between Russia and the constituent entities of the Russian Federation. Their appointment as one of the most striking forms of manifestation of the principle of budgetary federalism, overcoming the emerging imbalances and disagreements between public-law entities of different levels in the interests of legal, financial and political stability. They show to what extent the constitutional norms, which fix the basis of the legal status of the subjects of the Russian Federation, personality, person, principles (especially the equality of the subjects of the Russian Federation, equality of citizens and social state) have an appropriate mechanism of legal regulation and implementation. These relations have a significant impact on various areas of life. The budget, as well as public finances in general, performs various functions. Sometimes the political function dominates to the detriment of others, including the redistributive function, the purpose of which is to ensure social justice and economic growth. It is necessary to search for a reasonable balance in taking into account the interests of various public-law entities. At present, the priority of the interests of the Russian Federation or federal authorities prevails in the public sector. This is especially evident in the legal regulation of the distribution of revenue sources between the levels of the budget system with the centralization of high-yielding sources in the federal budget and the dominance of expenditure commitments at the regional level in the subjects of joint jurisdiction of the Russian Federation and the constituent entities of the Russian Federation. The reform of interbudgetary relations both in 2004 and in the subsequent years was inconsistent and insufficient for radical changes, since the fundamental issue of budgetary federalism and interbudgetary relations on the balance of interests of the Russian Federation and its constituent entities and the proportionality of spending powers to the revenues was not resolved by the budget legislation. Time and the Constitution of the Russian Federation itself, proclaiming our state as a social and legal one, predetermine the vector of transformations in inter-budgetary relations in favor of creating mechanisms for the full implementation of constitutional principles and social rights and guarantees of citizens.

DEVELOPMENT

Materials and methods

The object of research in the present article is a set of public relations, formed in connection with the distribution of budgetary powers between the subjects of the Russian Federation and the federal center. The subject of the study are legal norms that fix and regulate the principle of budgetary federalism and inter-budgetary relations.

The basis for the study were the provisions of the Constitution of the Russian Federation, the budget legislation of the Russian Federation and the existing foreign experience of regulation of intergovernmental fiscal relations.

A set of complementary research methods was used to conduct the research: systemic, comparative legal, formal legal and analogous. Their application allowed to consider the object of research in a holistic and comprehensive manner.

Results and discussion

Eloquent indicators of both the overall state of the budget system of the Russian Federation in the modern period, and the implementation of the principles enshrined in the Constitution of the Russian Federation and the Budget Code of the Russian Federation, are the data on the volume of income of public-law entities in the consolidated budget of the Russian Federation, where federal budget revenues dominate (for comparison, the distinctive feature of Canadian federalism is the excess of the revenue base of the subjects of the federation over the income of the federation) (Pimenov, 2011). Researchers, including foreign ones, analyze not only various aspects of the implementation of fiscal federalism in Canada, but also the peculiarities of budget equalization in this country (Lecours, Béland, 2010). The mechanism of redistribution of public finances through interbudgetary transfers is conditioned along with other factors and excessive differentiation of the financial potential of the RF subjects. About half of all revenues of the consolidated budgets of the constituent territories of the Russian Federation are the revenues of 10-15 self-sufficient constituent territories of the Russian Federation. The existing imbalances in the development of the constituent territories of the Russian Federation are partly due to interbudgetary transfers. The imbalance of the national budget system is named as one of the main threats to national security in the Strategy for National Security of the Russian Federation until 2020 (Decree, 2015).

The asymmetry of the federation that existed in Russia during the Soviet period has preserved many features and trends in modern Russia (Medushevsky, 2017). It has a bright continuation and legal entrenchment in the budget legislation. The existing ranking of the constituent entities of the Russian Federation is now most fully manifested in the public sector. Thus, Article 130 of the Budget Code of the Russian Federation divides the recipients of interbudgetary transfers from the federal budget into several groups depending on the share of grants for equalization of the budget capacity of the constituent territories of the Russian Federation in the volume of own revenues of the consolidated budget of the constituent territory of the Russian Federation. Fiscal capacity of public-law entities is a universal criterion for assessing its socio-economic status and development. Improvement of the legal regulation of the financial aspect of the principle of federalism is one of the ways to search for ways to achieve public unity and the creation of optimal (appropriate) conditions for the implementation of human rights and universal values.

The modern construction of both in general federal relations in Russia and their component - inter-budgetary relations - is based on the idea of concentration of public property and power in the federal center (Medushevsky,

2012). The principle of solidarity in inter-budgetary relations, which is most clearly manifested in such a form of inter-budgetary transfers as subsidies practically means priority or dominance of federal power. It should be noted that the strengthening of federal centralized beginnings with a noticeable expansion of the powers of federal-level government bodies is a general trend for most states in the second half of the twentieth century (Saunders, 1995; Filippov, Shvetsova, 2013). Legal regulation of intergovernmental fiscal relations does not fully take into account the economic and historical specifics of the development of the constituent territories of the Russian Federation, including those related to the number of municipal entities and their financial self-sufficiency.

For example, the Altai Territory has only 719 municipalities: 59 municipal districts, 10 urban districts, 650 settlements, of which 7 urban settlements and 643 rural settlements (Official, 2019). These circumstances do not provide a balance of conflicting social interests, but create wide opportunities to control the budgetary activities of the subjects of the Russian Federation and municipal entities.

The asymmetry of the existing model of federalism in the public sector is manifested not only in excessive differentiation in terms of revenues of regional budgets, but also in the peculiarities of financial provision of constitutionally significant rights of citizens. Thus, for example, the budget revenues of Moscow for 2019 amount to 2463534 million rubles, the Rostov Region - 178870 million rubles, the Perm Territory - 133478 million rubles, the Republic of Sakha (Yakutia) - 203849 million rubles, the Altai Territory - 100642 million rubles (Official, 2017). One of the ways to overcome the negative consequences of asymmetry is the evolution of budgetary federalism with the revision of priorities and prerogatives of federal power. The existing mechanism of interbudgetary transfers does not take into account the current real conditions to the proper extent, as it is formed in accordance with the political factors of the end of the last century and the beginning of a new one, when it was necessary to restrain the deconstructive centrifugal tendencies of some subjects of the Russian Federation.

The existing problems in the practice of implementation of budgetary and constitutional legal norms confirm the expediency of reforms and improvement of the mechanism of legal regulation of budgetary and related relations. This is necessary for political and social stability. Budgetary activity and the state of its legal regulation affects not only public legal entities and their authorities, but also citizens. Improvement of inter-budgetary relations in the context of strengthening the decentralized beginnings of budgetary federalism belongs to the category of politically significant decisions.

A high level of efficiency of inter-budgetary relations is possible only on the basis of the principle of budgetary federalism, which reflects the main content and nature of relations between the Russian Federation and its subjects, but it is not fixed normatively and does not yet have a solid theoretical basis in its constitutional and legal sense, although some aspects of this principle are studied by scientists (Kononova et al., 2015; Mirzoev, 2016). Fiscal federalism is not an abstract category, but a category of practical importance, as it reflects the peculiarities of relations between the state and its citizens from the point of view of organizing an optimal and fair distribution of public finances. It is a vivid manifestation of universal human interests. Russia will have to find its own variants of filling the substantive aspect of budgetary federalism. In this perspective, it is important to clearly define the legal and other criteria to be measured, that is, they are the starting points for the budgetary equalization of the subjects of the Russian Federation and municipal entities. The mechanism and methodology of budget equalization established by the budget legislation do not provide for real equalization and do not eliminate the existing excessive disproportions in the budget capacity of public-law entities.

As a result, not only the rights of public legal entities themselves, but also the rights of citizens living in the respective territory are realized to varying degrees. The asymmetry of the federation in Russia has not only organizational character, but also economic and financial aspect.

In order to attempt to balance the interests of the Russian Federation and its subjects and to develop a universal approach to the problem, it seems reasonable to turn to foreign experience, in particular, to the legal structures of the theory of "cooperative" federalism. According to a number of Western authors, common in the doctrine of "classical" and "cooperative" federalism is that the authorities of the union and its members should not be subordinate to each other (Kelkar, 2019). At the same time, if the theory of "dualistic" federalism recognized only the relations of independence and parallel competences, the theory of "cooperative" federalism demands coordination of relations and competences, excluding subordination (Commentary, 2013; Krylov et al., 1995; Formation, 2014; Handbuch, 1977). "Cooperative" federalism, in the end, serves as an organizational and technical rationalization of the state structure, in which coordination should openly preserve the middle path between centralist unification and regional independence (Wewer, 1993; von Beyme, 1999).

Analysis of the constitutional and budgetary legislation of different states shows different variants of legal regulation of intergovernmental fiscal relations (Wallace, 1999). In states with established political and economic relations, for example, in Germany, a significant part of the foundations of intergovernmental fiscal relations is regulated in the Basic Law. In these states, as a rule, the subjects of the federation do not have such essential differences as in the constitutional-legal plan, and in terms of financial self-sufficiency, as it is typical for the Russian reality. More detailed regulation with details of various aspects of intergovernmental fiscal relations is carried out in special financial legislation (Grinchinko, 2017).

In Russia, in contrast to a number of foreign countries, the current Constitution of the Russian Federation does not contain a special section or chapter devoted to the regulation of budgetary relations. It regulates inter-budgetary

relations within the framework of consolidation of the fundamentals of fundamental spheres and relations, including the principles of federalism, publicity, equality of subjects of the Russian Federation, unity of financial and budgetary policy, subjects of competence, priority of executive power in the budgetary sphere. Constitutional and legal norms in the Russian Federation do not regulate the financial aspect of the separation of powers between the levels of public power. This issue was regulated in 2003 by a new chapter IV.1 of the Federal Law "On General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Constituent Entities of the Russian Federation", which defines the general principles of separation of powers between federal bodies of state power and bodies of state power of the Constituent Entities of the Russian Federation (Federal, 2017).

The same law establishes the basis for the budget and legal status of the constituent territories of the Russian Federation, the solution of issues related to the budgetary security of the constituent territories of the Russian Federation, sources of financing of expenditure obligations arising in the course of the execution of the powers of the Russian Federation delegated to the public authorities of the constituent territories of the Russian Federation, the peculiarities of delimitation of revenue powers in the complex structure of the constituent territories of the Russian Federation, the procedure of financing through subventions, etc.

The largest volume of legal norms regulating intergovernmental fiscal relations is contained in the Budget Code of the Russian Federation (hereinafter - the BC RF), which, despite many positive aspects, is not characterized by a high level of legal regulation of budgetary relations, both from the standpoint of legal techniques and theoretical and substantive depth of some provisions. At the same time, it should be noted that the current version of the Budget Code of the Russian Federation regulates interbudgetary relations taking into account the priorities of the federation, objective reality and financial policy of the state at a higher level than before 2007.

From the point of view of the constitutional consolidation of the foundations of budgetary federalism, the experience of Germany, where the main idea of the Basic Law of Germany is the desire to ensure sufficient financing of the lands to guarantee their budgetary independence, is significant (Paragraph 1, Art. 109 of the Basic Law). In Germany, thanks to the longer period of existence of the federation and the successful experience of stable legal regulation not only of the state structure but also of financial issues in the Basic Law of the State, the mentality of inter-budgetary relations between the Federation and its subjects is different from that of Russia. Both in legislation and in practice, there is a clear desire to create conditions for the independence and independence of land from the Federation. The mechanisms for restricting the joint financing of projects are aimed at this, as well as the establishment of clear conditions for the provision of financial assistance to the land by the Federation in the Constitution (Art. 104b).

The current German federal legislation, such as the Stability and Growth Support Act (StabG), which contains the concept of general economic equilibrium, has a positive impact on intergovernmental fiscal relations (§ 1). It is understood as a stable price level, a high level of employment, external economic equilibrium, and constant and sufficient economic growth (Blankenagel, 2015). In Germany, the principle of mutual responsibility of the federal subjects for each other is enshrined, however, it is considered difficult to ensure the existence of really contradictory principles: on the one hand, the state independence and own responsibility of the lands, on the other hand - the principle of mutual responsibility of the lands for each other (Blankenagel, 2015).

The model of legal regulation of the distribution of expenditure powers between the levels of public power in Russia differs significantly from the German one, as it provides for different variants of mixed financing, additional expenditure obligations and peculiarities of financing of undistributed powers by the subjects of the Russian Federation and municipal entities (Sheveleva, 2015).

The comparative legal method of research allows us to see a variety of possible ways of development of both the states as a whole and mechanisms of legal regulation of various types of public relations. The diversity also testifies to the uniqueness of each individual state and provides an opportunity to borrow someone's positive experience. Using the experience of other states gives a positive result, provided that their national characteristics and other objective factors are taken into account. For example, Russia borrowed a model of horizontal budget equalization, which is used at the level of lands, i.e. subjects of the federation in Germany, and according to the Russian legislation some elements of it began to be applied at the municipal level, where many positive aspects of this model have no objective economic grounds for their manifestation.

Implementation of the principle of federalism in the public sphere in the Russian Federation has common features with Germany and is characterized by the presence of significant or, as German scientists claim, excessive federal powers in the field of subject matter and fiscal competences (Blankenagel, 2015). In Germany, this is enshrined in the Basic Law of the State, and in Russia - in the current constitutional and budgetary legislation. The difference between Russia and Germany is a wider assignment of subject powers to the constituent entities of the Russian Federation and a tendency to increase them almost every year. Thus, the majority of regional budgets in the Russian Federation are characterized by unbalanced and overburdened expenditure commitments, a significant part of which relates to the subjects of joint jurisdiction of Russia and its subjects.

Objectives of improvement of inter-budgetary relations and financial and legal status of public-law entities:

1. Elimination of existing problems, among which there is a constant lack of funds for the adequate financing of all expenditure obligations of the subjects of the Russian Federation and a large part of the public debt of the subjects

of the Russian Federation (Guseva, 2017).

2. Clarification or change of profitable powers on the basis of economic justification and the list of own revenues, providing a decent level of financing of obligations imposed on the subjects of the Russian Federation. Stable bases of regional budget revenues formation existing since 2004 do not provide a harmonious balance between revenue and expenditure powers. The issues of ensuring budgetary self-sufficiency of the RF subjects have been repeatedly raised in the legal literature (Bachurin, 2016). Distribution of powers between the levels of public power in the field of income, in particular tax, is not easy not only for Russia, but also for foreign countries (Janeba, Wilson, 2011).

Providing general standards of public services and maintaining a certain level of budgetary security of various public legal entities.

Legal regulation of intergovernmental fiscal relations is characterized by contradictory and ambiguous trends. On the one hand, especially in the comparative-historical perspective, it is characterized by certainty and relative stability, and on the other hand - by flawedness, which is manifested in the formal establishment of uniform principles and standards of the budget system and methods of distribution of interbudgetary transfers, which in practice are not fully respected or are violated on a legal basis. The Budget Code of the Russian Federation contains a sufficient number of legal norms providing such an opportunity to the federal executive authorities.

The next trend is related to the peculiarities of the distribution of public functions by subjects of joint management in the public sector. As already noted, the norms of the Constitution of the Russian Federation do not regulate the financial aspect of the division of powers between the levels of public authority. The most difficult, both in legal and economic terms, was the delimitation of expenditure commitments on the subjects of joint jurisdiction of the Russian Federation and the constituent territories of the Russian Federation.

Positive changes occurred after the appearance in 2003 of a new version of the Federal Law "On General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Constituent Entities of the Russian Federation". The analysis of the new chapter IV.1. of the given law taking into account the dynamics of the changes introduced into it testifies to the tendency of a significant expansion of the volume of expenditure obligations of the subjects of the Russian Federation in recent years (see art. 26.3 184-FZ in the dynamics), a significant part of which has a social character and many subjects of the Russian Federation cannot be financed at the level of a worthy social state (Federal, 2017). The continued relevance of the distribution of expenditure commitments between public-law entities is evidenced by the large number of budget disputes considered in recent years in the Constitutional Court of the Russian Federation. The subject of the appeal was the issues of belonging of the expenditure obligation to this or that public-legal education (Sheveleva, 2018).

Currently, there are changes in the priorities of the budgetary policy of states with the preservation of centralization as a mechanism to ensure a higher quality of public finance management and the dominance of the vector of financial control over the targeted use of budgetary funds, but the emphasis is shifting from the priority fiscal interests to universal, constitutionally significant values and increasing the level of solidarity. Deferralisation will contribute to a more balanced and rational distribution of public finances. Changes in the priorities of fiscal policy have an impact on decentralization processes in foreign countries (Blöchliger, Kim, 2016).

To ensure the principle of equality of the subjects of the Russian Federation, the general economic and social equilibrium in the country, the alignment of economic differences in the territory of the Russian Federation and the consolidation of decent ways of financial security of the subjects of the Russian Federation and municipal entities, it is necessary to change the legal regulation of intergovernmental fiscal relations (Chapter 16 of the Budget Code of the Russian Federation).

The existing system of budget equalization (Art. 131 of the Budget Code of the Russian Federation) has a formal nature and does not fully meet the fundamental interests of individuals and society. Application of a single method of calculation to economically and socially different territories for granting subsidies does not achieve the goals of budget equalization. There is a need for a methodology that has a real impact on the level and correlation of public and municipal services provided and guarantees the financial capacity of the constituent entities of the Russian Federation to implement the principle of equality of citizens regardless of their place of residence.

In order to smooth out the socio-economic imbalance in the development of the constituent entities of the Russian Federation and the fair and rational distribution of public finances, it is advisable to distribute income between the Russian Federation (federal budget) and the constituent entities of the Russian Federation on the principles similar to those enshrined in the Basic Law of Germany (see articles 106-107) (Blankenagel, 2015). These fundamental principles for the federation are called "the principle of harmonization", "the principle of subsidiarity" and "the principle of solidarity" (Constitutions, 1997):

1) Within the limits of current income, the Federation and its subjects have an equal right to cover the necessary expenses;

2) the needs of the Federation and its subjects in covering expenses shall be coordinated in such a way as to achieve their economic equalization, avoid overloading of taxpayers and ensure a uniform standard of living on

the territory of the Federation;

3) The federal legislator shall guarantee equalization of the differences in financial potentials of the subjects of the federation, taking into account the financial capabilities and needs of municipalities.

In order to sufficiently compensate for inequalities in the economic potential of the constituent territories of the Russian Federation and to use the equalizing function in respect of heterogeneous constituent territories of the Russian Federation, it is possible to use two options known in the world budget practice:

1. Budget equalization of the constituent territories of the Russian Federation by means of VAT. Value added tax is used as a corrective mechanism in case of insufficiency of own tax revenues. The share of income from it is determined in proportion to the population of the constituent territory of the Russian Federation. For those constituent entities of the Russian Federation, where income from own taxes is lower for each resident than the average income in the country, the share of increased income from VAT is provided.

2. Horizontal equalization at the level of constituent entities of the Russian Federation. It will show the effect of the principle of solidarity and mutual assistance of the constituent entities of the Federation to each other. Subsidies should be used as the last level in the budget equalization.

These proposals are based on the natural desire to achieve decent financing of the constituent territories of the Russian Federation in order to guarantee their budgetary independence. Through these options for improving the legal regulation of intergovernmental fiscal relations, several goals will be achieved:

1. Improving the efficiency of public finance management.

2. Elimination of excessive disproportions in the financial potential of the constituent entities of the Russian Federation.

3. Creation of conditions for the real implementation of the principles of independence and equality of the constituent territories of the Russian Federation in the public sector.

4. Ensuring the budget balance of interests of all consumers of state and municipal services.

5. Creating conditions for the implementation of many of the expenditure obligations of a social nature imposed on the constituent entities of the Russian Federation.

A special stage and a new concept of development of intergovernmental fiscal relations are associated with the Decree of the President of the Russian Federation of January 16, 2017 № 13 "On Approval of the Fundamentals of State Policy of Regional Development of the Russian Federation for the period up to 2025", which defines the principles, objectives, priorities and mechanisms of implementation of the state policy of regional development of the Russian Federation (Evdokimov, 2007; Waldhoff, 2015; Blankenagel, 2015). Its implementation involves changes in the legal regulation of budgetary relations on the basis of the development and implementation of a new holistic model of budgetary federalism, taking into account the specifics of different types of subjects of the Russian Federation. Many positive transformations in the legal regulation of inter-budgetary relations that have occurred since the adoption of the Budget Code of the Russian Federation have not been able to ensure an optimal balance of interests of the Russian Federation and its constituent entities, to eliminate significant differences both in the level of socio-economic development of the constituent entities of the Russian Federation, where the differentiation in terms of regional budget revenues is 43 times, and in the average per capita income of the population - a difference of 5.5 times.

Back to the Presidential Decree of December 1, 2016 № 642 "On the Strategy of Scientific and Technological Development of the Russian Federation" among the strategic guidelines was determined the need to overcome imbalances in the socio-economic development of the territories (Decree, 2017).

In the Decree of the President of the Russian Federation of January 16, 2017 among the principles of the state policy of regional development are named: a differentiated approach to the implementation of measures of state support for regions and municipalities depending on their socio-economic and geographical characteristics in order to reduce differences in the level and quality of life of citizens of the Russian Federation and the level of socio-economic development of the subjects of the Russian Federation. The main objective of the regional development policy is to ensure equal opportunities for the realization of economic, political and social rights of citizens of the Russian Federation throughout the country, as enshrined in the Constitution of the Russian Federation and federal laws.

Departing from the principle of equality, we proposed to compensate at the expense of the federal budget the missing funds to the average Russian level of income of the subjects of the Russian Federation. It is necessary to carry out an inventory of expenditure powers with the definition of priority expenditure obligations of the subjects of the Russian Federation, which implies co-financing from the constituent territories of the Russian Federation requires a serious legal substantiation, since, in fact, it implies the introduction of different budget regimes.

CONCLUSIONS

Worthy decisions of the question under study can be made based on the legal position of the Constitutional Court of the Russian Federation, which formulated the basic principles, principles and requirements for the legal regulation of financial activities, including the budget and public law entities.

For the effective financial and economic development of each public-law entity, taking into account the objective realities of natural-climatic, industrial, infrastructural and other nature, it is necessary to use a general approach, which is reflected in the Resolution of the Constitutional Court of the Russian Federation (Decree, 2016); in this sense the Russian Federation, represented by federal state authorities, is responsible for ensuring development and security on the territory of all the constituent entities of the Russian Federation, taking measures to facilitate the resolution of their publicly significant problems by the constituent entities of the Russian Federation, including taking into account the regional specifics of each of them (Resolution, 2014).

Legal regulation of inter-budgetary relations on the basis of the principle of unity of the budget system should ensure constitutional equality and financial equalization in order to create conditions to meet the vital needs of citizens regardless of their place of residence (Bondar, 2018).

It seems that the improvement of inter-budgetary relations should be carried out in the following directions:

1. For the purpose of optimal and reasonable balancing of federal and regional interests and efficiency of public functions, it is necessary to redistribute expenditures on the subjects of joint management of the Russian Federation and its subjects in order to reduce the excessive burden of expenditure obligations of the constituent territories of the Russian Federation and overburden them with public functions and tasks, or to introduce amendments to the legislation that significantly increase the revenue base of regional budgets, sufficient for their financing. Expenditure obligations of the constituent entities of the Russian Federation should be financially commensurate with their powers in the sphere of revenues. This will contribute to the balance of regional budgets and financial stability of the constituent territories of the Russian Federation.

2. Vertical and horizontal imbalances should be smoothed out by fair redistribution of public finances through transfers and other financial and legal mechanisms (e.g., as in Germany, using value added tax for this purpose) in order to achieve certain standards.

In this respect, the experience of Canada is positive, where federal transfer federalism is based on the implementation of specific social programs, in addition to the leveling of fiscal capacity of the constituent entities of the federation. Funds within the framework of the Canadian Social Transfer and the Canadian Health Transfer are directed to the subjects in the amount calculated on a per capita basis to guarantee a uniform quality of services to all Canadians regardless of their place of residence (Saunders, 1995; Janeba, Wilson, 2011).

This proposal is relevant in terms of the implementation of the main directions of financial policy formulated in the President's Address to the Federal Assembly of 20.02.2019 "Message of the President to the Federal Assembly", including the national projects, the results of which should be visible in each constituent entity of the Federation, in each municipality (The message, 2019). In the same document, the President of the Russian Federation stressed that the country has enormous financial resources for the well-being of Russia and Russian families.

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Curriculum development model for Cross-Cultural Corporate Identity course in Graphic Design Programme

Modelo de desarrollo curricular para el curso de identidad corporativa transcultural en el programa de diseño gráfico

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ABSTRACT

This study aims to develop a curriculum development model for cross-cultural corporate identity course for Graphic Design programme in higher education institution. The cross-cultural component in this study is based on local cultural contexts from ethnic groups in Peninsular Malaysian, Sabah and Sarawak. At present, the study on curriculum development which includes cross culture in the teaching of graphic design in the local contexts is lacking. Furthermore, there are insufficient studies done to evaluate students' cross-cultural competence in the context of formal education institution. Unfortunately, even though the practice of cross-cultural design is increasingly recognised, research on the design of the corporate identity curriculum is still lacking. Therefore, the objective of this study is to present a framework for a curriculum development model for cross-cultural corporate identity course for diploma in graphic design programme which include three key components: (1) identify the key components in curriculum model development, (2) outline and develop a curriculum model and (3) evaluate its feasibility based on cross-cultural in the process of learning creative corporate identity for the education of graphic design art. The Design and Developmental Research model is applied to develop such a model. The conceptual model proposed in this study outline three main aspects - namely (1) to put forward and establish the need to create the cross-cultural model of corporate identity of graphic design arts in the local higher learning institutions which is concurrent with the demands of current academic and creative industries, (2) design and development phase and (3) evaluation and usability phase. The development of the cross-cultural curriculum model is a guide for diploma lecturers in the education of graphic design arts to facilitate the implementations of project-based teaching and learning to be more responsive by applying local and cultural elements in the product designs. Knowing local cultures is a great way to encourage future diploma graduate graphic designers to produce more product designs with quality attributes such as being authentic, and highlighting locally-produced graphics which then have the potential to flourish globally.

Keywords: Cross-Cultural, Corporate Identity, Curriculum, Graphic Design Arts, Higher Learning.

RESUMEN

Este estudio tiene como objetivo desarrollar un modelo de desarrollo curricular para un curso de identidad corporativa intercultural para el programa de Diseño Gráfico en una institución de educación superior. El componente intercultural en este estudio se basa en contextos culturales locales de grupos étnicos en Malasia peninsular, Sabah y Sarawak. En la actualidad, falta el estudio sobre el desarrollo curricular que incluye la cultura cruzada en la enseñanza del diseño gráfico en los contextos locales. Además, no hay suficientes estudios realizados para evaluar la competencia intercultural de los estudiantes en el contexto de la institución de educación formal. Desafortunadamente, a pesar de que la práctica del diseño intercultural es cada vez más reconocida, todavía falta investigación sobre el diseño del plan de estudios de identidad corporativa. Por lo tanto, el objetivo de este estudio es presentar un marco para un modelo de desarrollo curricular para un curso de identidad corporativa intercultural para un diploma en programa de diseño gráfico que incluya tres componentes clave: (1) identificar los componentes clave en el desarrollo del modelo curricular, (2) esbozan y desarrollan un modelo curricular y (3) evalúan su viabilidad basada en la cultura intercultural en el proceso de aprendizaje de la identidad corporativa creativa para la educación del arte del diseño gráfico. El modelo de Diseño e Investigación del Desarrollo se aplica para desarrollar dicho modelo. El modelo conceptual propuesto en este estudio esboza tres aspectos principales: (1) presentar y establecer la necesidad de crear el modelo intercultural de identidad corporativa de las artes del diseño gráfico en las instituciones locales de educación superior que sea concurrente con las demandas de industrias académicas y creativas actuales, (2) fase de diseño y desarrollo y (3) fase de evaluación y usabilidad. El desarrollo del modelo curricular intercultural es una guía para los profesores con diploma en la educación de las artes del diseño gráfico para facilitar la implementación de la enseñanza y el aprendizaje basados en proyectos para ser más receptivos mediante la aplicación de elementos locales y culturales en los diseños de productos. Conocer las culturas locales es una excelente manera de alentar a los futuros diseñadores gráficos graduados de diplomas a producir más diseños de productos con atributos de calidad como ser auténticos y resaltar gráficos producidos localmente que luego tienen el potencial de prosperar a nivel mundial.

Palabras clave: intercultural, identidad corporativa, plan de estudios, artes de diseño gráfico, educación superior.

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1. INTRODUCTION

Graphic design entails intellectual and technical skills in generating creative ideas to deliver information to the public. It also involves the talent to create concepts, effective visuals, critical skills and technical knowledge (Drucker, 2016). Graphic design is continuously transforming with the changes of time and innovation of technology. Changes in the field of graphic arts are concurrent with new technological advancements which demand graphic designers to enhance their skills, technical abilities and produce their design tasks speedily. To remain significant, Engeler (2017) asserted that graphic design arts has to continue being dynamic and constantly evolving following the advancement in technology, as well as to apply cultural and social values in meeting the demands in this field. In addition, it is important to consider social, cultural and environmental elements when producing designs. Bahahir Zahrom (2017) also explained that graphic design art is driven by the sophistication of technology, and the improvement of taste and the culture of the people.

In fact, the field of graphic design is a professional one which requires expertise, a high level of creativity and a good technical mastery. Therefore, educational institutions play a key role to produce professional graphic designers, and in order to do that it is important to provide learning experiences which encompass all these elements in order to prepare students with the relevant professionalism to cater the needs of current creative industries. Fortunately, our world community today has embraced arts as much as other fields since arts is recognized as a relevant field which has the potential to grow further and has played a contributing role in the nation's economic growth. In the 21st century, with the progress of technology and communication, design fields such as graphic design arts are among the top programmes offered at higher learning institutions. As such, it is undeniable that many public and private universities, polytechnics, colleges and skill institutions offer study programmes related to creative arts such as the Graphic Arts Programmes at diploma and degree levels in local and international institutions.

Teaching and learning in the field of design emphasize the production of appropriate concepts, visual appeal, mastery of skills and technical expertise. Curriculum in graphic arts education not only focuses on visual organization, layout, text and image display but also emphasizes other aspects. Issues in the design of the Art Program curriculum include the failure to produce potential designers which meet the demands of the creative industry. The study done by Spencer (2016) stated that the failure of the university's graphic arts programme to produce graphic design students according to current needs has led to difficulties in obtaining employment as a designer in the industry. Spencer further explained that the factors contributing to the failure of the Graphic Arts Programme were the teaching and learning approaches that were less relevant to the realities of the work environment. In addition, there are problems in the implementation of teaching and learning methods for the Graphic Arts Programme.

A study conducted on students in the Graphic Arts Programme in Oman found that there was a lack of pedagogical practices and this has an impact towards the students' creativity (Alhajri 2016). This means that students' learning should never focus on a limited method of learning as this approach could affect the students' creativity levels. A study conducted at a university in Los Angeles USA, found that the Graphic Arts Programme focused less on the design process and less on commercial values in design (Drucker, 2016). Eventually, students had trouble understanding the process of producing a design. Such lack of understanding was also highlighted in the study done by Inciong (2010), where less emphasis was placed on the design process in the Graphic Arts Programme. In fact, without a good understanding towards fundamental design aspects and practices, the quality of design will become lower.

Furthermore, the production of corporate identity is a challenge in the era of globalization. Corporate identity requires the understanding towards various aspects in producing a design such as culture and national identity (Grethe and Pedersen, 2016). A study conducted by Stoimenova (2018) asserted that there is a lack of research on the visual design of corporate identity which is a part of corporate identity. The study conducted by Mohamad et al. (2016) also explained that only a handful of studies were conducted in the field of corporate identity. Moreover, the lack of teaching and learning practices in creating a corporate identity has left no new breath in the new design of corporate identity. Therefore, academicians need to address these issues so as to overcome issues on poor quality design works and complaints on failures to produce graduates who do not meet with the industry requirements.

Finally, the production of corporate identity is a form of visual transmission to society. Ethnic diversity provides space for creative arts education such as graphic design to explore the cross-cultural advantages of graphic design learning. Implementation of cross-cultural design is increasingly recognized in various fields such as education, communication and graphic arts, however, it is still practically lacking in graphic design production (Gray and Bowling, 2017). Cross-cultural aspects such as symbols, languages, visuals and cultural influences have not been used as triggers in the study of design production, especially in the elements of corporate identity. Cultural learning issues need to be addressed at the pedagogical level so as to address cultural issues before students could be positioned in the industry as designers (Meyer, 2008). A study conducted by (Meyer, 2008) stated that there is a need to integrate cultural sensitivity in the study of graphic arts based on the following:

i) Students lack understanding and appreciation of cultural components of society.

ii) Different teaching and learning practices are required in learning about culture.

iii) Students rely heavily on specific aspects of their culture even though they already have a basic understanding of culture

Based on the research gap and the analysis conducted from the previous studies, research on the design of the corporate identity curriculum is still lacking. Therefore, this study aims to fill in the gaps in terms of roping in cross-cultural aspects in the Graphic Design programme and also to further develop a cross-cultural corporate identity curriculum model which takes into account cultures from a number of local ethnic groups in Malaysia such as Malay, Chinese, Indian and Peranakan. In order to address problems pertaining to the design arts programme, this study is conducted to design a cross-cultural

curriculum model to be developed in Graphic Arts Education in Malaysia's higher learning institutions which would serve as a guide to the formation of a cross-cultural corporate identity curriculum in the graphic arts education. In addition, this model is a new platform for developing the Graphic Arts Programme curriculum which injects cultural elements into the learning of corporate identity design and thus contributes to a Malaysian identity based graphic design.

For that reason, the development of the proposed curriculum model would serve as a key guide to assist lecturers involved in the development of graphic design arts curriculum in tertiary institutions. This study would also identify the key components of the arts elements in the cross-cultural local communities and also the task of producing a design process in the workplace in order to develop the design of a corporate identity curriculum. In addition, the study aims to include experts in graphic arts education – namely, lecturers in public and private universities, stakeholders from the industry, as well as the Curriculum Development panel at university and ministry levels.

It is therefore important to note that at present, there is no cross-cultural corporate identity curriculum model which has been developed in Malaysia especially for the diploma programme, by anyone including the Ministry of Education Malaysia or the higher leaning institution itself. Therefore, the development of this model would be of great benefit to the field of Graphic Arts education in Malaysia which has been gaining attention from various sectors of the society.

The researchers hope to develop a cross-cultural corporate identity curriculum model for graphic arts course for the local higher learning institution in order to produce professional and marketable graduates relevant to the 21st century. The objectives are as follows:

a) Establish the need to put together a cross-cultural corporate identity curriculum model in the Graphic Design Arts Education.

b) Identify and put forward a cross-cultural corporate identity curriculum model for Graphic Design Arts Education

The conceptual framework proposed in this research serves as a guide for the researchers to carry out this study. Ultimately, the main objective of the study is to develop a curriculum development model for cross-cultural corporate course in graphic arts education which is based on several aspects of curriculum components. In Figure 1, three main factors form the basis for the conceptual framework of this study. The first element is the discussion between industry (stakeholders) and academicians to be taken into account in order to understand the needs and demands of the graphic design programme curriculum design. Meaningfully, two-way discussions focus more on the latest needs in the scope of graphic design work, knowledge of graphic design and manual or digital skills that designers need to master. These requirements and demands would be considered by academicians to be included in the design of the Graphic Design Programme curriculum in higher education institutions. This discussion is important so that graduates could reach the market potential of graduates and work in the field as well as reduce the number of unemployed graduates as what they had learned and practised cater to the creative industry and stakeholders already.

Secondly, the results of discussions from stakeholders from the industry and academicians would assist in the development of components in the curriculum design based on Tyler's model (1949). Tyler's curriculum model is selected for the design of graphic arts education curriculum development as a basis to determine the appropriateness of the elements of cross-cultural corporate identity curriculum model. Hence, elements in Tyler's model are deem as appropriate for developing a curriculum design which involves the teaching and learning of creative arts. The elements of the teaching method are important because in Tyler's model there is an emphasis on the organization of learning experiences to be carried out in a particular order or phases to achieve a maximum learning impact. It is clear here that the model focuses on the goal of achieving a clear and realistic goal. This is important as the teaching and learning of graphic design arts put emphasis on theory and practice.

Thirdly is the formation of cross-cultural corporate identity subjects in teaching and learning. According to the Malaysian Qualifications Agency in 2013, the curriculum content of the Arts and Design Program could be classified into two main areas: (1) aspects of design science and (2) practical aspects of design. This combination of knowledge in design and practical skills could explain the design of cross-cultural corporate identity curriculum. Overall, concepts presented have served to establish a conceptual framework for developing aspects of theory practice (art assessment) and practical practice (art production) in developing cross-cultural curriculum design models. It is hoped that from this study, a cross-cultural corporate identity curriculum model for the Graphic Arts Programme would then be developed in the near future.

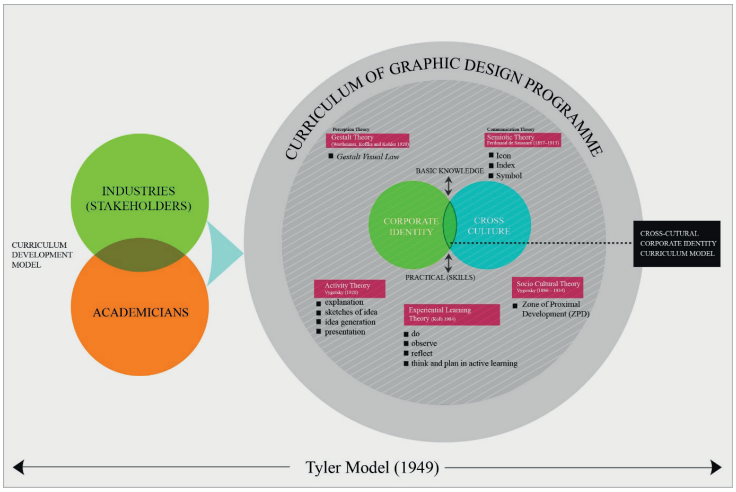

Figure 1: Framework

2. METHODOLOGY

This study features the development of cross-cultural curricula in the creative learning process of corporate identity. The proposed model is a framework of a new curriculum development for graphic arts education that applies process-based learning. This study adopts the design and development research approach (Richey et al., 2004). The concept of development is a form of production of a learning material. In terms of research and development, research is carried out systematically through three primary phases such as design, development and evaluation. This study adopts the ADDIE model development approach as a basis for cross-cultural curriculum development in the process of creative learning of corporate identity. This method of design and development would have a positive impact as it addresses the various issues and concerns in the graphic arts education.

In order to propose the model, the researchers have addressed three main stages suggested by Richey (2004):

1. **Needs analysis** - aims to identify the necessity for the development of this study model.

2. **Development and design** - adopt a model-based approach based on the Fuzzy Delphi Method and founded on expert approvals from academicians and industrial segments.

3. **Evaluation and usability** of the proposed model - conduct in-depth interviews with experts to evaluate the cross-cultural corporate identity curriculum model.

However, the scope of this paper is on proposing a conceptual framework and therefore, would not further outline and discuss the final phase, which is the evaluation and usability of the model. Aspects and phases of Research Design and Development of the Cross-Cultural Curriculum Model of Corporate Identity Curriculum in Graphic Arts Education at Institutions of Higher Learning are shown in Figure 2.

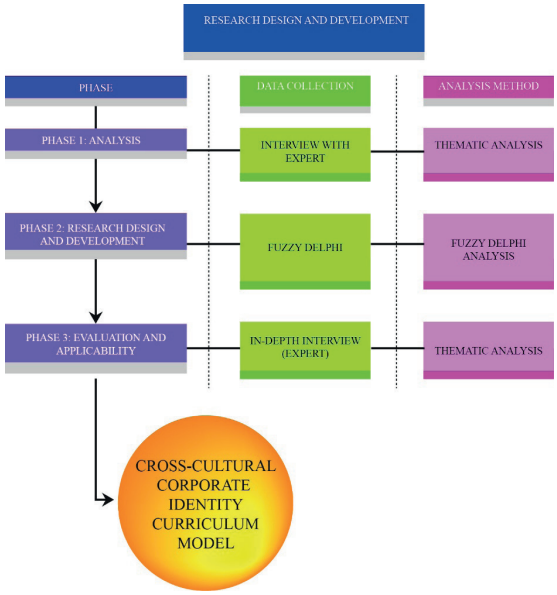

Figure 2: Research Design and Development of the Cross-Cultural Curriculum Model of Corporate Identity Curriculum in Graphic Arts Education at Institutions of Higher Learning

3. RESULT AND DISCUSSION

The development of this curriculum would provide useful input for relevant diploma lecturers or faculty members and students involved in the graphic arts education to enhance their graphic arts skills which incorporate cross-cultural corporate identity. It is also important to note that the researchers are directly involved, in graphic arts education per se and education in general, in the local public universities in order to partake in proposing this curriculum model. Next, the proposed model could also be used for the existing curriculum review process. Essentially, the development of cross-cultural graphic arts education curriculum should be created so that students can appreciate the diversity of Malaysian local culture that could serve as a source of inspiration in the creative works which embalm original and creative ideas highlighting obvious corporate identity.

The importance of this study can also be seen in helping lecturers guide students to come up with more original ideas and create new designs without imitating or "stereotyping" the creative works. Fortunately, Malaysia's rich cultures derive from various ethnic cultures; thus, there are countless sources of inspiration relating on the local visual culture which could be adapted and applied in producing original creative ideas. Designs portraying local ethnic cultures and identities must be applied in order to become an art branch capable of competing with the Western and Eastern arts platforms.

The development of a curriculum model which incorporates both theoretical and practical aspects of graphic arts education would then produce creative, innovative, skilled and competitive designers. The learning activities conducted by the lecturers would then emphasize the creative learning process as students experiment with designs portraying aspects of cross-cultural ethnic designs which embalm corporate identity. Learning activities which implement project-based learning tasks could also enhance students' cognitive, psychomotor and affective processes in producing design tasks and projects. It is hoped that the proposed curriculum design would assist the diploma students to develop an in-depth and rich understanding and also help to enhance skills pertaining the production of global and professional graphic works.

Ultimately, curriculum development in graphic design arts education is very important and requires involvement from academicians as well as the stakeholders (industry) in ensuring that the teaching and learning process benefit both the graduates and the learning institutions. An important aspect to this proposed model is to include the involvement of stakeholders such as professional designers from the creative industry so as to provide input on job process knowledge in the field of design and creative design career. With reference to curriculum development studies based on skills such as vocational engineering education (PTV), there are three main phases: curriculum design, curriculum development and curriculum implementation (Finch and Crunkilton, 1999). This study can also help organizations involved in curriculum development at the learning institutions to develop appropriate guidelines for developing a curriculum based on studies that require theoretical and practical mastery.

The program structure in graphic arts education implemented at the institute level comprises of subjects which are culturally and visually appealing. Such theoretical subjects emphasize the role and function of culture. However, in practice, the knowledge gained through these theoretical subjects is not applied in the design process. Thus, the design works by students lack cultural and visual appeals which are actually vital to create a different impact or competitive niche in the designs. Based on interviews conducted with a number of academics and graphic designers, the cross-cultural application of corporate identity learning is very helpful in understanding the culture and incorporating elements of culture into the design. The results from the interviews, respondents supported the development of a cross-cultural corporate identity curriculum model as it was seen as a good effort in promoting culture in the field of design education especially in graphic arts programs. Therefore, in fostering local culture for both theory and practice, the cross-cultural corporate identity curriculum design will open the door to create designs that communicate local identities which could compete at a competitive level. In addition, students will also better understand and appreciate the local culture which will assist in the production of graphic works that meet the needs of the community.

In brief, emphasis on culture in the curriculum in teaching and learning of graphic design arts course would ensure that the diploma students are more sensitive towards the needs of the community and, in turn, enable students to become global designers in future. As a result, in future, the university is able to achieve the target market potential of the graduates as planned and further enhance the university's ranking. The benefits that will come from developing this model will help educators to implement the teaching of corporate identity more effectively. In addition, students will gain a better understanding of the arts in various cultures and will also be able to implement the right design process in the production of corporate identity design. Cross-cultural can also help students generate new ideas to meet the demands of their clients. In addition, the use of art elements in cross-cultural is seen as a way or an effort to combat the issue of visual plagiarism by students who have lost ideas in design. The proposed contexts and aspects featured in this cross-cultural curriculum development corporate identity model can serve as a guide to create a learning curriculum whereby students are to be more creative and innovative and to achieve the national educational aspirations and also to produce creative graduates who meet the needs and demands of the global industry.

4. CONCLUSION

The proposed curriculum development model for the cross-cultural corporate identity course for the Graphic Design Arts Diploma Programme is vital to provide students with the opportunities to understand the learning practises in acquiring original ideas based on surrounding life sources such as multi-cultural elements. This cross-cultural corporate identity curriculum model would then serve as a guide and a clear-cut model which could be of use to university and college curriculum design committees in developing a curriculum model for a cross-cultural corporate identity course

relevant to current industrial needs. The model proposed is in line with the study done by Logan (2006) which suggested the need for academic development in graphic arts programmes that consider industrial needs. In addition, the cross-cultural corporate identity curriculum has the potential to be introduced to the faculty or department which run graphic arts education programme to expand the culture of graphic designs. Essentially, the model proposed also meets the arguments that students from the Graphic Design Arts Programme require exposure to the way professional design work is practiced in the creative industry (Fraher and Martinson, 2011). Diploma and degree graduate students have more potential to become successful professionals if they have in depth knowledge of the academic and industrial practices, cultures, expectations and expertise needed in the real world.

The development of this cross-cultural corporate identity curriculum model is in line with the Graphic Design Arts programme in the higher education institutions because at this level, students need to be exposed to the appropriate knowledge and methods of learnings that reflect the current academic and industrial needs of their future undertakings. In brief, this study contributes to the design of innovative curriculum that meets today's teaching and learning that addresses production of graduates and professionals which fit into the careers in the local and global scenes. Moreover, it is important to note that in order to further extend cross-cultural studies in the field of graphic design arts, cross-cultural contexts could also be proposed to be incorporated into the development academic curriculum for the Graphic Arts programme courses, such as advertising, illustration and animation. It is hoped that this curriculum model not only guide the development of creative corporate identity designs, but also in the creation of designs which have local identity features and also be able to instil diploma students with a sense of applying cross-cultural elements as a source of inspiration in the production of corporate identity design. In addition, by instilling a cross-cultural corporate identity can also convey Malaysia's local culture recognisable to others which features our national culture and identity. This will in future enable our diploma and degree level graduates to compete with other graphic arts design programmes. Ultimately, having an in-depth knowledge about the local ethnic cultures would provide a great platform to encourage future professional graphic designers to produce a more authentic, high-quality and locally-produced graphic design works which have the future potential to grow globally.

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A Universal Banking Model Based on Empowerment and Skills Development

Un modelo de banca universal basado en el empoderamiento y el desarrollo de habilidades

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ABSTRACT

The present paper aims to propose a universal banking system focusing on the empowerment and skill development of bank employees. This study used the Delphi fuzzy method to select experts and classify and analyze their responses. Further, the DEMATEL method was used to identify and investigate the criteria correlations and map the network relationships. A robust statistical method was used to solve optimization problems based on data uncertainty. The results drawn from the model indicated that factors such as employee decision-making ability, responsibility towards executing a decision, access to decision tools, and employee self-efficacy sources influence the empowerment of employees and correct implementation of private, corporate, business, and investment banking. Further, they showed that sense of competence, motivation, participation, sense of effectiveness, and information technology influence universal banking. In addition, training and reward influence all types of universal banking.

Keywords: Universal banking, Empowerment, Radical humanist paradigm, Metaheuristic algorithm, DEMATEL

RESUMEN

El presente documento tiene como objetivo proponer un sistema bancario universal centrado en el empoderamiento y el desarrollo de habilidades de los empleados bancarios. Este estudio utilizó el método difuso Delphi para seleccionar expertos y clasificar y analizar sus respuestas. Además, el método DEMATEL se utilizó para identificar e investigar las correlaciones de criterios y mapear las relaciones de red. Se utilizó un método estadístico robusto para resolver problemas de optimización basados en la incertidumbre de los datos. Los resultados extraídos del modelo indicaron que factores tales como la capacidad de toma de decisiones de los empleados, la responsabilidad de ejecutar una decisión, el acceso a las herramientas de decisión y las fuentes de autoeficacia de los empleados influyen en el empoderamiento de los empleados y la correcta implementación de empresas privadas, corporativas y comerciales. banca de inversión. Además, mostraron que el sentido de competencia, motivación, participación, sentido de efectividad y tecnología de la información influyen en la banca universal. Además, la capacitación y la recompensa influyen en todos los tipos de banca universal.

Palabras clave: banca universal, empoderamiento, paradigma humanista radical, algoritmo metaheurístico, DEMATEL.

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1. Introduction

Universal banking is a term used for financial institutions and banks. It provides clients with extensive options for banking services. Universal banking is mostly formed when the focus is on special client groups; that is, when banks tailor their functions to the needs of their client groups, they have to learn and employ new specializations from wider fields of financial markets (Abtahi, 1996). For instance, a number of German banks which had initially started as business or corporate banks later turned into private banks. Also, retail and corporate banking in Asia shifted towards investment banking with their presence in international competition and the growing global commerce. As such, it can be said that universal banking is in line with human progress and social welfare (Athanassopoulou, 2004). Four major client groups of universal baking are retail clients, business clients, corporate clients, and private clients. Different banks have different standards for this classification; however, in most banks, the classification mainly relies on the average deposit of the client accounts. According to each client group, the related banking fields are established to manage the affairs of that client group.

The three main steps of universal banking implementation are client identification, market segmentation, and identification of the needs of each segment. Client identification is the first and most important implementation step of universal banking.Moreover, creative and committed human resources and employees are nowadays considered to be among the primary assets of a banking system and in a sense, the human workforce is the fundamental capital of a banking system (Fornell, 1981). Traditional banking focused on the physical activities of the staff and the tasks were carried out within predefined frameworks.However, the circumstances of the human workforce and employees will definitely changein new banking systems such as universal banking. New banking environments require employees that make sound, timely decisions and provide solutions for their problems. This requires capable employees and human workforce (Fornell, 1981).

Empowerment is a comprehensive, relatively time-consuming process that requires actions such as sharing the information with the staff, providing adequate autonomy with defined boundaries, and replacing hierarchies with task teams.This, in turn, leads to a flexible and dynamic organization where employees feel a sense of belonging and thus work with enthusiasm and pride (Fornell, 1981). Marl and Mordis define empowerment based on one's ability to accept responsibility and power via training, trust, and support. Ginned defines empowerment as problem-solving by the managers, while Blanchard, in *Three Keys to Empowerment* argues that empowerment is based on the knowledge, practice, and motivational ability of individuals (Mohaqeqnia, 2014). There are certain requirements for the successful implementation of universal banking the most important of which is the employment of competent and capable human resources. Hasangholipoor et al. (Hasanqolipoor, 2013) reported that according to directive 90/40024 dated May 14, 2011,issued by the Central Bank of the Islamic Republic of Iran, banks are mandated to group their clients according to various criteria and tailortheir services to each client group. This has led to movements and efforts in the banking system to adapt to the new banking system. International researches have also addressed this subject. Genliterl conducted a study on developing a model for universal banking and staff capability and showed that employees need to be capable in this regard for the targeted implementation of universal banking [8]. Monorsitininvestigated the effect of leadership styles and bank directors' relationships on job satisfaction among the employees of Turkish banks (Fornell, 1981).

Considering the competitive atmosphere of Iran's banking industry and the increasing growth of private banks, implementing and proposing a model for universal banking has been addressed by the banking authorities and the new strategy has found a good position in domestic and foreign areas in both practical and research fields (Hasanqolipoor, 2013). Davari et al. (2014) investigated the competencies required for universal banking implementation. The research identified the required competencies using exploratory methods and expert opinions. The result indicated the importance of decision making and delegation of authority, competency-based evaluation, technological skills, updated knowledge, flexibility, considering the staff as human assets, and learning. Khajesalehani (et al., 2014) investigated the relationship between employee communication skills and customer satisfaction, finding that better communicator skills by employees also improves customer satisfaction. Danai et al., investigated the relationship between the decision-making style of the heads of Islamic Azad Universities and their organizational performance, concluding that there was a direct, significant correlation between their directive decision-making and organizational performance.

Considering the overall movement of the national banking system towards universal banking and the role of bank employees and human resources as the chief executives of universal banking, empowerment and skills development the staff of Tejarat bank, as an efficient bank, are highly important for creating a competitive edge and increasing staff efficiency. Most banking studiesadopt an objective approach to the subject based on structuralism and functionalism. Therefore, objective and humanist views still require further research. Moreover, one of the beneficial features of management studies is aiding the improved management practices as well as increasing the knowledge on the subject. The current work can improve management practices and provide an opportunity for rethinking the organization's activity and obtaining practical solutions for improved management performance. As such, this study aims to create a model of universal banking focusing on empowerment and skills development of employees. The main question of the research addresses the quality of a universal banking model based on employee empowerment and skills development. Accordingly, this brings about three questions:

1. What are the components of the desired universal banking model?
2. What are the component interrelations of the desired universal banking model?
3. What are the differences between models proposed for different banks?

2. Research Method

This is an applied studyaiming to develop applied knowledge in a specific field. Considering the nature of the subject, exploratory-descriptive research method was selectedand surveys and field studies were used for data collection.

The study used secondary sources such as books, papers, journals, and online resources to gather data. After that, it used a field study approach for developing and proposing the target model.

The statistical population of the qualitative phase consisted of a panel of experts who were able to help find the desired universal banking model based on their experience and knowledge. The statistical population at the quantitative phase consisted of the staff ofTejarat Bank of Gilan Province, Iran.

Data analysis was performed using component identification via the Delphi fuzzy method (expert views), identification of component interrelations using the DEMATEL method, developing a mathematical model based on large-scale, robust modeling; problem-solving using metaheuristic techniques, and sensitivity analysis via soft operational research techniques. The Delphi fuzzy method was utilized to select the experts and classify their responses and finally integrate them. The DEMATEL method was used to identify and investigate criteria interrelations and map network relationships. Further, the robust method was used to solve optimization problems with data uncertainty.

3. Findings

This study investigated various empowerment models and the factors influencing the empowerment. After reviewing the recent employee empowerment models in all levels, the factors identified in the models were submitted to the expert panel who selected 32 factors which they thoughtwould influence the staff empowerment in universal banking (Table 1).

Table 1: Factors influencing employee empowerment

No.	Factor
1	Sense of influence
2	Choice
3	Sense of competence
4	Sense of meaningfulness
5	Information
6	Rewards
7	Power to make decisions affecting organizational direction
8	Power to make decisions affecting organizational performance
9	Employee self-esteem
10	Self-efficacy beliefs
11	Senior management coaching
12	Training
13	Participation
14	Motivation
15	Job satisfaction
16	Information technology (IT)
17	Management strategies
18	Organizational conditions and factors
19	Employee self-efficacy sources
20	Participation in decision-making
21	Corporate values
22	Open relationships
23	Feedback dependent control
24	Structuring
25	Facilities
26	Employee decision-making ability
27	Staff operational responsibility in implementing the decisions
28	Access to decision and execution tools
29	Staff responsibility towards the outcomes of their decisions

30	Integrations between the senior managers and frontline employees
31	Involving the staff in planning and operational information of the organization
32	Involvement of staff unions

Moreover, having investigated different types of universal banking and the previous models and their implementation methods in Iran according to the banking experts, we selected the following six types of banking to investigate for model development:

1. Private banking;
2. Retail banking;
3. Virtual banking;
4. Corporate banking;
5. Investment banking;
6. Business banking;

In the next step, in order to respond to the first question, the components and function of each banking type were identified using field studies and a questionnaire survey. Then the product development criteria in each banking system were identified and according to the experts, 32 factors influencing universal banking were expertly reviewed and ranked based on their effectiveness.

3.1. Private banking

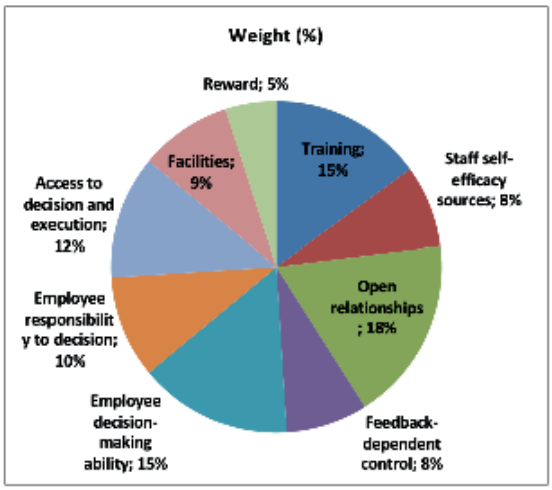
The types of private banking and their components are categorized into two groups: Asset management; financial services and private services and consultations. The development criteria of private banking products were investigated from four perspectives:

1. Needs assessment: every client;
2. Relationships: account manager;
3. Delivery: Offices and special branches
4. Required information: personal life information.

Afterward, the 32 factors affecting employee empowerment in universal banking were submitted to the panel of experts and ranked by their priority (Fig. 1).

Fig. 1. Employee empowerment in private banking as perceived by the experts

Effective factors	Weight (%)
Training	%15
Staff self-efficacy sources	%8
Open relationships	%18
Feedback-dependent control	%8
Employee decision-making ability	%15
Employee responsibility to decision	%10
Access to decision and execution	%12
Facilities	%9
Reward	%5



3.2. Retail banking

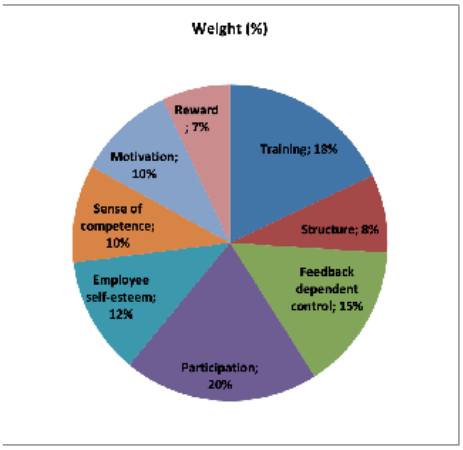
The 32 factors affecting employee empowerment in retail banking were submitted to the experts and ranked (Fig. 2). Different operations in retail banking were determined as follows:

1. Deposit reception;
2. Supervising e-payment methods;
3. Credit services and bank facilities;
4. Resource and usage assessment;
5. Claims;
6. Credit risk of the branches and their performance assessment;

7. In-person banking services to individuals and companies;
8. Market analysis and assessment of competition status and services;
9. Insurance services for clients;

Fig. 2. Employee empowerment in retail banking as perceived by experts

Factors affecting employee empowerment in retail banking	Weight (%)
Training	%18
Structure	%8
Feedback dependent control	%15
Participation	%20
Employee self-esteem	%12
Sense of competence	%10
Motivation	%10
Reward	%7



3.3. Virtual banking

Different virtual banking operations were determined as follows:

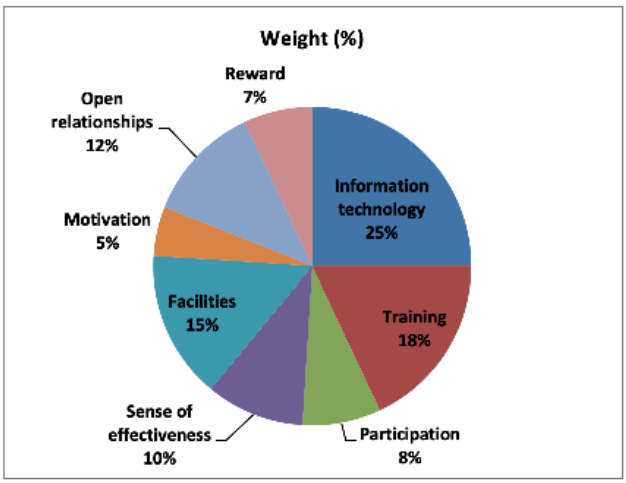
1. Focus on new distribution channels;
2. Providing modified series for clients;
3. Using e-commerce strategies.

Moreover, the criteria for virtual banking product development were investigated from four perspectives:

1. Needs assessment: client class;
2. Relationships: electronic;
3. Delivery: virtual;
4. Required information: client personal lives.

Then, the 32 factors affecting employee empowerment in virtual banking were submitted to experts and ranked (Fig. 3).

Fig. 3. Employee empowerment in virtual banking as perceived by the experts



Factors influencing employee empowerment in retail banking	Weight (%)
Information technology	%25
Training	%18
Participation	%8
Sense of effectiveness	%10
Facilities	%15
Motivation	%5
Open relationships	%12
Reward	%7

3.4. Corporate banking

Different corporate banking operations were grouped as follows:

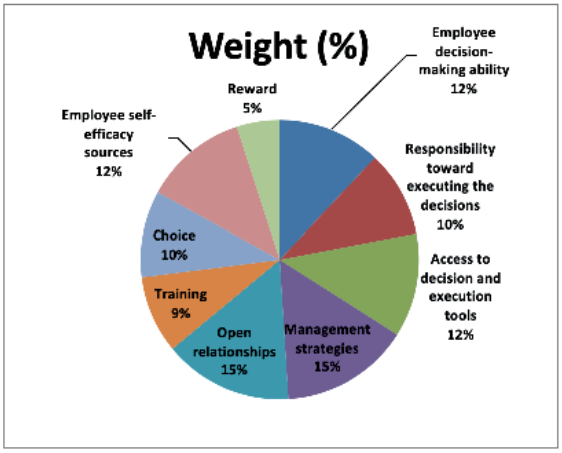
1. Corporate payment services;
2. Financial risk management;
3. Corporate risk management;
4. Capital management;
5. International management;
6. Corporate facilities;
7. Market management;
8. Financial corporate management.

Then, the criteria for corporate banking product development were investigated from four aspects:

1. Needs assessment: every client;
2. Relationships: directors and clients;
3. Delivery: dedicated branches and offices;
4. Required information: business information.

The 32 factors influencing employee empowerment in corporate banking were submitted to the experts for ranking (Fig. 4).

Fig. 4. Employee empowerment in corporate banking as perceived by the experts



Factors influencing employee empowerment in corporate banking	Weight (%)
Employee decision-making ability	%12
Responsibility toward executing the decisions	%10
Access to decision and execution tools	%12
Management strategies	%15
Open relationships	%15
Training	%9
Choice	%10
Employee self-efficacy sources	%12
Reward	%5

3.5. Investment banking

Different operations of investment banking were identified as follows:

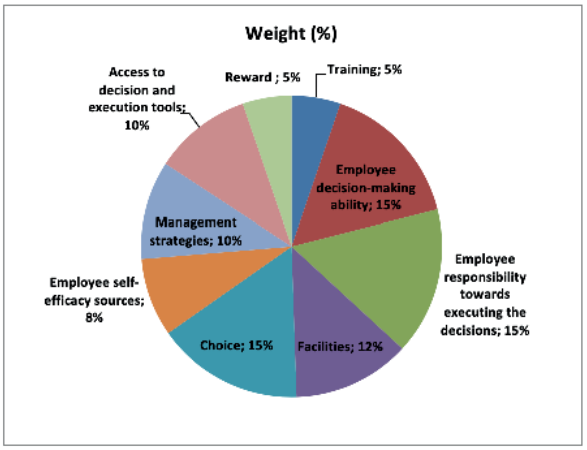
1. Financial studies;
2. Assessing and supporting business plans;
3. Developing financial justification plans for projects;
4. Consultation and leadership in financial resourcefunds for financing businesses;
5. Assessment of the evaluation and public or private distribution of corporate securities;
6. Subscription and subscription agreement for securities;
7. Strategic assessment and operation support for the purchase and merging of companies;
8. Participating in and financing new and profitable projects;
9. Consulting for corporate financial restructuring and developing business plans for businesses;
10. Preparing companies for listing in national and international exchange markets.

Then, the criteria for investment banking product development were ranked as follows:

1. Needs assessment: every client;
2. Relationships: account manager;
3. Delivery: offices of investment banks;
4. Required information: business, industry, and economic information.

Next, the 32 factors influencing employee empowerment in investment banking were ranked by the experts (Fig. 5).

Fig. 5. Employee empowerment in investment banking as perceived by the experts.



Factors influencing employee empowerment in investment banking	Weight (%)
Training	%5
Employee decision-making ability	%15
Employee responsibility towards executing the decisions	%15
Facilities	%12
Choice	%15
Employee self-efficacy sources	%8
Management strategies	%10
Access to decision and execution tools	%10
Reward	%5

3.6. Business banking

Different business banking operations were identified as follows:

1. Liquidity management;
2. Imports financing;
3. Payment services;
4. Distribution of security papers;
5. Providing facilities;
6. Exports financing.

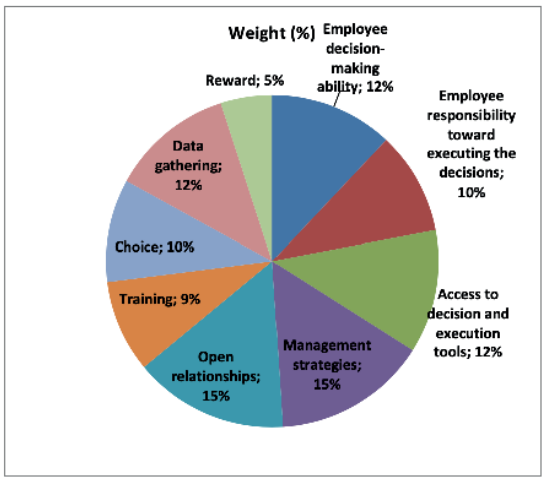
Then, the criteria for business banking product development were investigated from four aspects:

1. Needs assessment: every client;
2. Relationships: account manager;
3. Delivery: offices of investment companies;
4. Required information: business, industry, and economic information.

In the next step, the 32 factors affecting employee empowerment in business banking were submitted to the experts for ranking (Fig. 6).

Fig. 6. Employee empowerment in business banking as perceived by the experts.

Factors influencing employee empowerment in business banking	Weight (%)
Employee decision-making ability	%12
Employee responsibility toward executing the decisions	%10
Access to decision and execution tools	%12
Management strategies	%15
Open relationships	%15
Training	%9
Choice	%10
Data gathering	%12
Reward	%5



In the last step, based on the component relationships in universal banking focused on employee empowerment, the authors used the DEMATEL method (using expert views to extract system parameters and place them in a structure based on graph theory and hierarchical structures) to classify the components of universal banking as follows:

Group A:

1. Private banking;
2. Investment banking;

3. Corporate banking;
4. Business banking.

Group B:

1. Retail banking;
2. Virtual baking.

Then, the factors influencing employee empowerment were classified based on the weights given by banking experts to each component of universal banking. The results showed that the two factors of *training* and *reward* influence all components of universal banking. The remaining components of universal banking were calculated and classified based on their respective banking functions.

4. Discussion and Conclusion

Considering the proposed universal banking models have always consisted of market segmentation and client classification (i.e. corporate, investment, virtual, business, retail, and private banking, etc.) which are rooted in two of the four paradigms of social sciences (structuralism and functionalism), the present research studied the implementation of universal banking from the humanist and cognitive paradigms. The results indicate that employee empowerment and analyzing the factors influencing empowerment in each banking component can effectively influence the sound implementation of universal banking.After weighting to each factor influencing the good implementation of universal banking in Group A (private, corporate, business, and investment banking), the Group A factors were identified as follows:

1. Employee decision-making ability;
2. Employee responsibility toward implementing the decision;
3. Access to decision and implementation tools;
4. Employee self-efficacy sources.

Then factors influencing Group B were identified as follows:

1. Sense of competence;
2. Motivation;
3. Participation;
4. Information technology;
5. Sense of effectiveness.

Further, the two factors of *training* and *reward* were effective in different types of universal banking. Mashhadi investigated the relationship between employee communication skills and customer satisfaction. They concluded that verbal communication skills had a direct and significant relationship with customer satisfaction, where higher verbal communication skills were related to higher customer satisfaction. As for listening skills, the findings and the feedback showed that they did not predict customer satisfaction, that is, there was no significant relationship between listening skills and feedback with customer satisfaction. Therefore, the verbal skills of employees were stronger predictors of customer satisfaction. Momeni et al., conducted a study on the results of employee empowerment in the health and medicine sector, concluding that organizations can invest on employee training and learning to increase the capacity required for added value, effective performance, and responsibility by the staff. Thomas and Velthouse, investigated the relationship between customer satisfaction and the universal bank. They concluded that there are 7 effective factors on customer satisfaction in universal banks: employee responsiveness, social responsiveness, innovative services, positive verbal communications, competence, and reliability. Positive verbal communication was rated as very significant by the customers. As such, banks need to improve the effective communication skills of their personnel via training and supervision over conduct and performance. The findings of the present work have provided a complete model of universal baking in line with other studies.

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Towards the declaring on income, expenses and property by public officials: Russian practice and foreign experience

Hacia la declaración de ingresos, gastos y bienes por parte de funcionarios públicos: práctica rusa y experiencia extranjera

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ABSTRACT

The article provides a comparative legal analysis of the existing experience of foreign countries (USA, Canada, Germany, South Korea, France, and Ukraine) in the field of legal regulation of provision by public officials of these countries of information on income, expenses and property, reveals common and distinctive features of this legal regulation, as well as some trends in connection with which certain conclusions were drawn. Special attention is paid to the procedure and peculiarities of the declaration campaign in the Russian Federation. The greatest difficulties have arisen in practice in connection with the extension of the obligation to report on income, expenses, property and liabilities of a property nature on the deputies of representative bodies of municipalities, including those exercising their powers on an ad hoc basis. The article analyzes the problems that have arisen in connection with this situation, and considers specific ways to overcome these problems.

Keywords: Corruption counteraction, control over incomes, property and obligations of property character, the public official, the deputy, the declaration, municipal formation.

RESUMEN

El artículo proporciona un análisis legal comparativo de la experiencia existente de países extranjeros (EE. UU., Canadá, Alemania, Corea del Sur, Francia y Ucrania) en el campo de la regulación legal de la provisión por parte de funcionarios públicos de estos países de información sobre ingresos, gastos y propiedad, revela características comunes y distintivas de esta regulación legal, así como algunas tendencias en relación con las cuales se extrajeron ciertas conclusiones. Se presta especial atención al procedimiento y las peculiaridades de la campaña de declaración en la Federación de Rusia. Las mayores dificultades han surgido en la práctica en relación con la extensión de la obligación de informar sobre los ingresos, gastos, bienes y pasivos de carácter inmobiliario a los diputados de los organismos representativos de los municipios, incluidos aquellos que ejercen sus poderes de manera ad hoc. El artículo analiza los problemas que han surgido en relación con esta situación, y considera formas específicas de superar estos problemas.

Palabras clave: la lucha contra la corrupción, el control sobre los ingresos, la propiedad y las obligaciones de carácter de propiedad, el funcionario público, el diputado, la declaración, la formación municipal.

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INTRODUCTION

The problems of corruption have become universal in nature. It is generally accepted that the development of anti-corruption policy is expressed in the strengthening of anti-corruption motivation in society, as well as in the creation of joint consistent forms of interaction between society and the state in the fight against corruption. Achieving the relevant results is impossible without observing the principle of transparency and openness, including with regard to various spheres of activity of public officials. Declaration of income, expenses, property and property obligations of these persons is accompanied by wide opportunities to identify corrupt relations related to corrupt actions committed by public persons through the use of their official powers, as well as their prevention, prevention and elimination of negative consequences, so that the said legal instrument of anti-corruption policy should be recognized as effective and efficient.

Materials and methods

The object of research in this article is a set of social relations arising in connection with the legal regulation of the obligation of public officials to report on income, expenses, property and liabilities of a property nature in the Russian Federation and foreign countries. The subject of the research is the legal norms that fix and regulate the order of organization and conduct of the declaration campaign in the countries under study.

The basis for the study were the provisions of the Constitution of the Russian Federation, the legislation of the Russian Federation in the field of combating corruption and the existing foreign experience of legal regulation of the institution of declaration by public officials of income, expenses, property and liabilities of a property nature.

To conduct the research, a complex of complementary research methods was used: systemic, comparative legal, formal legal and analogy. Their application made it possible to consider the object of research in a holistic and comprehensive manner and draw the necessary conclusions.

The obtained results and their discussion. For the first time the requirement to provide information on income and property in respect of civil servants in Russia was introduced in 1995. In accordance with Article 12 of the Federal Law of July 31, 1995 N 119-FZ "On the Fundamentals of the Civil Service of the Russian Federation" civil servants had to provide the tax authorities with "information on income and property owned by them on the basis of the right of ownership, which are objects of taxation" (Collection, 1995). However, all these data received the status of official secrecy, and their verification was carried out only by the tax service. The efficiency of their use for prevention of illegal enrichment and settlement of the conflict of interests remained extremely low.

The introduction of income and property declarations for public officials is enshrined in article 8 of the United Nations Convention against Corruption (Collection, 2006), in several instruments of the World Bank, the Organization for Economic Cooperation and Development and in other international institutions. Russia ratified the UN Convention against Corruption on March 8, 2006, thus, the country undertook to introduce a mandatory declaration of income and property of public officials.

The obligation to declare income, property and property obligations for public officials and their family members, represented by the spouse and minor children, appeared in Russia with the adoption of Federal Law No. 273-FZ "On Combating Corruption" dated December 25, 2008 (Collection, 2008). Since 2010, public officials are obliged to annually provide information on income, assets and liabilities of a property nature in relation to themselves and family members, the spouse and minor children. Categories of public officials who are required to submit declarations are specified in the Federal Law "On Combating Corruption". Decree of the President of the Russian Federation of 18.05.2009 No. 557 (ed. on 03.07.2018) "On approval of the list of positions in the federal public service, in the case of which federal public employees are required to submit information on their income, property and property obligations, as well as information on income, property and property obligations of their spouses and minors (Collection, 2009), and similar instruments for each ministry and agency.

This practice is also common in foreign jurisdictions. Thus, out of 149 client countries of the World Bank, according to the data for 2009, only 43 countries did not require public officials to submit income and property declarations (Ninenko, 2012). Almost half of these countries are in Africa. Of the European countries, only Estonia does not have a requirement for these persons to file a declaration.

Foreign countries are characterized by a certain diversity in solving the issue of declaring the expenses and incomes of public officials. For example, in Singapore, every civil servant is obliged to submit 4 declarations: on investments, real estate, securities, financial obligations (Levakin, 2012). In Canada, the Values and Ethics Code for the Public Service is in force (September 1, 2003 (Values, 2003)), which applies to persons who hold positions in the public service in the executive branch, agencies and other public bodies. The Code defines a list of assets and payment obligations that a public official must disclose in the Confidential Report if they have resulted in, or may result in, a conflict of interest. This list is not exhaustive, but includes: shares of corporations and foreign governments; shares in partnerships, venture capital companies, private companies and family businesses, especially if the company does business with the government; farms engaged in commercial activities; real estate if it is not used for the residence of civil servants and their family members; commodities traded on a stock exchange, futures, foreign currencies that are used for speculative purposes; assets invested in a trust or real estate in which The relevant information is submitted to the CGIAR, which in turn publishes a register of all declarations.

The countries that were previously part of the USSR are also on the way to introducing expenditure declarations for civil servants and even for non-public individuals. Thus, on April 7, 2011, the Law of Ukraine No. 1506-VI "On the Fundamentals of Preventing and Combating Corruption" was adopted (Law, 2011). It stipulates that the persons authorized to perform the functions of the state or local government shall submit annually, before April 1, at the place of work (service), a declaration on property, income, expenses and liabilities of a financial nature for the previous year in the form established by this law.

In addition, the Verkhovna Rada introduced a special check on persons who apply for positions related to the performance of the functions of the state or local self-government (except for presidential candidates, deputies of the Rada, deputies of local councils and for the positions of rural, settlement and city chairmen), including the declaration submitted by the candidate. The inspection is carried out within 15 days with the written consent of the person who claims to hold office. In case of establishment by results of check of the facts of submission by the applicant for a post of unreliable information about himself, the official or the body which is carrying out appointment (election) for this post, refuses the applicant in appointment, and also within 3 days informs on the found out fact to law-enforcement bodies for reaction.

DEVELOPMENT

Article 21, paragraph 3, of the Law of the Republic of Latvia "On Personal Income Tax" of May 11, 1993 (as amended and supplemented) (Law, 1993) states: "If the declared income of the payer or the income of the payer indicated in the reports (notices) at the disposal of the State Revenue Service does not correspond to the payer's expenses in the year of taxation, the State Revenue Service shall request the submission of the report within the time limit established in paragraph 3.1 of this Article: 1) additional declaration of income (according to the form approved by the Cabinet of Ministers) on income, monetary and other savings, property and changes in their value (hereinafter - additional declaration); 2) declaration of income of the year of taxation, if it was not submitted in the manner prescribed by this law". According to Article 23 "If the submitted declaration contains actual inaccuracies and/or inaccuracies in calculations, the territorial office of the State Revenue Service shall correct the mistakes made and send the corrected declaration to the payer together with the indication of the mistakes made by the payer. In case of detection of violations of the law, incomplete reflection or concealment of income, as well as other violations, the territorial office of the State Revenue Service shall draw up an act of violation and apply the sanctions provided for by the laws.

In Germany, Bundestag deputies are obliged to declare financial interests and secondary sources of income if they exceed 10,000 euros per year, as well as cash gifts and gifts of more than 5,000 euros per year. Declarations are published on the website of the German parliament (Bourdillon, 2017).

Scandinavian countries have the most stringent property control policies for civil servants. In Sweden, for example, a law was adopted in 1986, which establishes a general code of conduct for all members of the administration who participate in public decision-making. It also obliges government ministers to submit income and property declarations (Anonymous, 2010).

One of the first places in the sphere of control over property of politicians and officials is occupied by the USA. Before their appointment, future ministers, Supreme Court judges and heads of federal agencies must complete a 60-page questionnaire that covers all aspects of their personal and professional lives (sources of income, treason, tax evasion, drug use, etc.). Those who have provided false information are facing charges of perjury. In addition, their cases are scrutinized by a special committee in Congress, and the relevant Senate commissions call them in for hearings. Tax returns by public officials in the United States are reviewed by a special government ethics office. It was established under the U.S. Federal Government Ethics Act of 1978. This law obliges senior officials to report annually on their financial situation, including disclosure of what securities they hold. In addition, this independent body in the U.S. government, whose head is appointed directly by the president, is responsible for thoroughly regulating what officials can do and under what circumstances should not be allowed to do in order to prevent "conflicts of interest" in the public service. All facts of violation of ethical norms by employees of executive power are transferred by the Office of Government Ethics to the Federal Bureau of Investigation (Bourdillon, 2017).

In the UK, the Prime Minister and other members of the Government are required to report on their income. However, although the government is required to be fully transparent (on government contracts, ministerial meetings with lobbyists, etc.), information about the property of ministers remains confidential, which is a reason for criticism from the opposition (Bourdillon, 2017).

In Japan, MPs and ministers have had to declare their real estate and income annually since 1992, but they are not required to report on current accounts and movable property (Anonymous, 2010).

Article 4 of the Republic of Korea's Public Employees' Ethics Act requires public officials to provide information to the supervisory authorities on all property and assets, including those located abroad. It is noteworthy that the law specifically emphasizes that not only must the property and assets held by the public official be declared, but also that which he or she "actually owns or disposes of, regardless of the formal owner". In addition to the civil servant himself, information about his assets and income should also be provided by his closest relatives, which means the spouse, children and parents. The term "property" means any real estate (residential and non-residential,

land, etc.), as well as vehicles (cars, ships, aircraft, etc.). In addition to this, almost all assets, including cash, bank accounts, precious metals, shares, intellectual property rights, any securities, etc., whose aggregate value exceeds (for each of the items) 10 million won (about $8.5 thousand) are subject to registration.

If an official has precious metals, stones, antiques, works of art, membership cards of clubs, etc., they should be declared if their value (for each of the types) is equal to or exceeds 5 million won (about 4 thousand dollars). At the same time, the civil servant must provide information on his or her debt obligations. All information provided by the official is carefully checked (Anonymous, 2012).

In France, the National Commission on Political Transparency is responsible for controlling the income and expenditures of officials and deputies. Its competence is to monitor the holdings of all people who hold positions of responsibility or elected office in the state. In this list, ministers and their deputies, heads of departments, members of parliament and MEPs, senators, heads of enterprises where the state share exceeds 50%, mayors of cities with a population of more than 20,000 people, only about six thousand people).

The Commission receives asset and financial declarations (both French and foreign) from public officials at the beginning of their service or mandate. All information received by the Commission is strictly confidential and may not be disclosed. The law provides for criminal penalties of up to one year's imprisonment and a fine of 45,000 euros for disclosure. A second declaration is issued at the end of the mandate for elected officials and a contract of employment for those who have worked in public enterprises (Anonymous, 2012).

The analyzed practice of foreign countries shows that the effective fight against corruption requires the implementation of a comprehensive anti-corruption strategy - the declarations of income and assets themselves are unlikely to be able to fight corruption. At the same time, it should be noted that scientists have established a clear relationship between the work of the system of declaration of property and income and the index of perception of corruption (hereinafter - the CPI), published annually by the international agency Transparency International (Corruption, 2018). Recall that the CPI is a global survey and the accompanying ranking of countries in the world in terms of the prevalence of corruption in the public sector. It is based on several independent surveys involving international financial and human rights experts and ranges from 0 (maximum level of corruption) to 100 (absence of corruption).

In the survey (Global, 2006), countries were grouped into four groups depending on the CPI level. As a result, the average duration of a law on asset declarations for CPDs in countries with the lowest CPI (i.e. high levels of corruption, more accurately perceived by respondents) was 1.67 years, and in countries with the highest CPI (i.e. low levels of perceived corruption) it was more than 17 years. This leads scientists to conclude that the introduction of declarations has a long-term effect and, over time, has an impact on improving the CPI (i.e. reducing perceived corruption) (Ninenko, 2012).

In other study (Global, 2006), the authors compared the verification mechanisms used in different countries.

The countries were grouped according to two criteria:

- Whether the PDL declarations are public, i.e. accessible to all citizens through publication in the media, organization of access in special institutions, etc. This mechanism theoretically allows all citizens to participate in the verification of data;

- Whether there is a mechanism for verifying each submitted declaration.

As a result of the study, the following conclusions were obtained:

- in countries where declarations are public and there is a legal mechanism for verifying each submitted declaration, the average CPI is 4.13;

- In countries where declarations are not public, but there is a mechanism for verifying each submitted declaration, the average CPI is 3.4;

- In countries where declarations are public but there is no mechanism for verifying each submission, the average CPI was 2.5;

- In countries where declarations are not public and there is no mechanism for verifying each submission, the average CPI was 2.07.

Thus, it can be seen that countries with a better mechanism for verifying declarations have a lower level of perception of corruption (i.e., a higher CPI score). Scientists conclude that the correlation between the CPI and declarations is not necessarily due solely to the impact of declarations on perceived corruption, but that the introduction of effective mechanisms for verifying declarations is likely to be part of the comprehensive anti-corruption strategies implemented in these countries.

It is also important to note that political-administrative and national-cultural peculiarities make it possible to assess the "administrative models" of European and Asian countries, the criteria for which directly determine the mechanism for assessing the effectiveness of anti-corruption measures. According to the results of G. Peters' research, the selection of models allows to explain to a great extent the results of various reforms of public

administration, including those related to public policy to combat corruption (Peters, 2008; Peters, 1997).

There are also many other studies by foreign scholars devoted to the issues of income and property declaration by public officials (Burdescu et al., 2009; Greenberg et al., 2009; Messick, 2009; Savran et al., 2011; Balisacan, 2018; Gae, 2008; Jenkins M. (2015). They analyze the tools of declaration, the issues of publicity of information about declarations, problems associated with the mechanism of return of assets of public officials obtained by criminal means to the ownership of the state, etc. At the same time, all these studies, in general, recognize declaration as a useful tool of anti-corruption policy and consider it necessary to further improve the mechanism of its legal regulation at the supranational and national levels.

In the Russian Federation, the obligation to report on their income, property obligations and large expenditures is legally imposed on a wide range of persons replacing state and municipal positions, civil service positions, etc. At the same time, the greatest problems associated with the legal regulation of the relevant duty in practice, in our view, have arisen at the level of the deputy corps of municipal entities. The Federal Law No. 303-FZ "On Amending Certain Legislative Acts of the Russian Federation" dated November 3, 2015 introduced a corresponding obligation for all municipal deputies without exception 25], which amended the Federal Law No. 273-FZ of 25 December 2008 "On Combating Corruption (Collection, 2008).

In accordance with part 4 of article 12.1 of the mentioned Law the persons substituting municipal posts are obliged to submit information about their income, property and liabilities of property character, as well as information about income, property and liabilities of property character of their spouses and minor children (hereinafter - information about income) in the order established by normative legal acts of the Russian Federation.

Thus, as follows from the paragraph of the seventeenth part of 1 article 2 of the Federal law from 06.10.2003 No. 131-FZ "About the general principles of the organisation of local government in the Russian Federation", the person replacing a municipal post, the deputy, a member of an elected body of local government, the elected official of local government, the member of the selective commission of the municipal formation operating on a constant basis and being the legal body, with the right of deciding vote (Collection, 2003) is the deputy, a member of selective body of local government, the elected official of local government, the member of the selective commission of the municipal formation.

Thus, the obligation to provide information on income applies to all members of the representative body of the municipality, regardless of whether they hold office on a permanent basis or not. At the same time, according to Part 7.1 of Article 40 of the Federal Law of 06.10.2003 No. 131-FZ "On General Principles of Local Self-Government in the Russian Federation", in the event of failure to fulfill this obligation, the powers of a deputy of the representative body of the municipal entity shall be terminated prematurely (Collection, 2003).

The extension by the federal legislator of the obligation to provide information on income to all members of the representative bodies of municipal entities gave rise to a number of issues that needed to be discussed and resolved as soon as possible.

The main subject of discussion was the issue of necessity and expediency of extending the relevant obligation to all members of representative bodies of all types of municipal entities, as well as the establishment of a single sanction for their failure to provide information on their incomes (or submission of knowingly unreliable or incomplete information) in the form of early termination of their authorities. Advocates of this position, as a rule, refer to the need to respect the equality of legal status of all deputies of representative bodies of municipal entities.

In this regard, it should be noted that prior to the adoption of the Federal Law No. 303-FZ "On Amendments to Certain Legislative Acts of the Russian Federation" dated November 3, 2015, which was already mentioned above, the following acts should be adopted (Collection, 2015) the obligation to provide information on revenues applied only to those municipal deputies who filled municipal offices on a permanent basis, i.e. were paid for their activities (in accordance with Part 4 of Article 40 of the Federal Law No. 131-FZ "On General Principles of Local Self-Government in the Russian Federation" dated 06.10.2003, no more than 10% of the authorized personnel complement of the representative body of the municipal entity may work on a permanent basis. As a result, the sanction in the form of early termination of authorities for failure to provide information on revenues was applied only to this group of deputies.

Thus, there was a legal collision when the authorities of some of the deputies (those who held municipal offices on a permanent basis) could be terminated prematurely in the event of failure to provide them with information on their incomes (or to provide knowingly unreliable or incomplete information), while the authorities of other deputies could not be terminated prematurely on this ground. Of course, it can be argued that such inequality of the legal status of deputies was justified and caused, first of all, by the increased degree of responsibility of those who work on a permanent basis.

However, a closer analysis of the relevant federal legislation puts this assumption into question, since in all other situations (including very similar situations - for example, in the case of failure of deputies to provide information on expenditures) the legislator provided for uniform responsibility for all deputies. In addition, the absence of serious measures of legal responsibility for the failure to provide or submission of knowingly unreliable or

incomplete information on income could have given rise to a number of municipal deputies' feeling of impunity for such acts (Anonymous, 2015) and, ultimately, to form a nihilistic attitude in society towards the need to comply with the law as a whole, which, in our view, is categorically unacceptable.

Opponents of the dissemination of the duty to provide information on income to all deputies, in turn, appealed to the fact that the vast majority of members of representative bodies (especially in rural/ urban settlements) work on an ad hoc basis, do not receive monetary compensation for their activities, and the introduction of a corresponding duty in respect of them will significantly complicate their lives and lead to numerous problems, up to the mass early termination or voluntary resignation of their powers (Filatova, 2016).

The practice of the 2016-2019 declaration campaigns (at least in the Altai Territory and a number of other regions) has shown a certain rightness of supporters of this position (Anonymous, 2016a). Deputies of many representative bodies of municipal entities faced difficulties in preparing and correctly filling in the declarations. In particular, the known problems were related to obtaining information about the balances of funds deposited in the accounts of deputies - the relevant information is usually provided in bank branches located, at best, in district centers or even in cities to which the deputies of representative bodies of rural/ urban settlements need to get on their own and at their own expense (also at their own expense, the deputies have to order the relevant certificates in bank branches).

In addition, most of the municipal deputies do not have the knowledge and skills required to fill in multiple forms of declaration, and as a rule, there is no one to provide them with the necessary information and legal assistance (especially at the settlement level). Leaving much to be desired, as well as informational and educational work preceding the declaration campaigns. Nobody (both at the federal and regional levels) has explained to municipal deputies why they, who work in a representative body on a non-permanent basis and do not receive any material benefit from their deputy activities, in principle, should publicly present all the information about their income and the income of their families, especially since in conservative rural areas such information is usually considered to be classified and its disclosure among their fellow villagers (and even more so among a wider range of people) does not welcome

As a result, some municipal deputies (especially at the settlement level) refused to submit income declarations and voluntarily resigned or their powers were prematurely terminated by the representative bodies themselves, including at the initiative of the prosecutor's office (in a number of municipal entities, this process was mass in nature) (Anonymous, 2016b). As a result, certain (and often very significant) problems arose for the municipalities themselves, which had to seek unplanned funds in the local budget for holding by-elections of deputies instead of those whose authorities were terminated (in some municipal entities, as a result of mass termination of powers of deputies, problems with the authority of the representative bodies themselves even arose).

The solution to this problem, according to some scientists and politicians, could be to amend federal legislation to exclude from the list of persons obliged to provide information on incomes, deputies of all rural settlements or deputies of municipal entities with a population not exceeding, for example, 10,000 people. Such draft laws have been submitted to the State Duma since 2016, but until a certain time they received a negative opinion from the Government of the Russian Federation and were rejected by federal parliaments (Draft? 2016).

However, in the summer of 2019, the State Duma finally adopted the Federal Law of 26.07.2019 N 251-FZ "On Amendments to Article 12.1 of the Federal Law" On Combating Corruption (Collection, 2019) that simplifies the procedure of income declaration by deputies of representative bodies of rural settlements exercising their powers on a non-permanent basis. In accordance with the amendments, these persons are obliged to submit information on their income, property and liabilities of a property nature, as well as on the income and property of spouses and minor children, within four months from the date of election.

However, in the following year, the relevant declarations will be filed by the deputies of the rural representative bodies only if they make large purchases of real estate, land, cars or securities for a large sum. If no major transactions have been made during the year, the deputy is obliged to inform the head of the region about it in a simple notification form. The reliability of the message can be verified by the relevant services. For providing false information, the elected representative may still lose his authority.

Certain problems in the legislative support of the declaration campaign of municipal deputies (and in principle of all public officials as such) are related to the legal regulation of the obligation of the latter to report not only on their income, but also (in certain cases) on their expenses.

According to part 1 of article 3 of the Federal law from 03.12.2012 of No. 230-FZ "About the control over conformity of expenses of the persons substituting state positions, and other persons to their incomes" the person substituting a municipal position, is obliged annually in the terms established for representation of data on incomes, to submit data on the expenses, and also about expenses of the spouse and minor children under each transaction on acquisition of the ground area, other object of the real estate, a vehicle, securities, shares (participation shares, shares in authorized capital stock, shares in authorized capital stock, etc.). Failure to submit the relevant information in accordance with paragraph 2 of Article 16 of the above Law is the basis for the dismissal of the person from his or her position (Collection, 2012).

Without disputing the very need to monitor the compliance of expenditures of public officials (including municipal deputies) with their income, we have to state that in its current form, this measure does not fully meet anti-corruption goals, and its implementation in practice may lead to known abuses. The fact is that a public official should report on his expenses on each transaction on acquisition of a land plot, other real estate object, vehicle, securities, shares (participation shares, units in authorized (share) capitals of organizations) made by him only if the total amount of such transactions exceeds the total income of this person for the last three years preceding the reporting period.

Thus, this rule in no way takes into account the situation when a public official annually during several years makes large transactions that individually do not exceed his total income for the last three years, but in total significantly exceed his total income for previous years, which may indicate that the official has undeclared income, possibly derived from crime (as a hypothetical example can be given a situation where the public official In this regard, it is proposed to amend the current legislation and to supplement the relevant rule, indicating that the public official is obliged to provide information about his expenses, as well as the expenses of his wife (husband) and minor children on each transaction to purchase land, other real estate, vehicles, securities, shares (participation shares, shares in the authorized (share) capitals of organizations), committed by him, his wife (husband) and (or) minor children during the calendar.

Inadequate procedures for verifying the accuracy of information on the income of municipal deputies and the procedure for early termination of their powers in the event of failure to provide the person with the relevant information on income or in the case of submission of knowingly unreliable or incomplete information. Prior to 2017, there was no special provision in federal legislation on the procedure for verifying the accuracy of information on income submitted by members of representative bodies of municipal entities.

In this connection, the general norm provided for by part 7 of article 8 of the Federal Law of 25.12.2008 No. 273-FZ "On Combating Corruption in the Russian Federation" (Collection, 2008) was applied, according to which the verification of the reliability and completeness of information about the income was carried out by the decision of the representative of the employer (head) or the person to whom such powers are granted by the representative of the employer (head), in the manner prescribed by the President of the Russian Federation, independently or by sending a request to the federal executive authorities authorized to sentence.

The decision on early termination of powers of the deputies who did not submit information about income (or submitted knowingly false information, as it was shown by the inspection), in accordance with Part 11 of Article 40 should have been taken by the representative body of the municipality itself no later than 30 days after the date of the grounds for early termination of powers of the deputy. In case of refusal of such a decision by the representative body itself (such precedents have been met in recent years (Municipal, 2016), the relevant decision could have been taken by the court on the proposal of the prosecutor's office (Anonymous, 2016a).

The application of this procedure in practice led to certain problems, which resulted in the adoption of the Federal Law of 03.04.2017 N 64-FZ "On Amendments to Certain Legislative Acts of the Russian Federation in order to improve public policy in the field of combating corruption" (Collection, 2017), which introduced amendments, including to the Federal Law of 25.12.2008 No. 273-FZ "On Combating Corruption" and the Federal Law of 06.10.2003 No. 131-FZ "On General Principles of Local Self-Government in the Russian Federation". According to the specified changes, unless otherwise is established by the federal law, the persons replacing municipal posts (including municipal deputies), submit data on incomes to the highest official of the subject of the Russian Federation (the head of the highest executive body of the state authority of the subject of the Russian Federation) in an order established by the law of the subject of the Russian Federation. Thus check of reliability and completeness of data on incomes by the deputy, a member of elected body of local government, the elected official of local government, is spent under the decision of the senior official of the subject of the Russian Federation (the head of the supreme executive body of the state authority of the subject of the Russian Federation) in an order established by the law of the subject of the Russian Federation (Collection, 2008).

The analysis of the specified changes of the federal legislation leads to the following conclusions. First, in development of the tendency which has already appeared last years, the federal legislator has continued practice of assignment of powers on regulation of those or other actions which are carried out at municipal level, on legislative (representative) bodies of subjects of the Russian Federation that, taking into account a constitutional principle of independence of local government, looks, to put it mildly, doubtful.

Secondly, the entire declaration campaign of deputies, members of elected bodies of local self-government, elected officials of local self-government turned out to be closed on the top official of the subject of the Russian Federation (the head of the supreme executive body of state authority of the subject of the Russian Federation), which taking into account the significant number of persons replacing municipal posts (in the Altai Territory only the total number of municipal deputies is more than 7000 people) can lead to a very serious problems of legal and organizational structure,

Third, there are questions about the presence of a corruption factor in the form of a breadth of discretionary powers as applied to the right of the highest official of the subject of the Russian Federation (the head of the highest executive body of state power of the subject of the Russian Federation) to apply for early termination of powers of a deputy, a member of the elected body of local self-government, an elected official of local self-government in the

body of local self-government authorized to make the appropriate decision, or in court (from the questionnaire).

Fourth, in accordance with paragraph 2 of Part 1 of Article 13.1 of the Federal Law of 25.12.2008, N 273-FZ "On Countering Corruption (Collection, 2008) a person who replaces a municipal office in the manner prescribed by federal constitutional laws, federal laws, laws of constituent entities of the Russian Federation, municipal regulations, is subject to dismissal (dismissal) due to loss of confidence, not only in the event of failure to provide information on income, but also in the case of knowingly unreliable or incomplete information.

Such wording in its practical application has revealed certain problems and difficulties associated with the lack of clear criteria for establishing the fact of knowingly providing false or incomplete information, which in some cases even led to an attempt to abuse the right to terminate the powers of public officials filing declarations (Anonymous, 2017a). In this regard, we believe it necessary to define in law the criteria for the knowledge of providing false or incomplete information, as well as to establish that the relevant fact can be established only in court.

CONCLUSIONS

Summing up all of the above, it should be noted that there is a certain diversity in the legal regulation of the countries of the world of the obligation of public officials to report on their income, expenses, property and liabilities of a property nature. However, there is an obvious trend: in countries where declarations are public for a long time, the law provides a formalized mechanism for their verification, the level of corruption (at least the level of public and expert perception) is lower than in countries where declarations are recently introduced and/or are not public and/or there is no mechanism for their verification.

Besides, it is necessary to pay attention once again (Bobkov, 2013) to the imperfection of the Russian legislation devoted to the obligation of public officials (in particular, deputies of representative bodies of municipal entities) to provide information on income, expenditures, property and property obligations, as well as the need for its further adjustment and improvement.

In particular, it is proposed to improve the criteria for qualification of corruption relations on a legislative basis. In order to make full use of the mechanisms of the institution of declaration, it is necessary to optimize the content of the declaration of public officials and the information it contains, as well as to create a flexible and effective mechanism for verifying the declaration data, which requires the implementation of a system of comprehensive measures and significant adjustment of the legal space.

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YouTube application in supporting students' Arabic listening skills

Aplicación de YouTube para apoyar las habilidades de escucha en árabe de los estudiantes

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ABSTRACT

This study aims to identify the level of YouTube application usage to teach Arabic listening skills and identify respondents' perceptions on categories of materials in YouTube application that have been selected and collected. This study was a survey study using a questionnaire instrument to measure the level of YouTube application usage to teach Arabic listening skills to students and to investigate students' perceptions on the selected materials. The research sample was 70 students of one public university in Malaysia who were selected using random sampling method. The data collection was done using a set of questionnaires covering various items of YouTube application usage in T&L Arabic language skills. The questionnaire was modified and adapted from Aziah Abdol Aziz & Parilah Mohd Shah (2014) study and has gone through the validity process with high alpha Cronbach value of 0.98. The findings show that the level of YouTube application usage in teaching Arabic listening skills is at a high level. Subsequently, students are likely to be attracted to the materials that feature interesting forms, graphics, audios and visuals, appropriate timeframes and the use of standard language (fusha).

Keywords: YouTube application; teaching aid; Arabic language; listening skills.

RESUMEN

Este estudio tiene como objetivo identificar el nivel de uso de la aplicación de YouTube para enseñar habilidades de escucha en árabe e identificar las percepciones de los encuestados sobre las categorías de materiales en la aplicación de YouTube que se han seleccionado y recopilado. Este estudio fue un estudio de encuesta que utilizó un instrumento de cuestionario para medir el nivel de uso de la aplicación de YouTube para enseñar a los estudiantes habilidades de escucha en árabe e investigar las percepciones de los estudiantes sobre los materiales seleccionados. La muestra de investigación fue de 70 estudiantes de una universidad pública en Malasia que fueron seleccionados utilizando un método de muestreo aleatorio. La recopilación de datos se realizó mediante un conjunto de cuestionarios que cubren varios elementos del uso de la aplicación de YouTube en las habilidades del idioma árabe T&L. El cuestionario fue modificado y adaptado del estudio de Aziah Abdol Aziz y Parilah Mohd Shah (2014) y ha pasado por el proceso de validez con un alto valor alfa de Cronbach de 0,98. Los resultados muestran que el nivel de uso de la aplicación de YouTube en la enseñanza de las habilidades de escucha en árabe es de alto nivel. Posteriormente, es probable que los estudiantes se sientan atraídos por los materiales que presentan formas interesantes, gráficos, audios y visuales, plazos adecuados y el uso de lenguaje estándar (fusha).

Palabras clave: aplicación de YouTube; ayuda para enseñar; Lenguaje árabe; habilidades de escuchar.

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1. INTRODUCTION

Second and foreign language teachers often seek to utilize potential technology in teaching and learning (T&L) in order to promote students' autonomy and make their teaching to be interesting. Several studies have shown the widely use of multimedia-related materials in various subjects including History, English and Malay. However, some studies show that language teaching that involves listening skills, especially in the second / foreign language, specifically, Arabic language T&L process, is usually tied to the provided materials and uses teaching aids in the forms of audio or tape recording devices in language lab.

The development of this latest social media landscape is very rapid with statistics showing more than 75% of Internet users using social media. Social media like Blogs, Facebook, Twitter, and YouTube have become trendy, cheap and easy to access for the youths from the category of Generation Y (Shiratuddin N, Sani MA, Hassan S, Ahmad MK, Talib KA, Ahmad NS, 2016)]. Several of studies findings revealed that students perceived that mobile social learning could assist them in terms of accessing information quickly, enhance communication between classmates and instructors, as well as offer situated and contextualized learning. Findings also indicated that students had issues with mobile devices which led to frustration and issues with devices as a distraction (i.e. mobile devices causing them to be distracted with activities not associated with learning such as instant messaging among classmates) (Norman H, Nordin N, Din R, Ally M, Dogan H, 2015).

This phenomenon seems to force students and teachers to restructure their T&L designs and among the strategies to think about is to try to leverage on effective audio-visual resources in learning classes. Some recent studies have proven that the use of audio-visual sources such as *YouTube* is a great help to learning foreign languages. Master of education emphasizes two important points in the use of audio-visual resources that utilize visual and auditory as students will directly focus their vision and hearing. The use of this audio-visual resource is informally capable of reflecting the concept of knowledge, stimulating active learning activities, and motivating students (Ghazali, Yusri. & Nik Mohd Rahimi, NY,. 2010; Mills, 2011; Chen et al., 2018).

Youtube in Language Learning

The use of the *YouTube* application in the classroom aims to provide broad exposure to linguistic learning and create more autonomous and student-centred learning (Leung KM. 2004). When students often use multiple media for second / foreign language learning, they are actually able to achieve a better level of second / foreign language. Furthermore, the diversity of resources and materials used to improve the input of second / foreign language also has a positive impact on the language procurement process. In addition, using technology in classroom learning, especially in learning the second / foreign language is a way for students to feel the real reality of communicating (Li Wa, 2005; Aisyah A, 2017). This is very different from the situation and the atmosphere of language classes that are more concerned with abstract concepts and language learning theories. The effort to bring technology into the classroom especially among low proficiency students is able to develop student autonomy and nurture lifelong learning skills.

Apart from linguistic and al learning goals, foreign language learning can be enhanced by examining the information and culture of the native speakers of a language learned. Through *YouTube* clips, the information of a language can be dashed through the culture of a local community. Knowledge about culture serves as a valuable resource in foreign language learning to empower language of a nation and civilization. Furthermore, learning YouTube-based Arabic dialect can foster students' interest to learn Arabic and get started to apply it in everyday life, especially for students who are Muslim where the Arabic language is made a sacred language and impact the fundamental of Islamic knowledge and appreciation of the worship that is taken on implications for their faith will grow better (Albantani AM, Madkur A, 2017). Many of the oral communication features of a language cannot be formally studied in the classroom because the resources are very limited. The supra-segmental is a speech element in phonetic that has features such as tone, pause, pressure and intonation which are difficult to learn except through exposure and interaction of the real situations. These features cannot be learned from textbooks, dictionaries or rely on formal teaching in the classroom. Therefore, the sharing of information and culture of a nation through *YouTube* clips is at least capable of giving minimum exposure to the target language and interactions with native speakers.

The strongest reason for using *YouTube* clips in foreign language learning is that they can enhance students' communication skills especially in terms of phonetic and non-verbal language. In the Arabic language issue as a foreign language or third language (B3), students often have no platforms to communicate (Ballman, T, et. al, 2001; Zamri, M., et. al, 2014)). Lack of opportunities to practice phonetics and pronunciation is another problem that arises and disrupts the mastery of the language well. Some studies on the accuracy of students' pronunciation revealed that students with lack of exposure and communication experience in the target language countries are deficient in their pronunciation. In some studies, language experience means the opportunity to use the language in everyday life. One of the factors contributing to students' difficulty in mastering the Arabic language is probably poor pedagogical strategies especially in teaching syntax and morphology (M. N. Linamalini, & S. M. T. Kamarul, 2014; Mohd, Z. I., & Kaseh, A. B. 2016). Arabic language students at tertiary level were still very dependent on lecturers (N. J. Harun, & N. M. I. Siti (2014); Harun, B. & Zawawi, I. (2014).

Students could become more active learners if the teaching process encouraged active involvement. One way is by the use of interactive multimedia. Users could become more interested in learning if they used interactive multimedia. Due to the economic and financial constraints to have opportunities to practise language in target language countries, the language experience is actually available through the benefits of audio-visual resources like *YouTube* and it is found to be an effective method.

Even though the *YouTube* application has started to grow rapidly and has gone viral on the internet but the impact on learning in language classes is rarely presented in the form of scientific and empirical studies (Berk, R. A., 2009) has studied the use of video clips in the classroom and provides detailed rationale for these practices. However, Berk's research focus

is too general as he only focused on all areas of education rather than specific areas that would impact the second / foreign language learning. Nevertheless, he succeeded in listing the learning outcomes and exploring the interesting neuro-cognitive secrets and enlightening the language educators to consider using video clips in their class.

The teachers and students who love acting, movie and video storytelling will actually be satisfied with the content of the materials presented by the *YouTube* application as they can be utilized in the learning of second / foreign language. Along with the advancement of the materials, the content provided in the *YouTube* application through the clips and scenes from tons of movies, advertisements, dramas and animations are able to attract the attention of those involved in T&L of a language. With the *YouTube* application, students and teachers can carefully review any scene in the movie with great focus on rhythm and speech intonation, voice styles, grammar nuances, conversations of each character and roles, or almost all the topics being learned in the language classes.

Since *YouTube* and other online videos appear in the virtual world, the potential that users get is the potential of visuals and audio offered through the materials contained in the *YouTube* application. Creative teachers and learners can find new ways and techniques on *YouTube* channels to help and support their language learning. The language skills that have seen most benefiting from *YouTube* are listening and speaking skills (Raj, S. A. P. S, et. al., 2019). Among the activities that have great potentials when using *YouTube* in second / foreign language learning, specifically when learning listening and speaking skills, are analysing script, dialogues and conversations, re-enactment, dubbing, vlog writing activities and so on.

There is often a question of who is more responsible in determining the direction of approach in language learning; teacher or student? For teachers who are interested in encouraging autonomous students and student-centered learning, *YouTube* once again has the answer. The term autonomous student usually involves debates associated with any of these five ideas, namely: 1) the responsibility for expanding the language potential is located on the shoulders of the students, 2) the students are entitled to explore any of the learning skills they want, 3) the students always have the opportunity to learn independently and independently, 4) students have the right to choose to explore any areas of language learning and development more specifically, and 5) students are entitled to caveat the form of education and learning in their own molds in spite of the different forms of education offered by their educational institution.

Every idea on the concept of autonomous students can be attributed to the use of *YouTube* application. Firstly, students may choose to view *YouTube* clips in target languages according to their timing, evaluate their own level of understanding ability and ultimately be entitled to either continue learning focusing on the topic or to stop and move on to another topic. Secondly, after being exposed to *YouTube* clips, well-developed and linguistic level students can define themselves what elements of the language they want to pursue, especially phonetics and pronunciation in conversations and then strive to master them. Thirdly, students can scan and search millions of video clips available on the *YouTube* application without the help of any teacher or friend. Fourthly, if students find an interesting and useful clip for language learning from *YouTube* channel, they are free to explore all those clips without restrictions. Lastly, if students feel that learning materials provided in the classroom are useless, then students can explore, improve and evaluate their own learning by using materials from *YouTube* channels.

YouTube is a social application that enables clients to share and shape networks around their substance. It pulls in content clients, for example, understudies who get writing in a reasonable learning process in visual shape. In the 21st century Arabic learning isn't just done in relevant or customary route, by following the advancement of the period and exploration of learning, Arabic dialect can be produced in contemporary with online life that exists today, so learning can be conveyed particularly additionally take after the stream of improvement without investigating the substance of the learning itself [Albantani AM, Madkur A, 2017].Therefore, this study aims to: (1) identify the level of *YouTube* application usage in helping students with Arabic listening skills, (2) identify the audio-visual materials in *YouTube* that are intended for Arabic listening skills and (3) identify respondents' perceptions on the categories of materials collected in *YouTube* application.

2. METHODOLOGY

Cross sectional survey research as a quantitative research approach has been used in this study as the data had been collected once in a short period of time. The participants of the study were 70 students under the Arabic language master's degree program in one public university in Peninsular Malaysia. All participants are full time students with diverse backgrounds and learning experiences. They were selected using purposeful random sampling technique. This study used the questionnaire adapted from Aziah Abdol Aziz & Parilah Mohd Shah (2014). The questionnaire consists of three parts, namely Part A, Part B and Part C. Part A contains of respondents' background, Part B contains of items related to the use of *YouTube* application in Arabic listening skills, while Part C contains of statements on the suitability of selected materials from *YouTube* application to learn Arabic listening skills. A five-point Likert scale was used to measure all the three parts. The scales ranged from "1" – strongly disagree to "5"- strongly agree were adapted from previous study (Mayora CA, 2009). Questionnaire items were examined by three assessors from various areas of expertise (Education, Arabic and ICT) and converted into '*google form*' form before conducting a pilot study to 30 respondents in two other public universities. The respondents' characteristics are similar to the study population in which the students have 3 years or more experiences of studying Arabic and are currently studying Arabic. The final version of the questionnaire was sent via e-mail to the respondents. The entire *Cronbach's Alpha* value was derived for the reliability value of .98. Results from the questionnaire were collected and then coded, calculated and processed using the SPSS version 15 software, where mean descriptive statistics and standard deviation were used.

3. RESULT AND DISCUSSION

Students' perception of the benefits of *YouTube* application in supporting students' Arabic listening skills is at a high level based on the acquired mean value. Table 1 shows the percentage and mean value for the benefits of using the entire item in using *YouTube* application for Arabic listening skills. The findings have shown that there are 7 items referring to the benefits of *YouTube* usage that have high mean value while 3 items are at moderate level mean value. This shows the mean value of the benefits of using *YouTube* application to help students' Arabic listening skills as a whole is at a high level of min = 3.75.

The findings are found to be consistent with the findings of the study of *YouTube* application as a teaching material in the History subject which has attracted the respondents to participate in teaching and learning session. Majority of respondents agreed on the use of *YouTube* videos in teaching and learning process. This finding is supported by a study conducted by Aziah Abdol Aziz & Parilah Mohd Shah, 2014) that students agreed on the use of *YouTube* application in providing benefits in terms of improving, enriching and learning new vocabularies. The findings from Ghazali Yusri, Nik Mohd Rahimi, NY, Parilah M. S., (2010) also prove that this *YouTube* application is a suitable material in language learning as well as in writing. Additionally, the use of *YouTube* videos can increase students' interest to follow the process of teaching and learning (Albantani AM, Madkur A, 2017).

Only three items are found to be at the moderate mean value which are the language feature used in *YouTube* material that is easy to understand, the words used are clearly heard and the atmosphere is interactive. Based on these three items, students have problems with the language used in *YouTube* materials due to the lack of emphasis on Arabic listening skills [Albantani AM, Madkur A 2017; Ghazali Yusri, Nik Mohd Rahimi, NY, Parilah M. S, (2010).

Table 1: The Benefits of Using *YouTube* Application in Supporting Students' Arabic Listening Skills

***Youtube* Application Usage**	**1** (%)	**2** (%)	**3** (%)	**4** (%)	**5** (%)	**Mean**
The usage of *YouTube* in class benefits the learning of Arabic language	0	7.1	22.9	30	40	4.03
YouTube application would increase students' Arabic vocabularies	0	5.7	11.4	58.6	24.3	4.01
The continuous usage of *YouTube* would motivate students to learn	7.	4.3	14.3	37.1	37.1	3.93
YouTube materials are in accordance to the level of listening skills	1.4	10	18.6	37.1	32.9	3.90
YouTube application is suitable to be used outside of the class to support students' listening skills	0	11.4	10	58.6	20	3.87
YouTube helps to attract students' interest to learn listening skills	0	11.4	10	61.4	17.1	3.84
YouTube materials are relevant in class	1.4	11.4	12.9	55.7	18.6	3.79
The language used in *YouTube* is understandable	7.1	7.1	27.1	38.6	20	3.57
The pronunciation in *YouTube* is clear	4.3	24.3	17.1	42.9	11.4	3.33
The language used in *YouTube* helps to improve students' interactivity	2.9	24.3	28.6	34.3	10	3.24

Overall Mean = 3.75

Table 2 shows the mean value of students' consent to nine categories of selected materials for Arabic listening skills in the *YouTube* application. The categories that are shared with the overall mean of the students' perception are shown in Table 2.

Table 2: Categories of *YouTube* Materials

No.	**Material**	**Overall Mean**	**Level**
1.	Song (Kun Anta)	4.07	High
2.	Animation (Upin Ipin)	4.07	High
3.	Top 25 must know Arabic phrases	3.95	High
4.	Learn Arabic / arabicpod101. com in 3 minutes	3.80	High
5.	Individual conversations and texts	3.76	High
6.	Theme song (*Khawater* Show)	3.73	High
7.	Television (*Khawater* Show)	3.72	High
8.	Learning lessons (audio & images)	3.55	Moderate
9.	Audio (Connections/Audio Lesson) Eng & Arabic	3.44	Moderate

There are seven selected materials that got high mean values while only two materials got moderate mean values. The seven materials with high mean values indicate that students tend to be interested in songs and animated materials that

are close to their interests. '*Kun Anta*' songs, *Upin & Ipin* animations and *khawater* show are materials that are close to Malaysian society as they are often played in mass media such as radio and television (Salasiah Hanin Hamjah, 2009). This is quite different from less popular materials such as materials 8 and 9 with moderate mean values.

This situation is further reinforced by a separate analysis of three materials namely *'Kun Anta'*, *Upin & Ipin* animation and audio materials (connections / audio lessons). This analysis aims to determine students' perceptions of materials that have been selected as materials to learn Arabic listening skills. Analyses were conducted based on 10 assessment items to see the features available on the materials including their attractiveness, shapes, visuals and graphics, easy to understand content, audio and voice quality, duration of the material and language use. Based on the findings of mean value, audio material (connections / audio lessons) obtained a moderate mean value of min = 3.44. The findings show that only four items have high mean values, hence it means these materials are easy to understand and are able to attract students' interest to learn Arabic. The rest of the items indicates that the materials possess high mean value. Based on the items that earn a moderate mean value, the materials are less graphical, contain less visual, not attractive to be used as listening materials, less attractive audio system, and a relatively lengthy material as compared to other materials.

Next is the mean value of the song material (*Kun Anta*) which is at a high level of mean = 4.07. There are seven features determining one material to get high mean value which are, the materials are interesting for Arabic learning to be specific, Arabic listening, contain interesting visuals and graphics, easy-to-understand, and able to stimulate interest. While there are only 3 features that cause one material to get a moderate mean value. Based on the items, the materials are illustrated as not using the standard language (*fusha*), the length of the materials is too long and the use of visuals are less attractive and appropriate. Students' perception of the characteristics of *Upin & Ipin* animated material is at a high level of mean = 4.07. There are nine features that causing this material to get high mean value that are it is an interesting material for learning Arabic listening, contains attractive visuals and graphics, easy-to-understand, and able to stimulate interest. While there is only one feature that gets a moderate mean value which is the material does not use the standard language (*fusha*).

Based on the analysis of the three materials, students' perception on the materials selected from *YouTube* application as students' learning aid was positive. The multimedia elements used in the materials include text, graphics, voice, visuals and animations. These elements have a positive impact on students' learning activities as well as attracting students' learning interest (Abdul Razak Ahmad, Ahmad Ali Seman & Letchumanar a/l Narayanasamy, 2009). In fact, teachers and students prefer wider exposure to movies and videos in the target language contained in *YouTube (*Yuen FY., 2015). *YouTube* and multimedia technology in teaching bring positive perception in their use and are able to train more professional teachers in education field (Mohamad M, Ismail IS, Wahab N, Mamat S. 2016). However, the lack of sensitivity and exposure to the prosodic elements cause students to experience problems with informal (*ammiah*) language, stress, rhythmic, intonation and so on. Research findings demonstrate the difficulties and challenges faced by students are time constraints, communication problems, verbal exchange issues, technical difficulties, and the shortage of creativity and confidence (Watkins J, Wilkins M., 2011). Thus, suprasegmental or prosodic capabilities in Arabic can be overcome by examining carefully any material in *YouTube* by focusing on discourse intonation, code changes, syntactic tones and discussion parts (Silviyanti TM., 2014). Students seem to be interested in video content on *YouTube*, however the defect point appeared when students had to watch and listen to the audio system who spoke Arabic very speedy. This made their untrained ears to sometimes almost surrender in trying to observe the thoughts and ideas. To address this problem, they had to work in group and team to assist each other recognize the material better because this allowed them to share thoughts, ideas and experiences among them ((Silviyanti TM., 2014).

4. CONCLUSION

The main purpose of this study was to examine the perception of the students on the benefits of *YouTube* as a learning aid to learn Arabic listening skills. The findings have shown that the use of *YouTube* is beneficial in general to Arab listening skills, interesting, relevant, and motivating, also it has been found that students expressed their enthusiasm with audio-visual materials. The results of the study have shown that this application is able to help students in improving their Arabic language proficiency. Looking at the current development, *YouTube*, a social communication platform should be utilized and incorporated into Arabic language T&L planning so that some potential activities for language learning can be implemented. Be that as it may, there are additionally less-known video material among them due to videos do not contain intriguing illustrations and sound, don't utilize *fusha* dialect, quick discussions et cetera. Nonetheless, there are a few constraints to this study. It just announced the students' interest toward listening practice by utilizing movie videos on YouTube. This research did not cover the T&L practices that occurred in the classroom, such as the procedure of arrangement and collaborative work. Moreover, the students' performance in enhancing their listening ability after using *YouTube* movie videos were likewise not explored. Therefore, it is recommended that other researchers who are additionally keen on instructive innovation to direct further inside and out research on these issues.

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Cybercrime as a global security threat

El cibercrimen como una amenaza de seguridad global

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ABSTRACT

The aim of the study is to analyze in depth and further develop the existing theoretical and practical developments of domestic and foreign specialists in the field of investigation of crimes related to information technology. On the basis of studying and researching different points of view of specialists in this field, - to reveal and analyze different approaches of scientists to the formation of discussion questions. According to the purpose of the research, the article uses: dialectical, system-structural, formal-logic, statistical, comparative, as well as some sociological methods. The specificity and complexity in the investigation of such cases lies in the fact that this type of crime has no territorial or spatial limitations, and this, in turn, complicates its methods of rapid disclosure.

Keywords: Cyber security, digital economy, national cybersecurity strategy, cyber threats, cybercrime.

RESUMEN

El objetivo del estudio es analizar en profundidad y desarrollar aún más los desarrollos teóricos y prácticos existentes de especialistas nacionales y extranjeros en el campo de la investigación de delitos relacionados con la tecnología de la información. Sobre la base de estudiar e investigar diferentes puntos de vista de especialistas en este campo, - revelar y analizar diferentes enfoques de los científicos para la formación de preguntas de discusión. De acuerdo con el propósito de la investigación, el artículo utiliza: métodos dialécticos, estructurales del sistema, lógicos formales, estadísticos, comparativos, así como algunos métodos sociológicos. La especificidad y complejidad en la investigación de tales casos radica en el hecho de que este tipo de delito no tiene limitaciones territoriales o espaciales, y esto, a su vez, complica sus métodos de divulgación rápida.

Palabras clave: Ciberseguridad, economía digital, estrategia nacional de ciberseguridad, ciberamenazas, cibercrimen.

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INTRODUCTION

The third millennium, according to specialists in the field of new information technologies, is a period of full blossom of computerization on our planet. Half a century from the creation of the first computers to the present day indicates the extremely rapid development of technical information tools. Today, there is virtually no human activity where computers are not used in one form or another (Polevoy, 1994).

Mass computerization has replaced outdated technologies of receiving, processing and transmitting information, significantly expanded the range of vision and interpretation of some concepts in the view of life and communication between peoples, accelerated the flow of electronic information exchange in matters related to the military-industrial complex, strategic, environmental, trade through the global Internet. In terms of this concept, it should be noted that: "The Internet is a spatially-distributive global network of computer equipment and information infrastructure of users, which allows the exchange of information and services to meet the needs of individuals and legal entities, public authorities and other actors, to ensure their contacts in real time, the network, the operation of which is governed by technical standards, rules of ethics, as well as international norms and national law, aimed at protecting the rights of the people Computerization has become an integral part of our existence. At the same time, however, it has become an obstacle for society as a whole, namely, the new phenomenon of computer crime.

Methods

This article is based on literary research. The author has gained access to information from various sources: magazines, articles, global reports, current events and modern trends in new technologies. The choice of literature was based on the purpose of the research, authority, efficiency and reliability of the authors. For the purposes of the study, publications were selected, mostly from 2010 to 2017, dedicated to updating cyber security.

DEVELOPMENT

Results

In 2014, RAND announced the maturity of the cybercrime markets (Ablon et al., 2014). Dean, in his publication, notes that this market may well compete with the international drug trade (Dean, 2015).

The majority of the public, commercial, private and individual sectors suffer from attacks on their information databases by "white-collar criminals" (a form of outreach to information technology offenders). There are various types of disruptions and distortions in computer networks, as well as the downloading and theft of individual blocks of information sites. Numerous computer programs-parasites (viruses) and twins are launched, which ultimately disrupt technological, financial, information and other production flows. Against this backdrop, society faces the problem of trust in government agencies charged with protecting society from such threats. Snowden's disclosure of NSA activities and other such revelations continue to undermine this trust (Burgess, 2017).

In the emerging cyberspace, technology continues to push the boundaries of the digital economy. One of the most destructive innovations is Bitcoin, which breaks down barriers and creates new rules. This open banking network defines the world's first digital currency based on a peer-to-peer agreement with equal partners. In 2010, 10,000 bitcoins were sold for pizza, each worth $0.0025 per bitcoin. The cost of the pizza is estimated at $0.0025 per bitcoin (Lee, 2014). On 10 March 2017, Bitcoin soared to $1,350 (Bitcoin, 2017). The opportunities offered by Bitcoin could not help but attract the attention of cybercriminals by providing them with anonymity in their illegal activities (Bohannon, 2016).

Globalization is a key principle in the development of digital technologies, while markets are a source of major security concerns, regardless of where the hardware or software is located. Cyber security is a key element of national security (Elkhannoubi, Belaissaoui, 2015). Nations need to balance the needs of the digital economy and ensure the reliability and security of cyberspace (NATO, 2013). Security failures and related criminal activities are currently causing various technical, social and economic problems that affect all aspects of our daily lives, from financial institutions to smart homes. The backdoor of a secure system is becoming the primary target for cybercriminals. In addition to transactional cybercrime, new methods and tools are emerging that use the ubiquitous digital infrastructure.

The news that the Russian Federation influenced the U.S. election results in 2016 gives an idea of this and illustrates the alarming signal of the cyber threat, despite the fact that social engineering as a tool has long been studied and that such approaches are now highly automated and produced on a large scale, with significant geopolitical implications (USA, 2018).

Regarding transactional cybercrime, the statistics speak for themselves: in the U.S., the average amount of losses from one physical bank robbery is $3.2 thousand, from one fraud - $23 thousand, from one computer theft - $500 thousand. The annual economic loss from computer crime in the late 1990s approached $100 billion (Kostenko, 2019). As for the focus of criminal activity, according to the American scientist D. Sraub, 11% of computer attacks are aimed at stealing equipment, about a fifth at programs, about 3/5 at information and about 13% at services. The vast majority of assaults focus on information programs and data from the total number of cases (Sharikov, 2015).

The Remove PC portal (http://www.remove-pcvirus.com) illustrates the international nature of the problem and provides statistics on countries that account for the total number of computer crimes (Fig. 1).

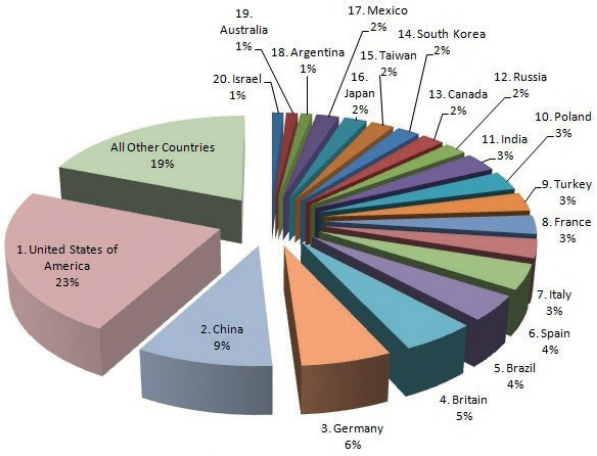

Fig. 1. World distribution of computer crimes.

At the same time, it should be noted that the ideology of hackers (one of the types of computer criminals), is the constant search for new, unexplored peaks of the criminal sphere. They are particularly interested in the strategy of the military-industrial complex, and therefore protection against cyber threats has become a top priority for countries around the world. In 2015, the British government identified cyber threats as a first-level risk in its national security strategy (NSS) (National, 2016).

The U.S. Army Agency has established an e-commerce office. The e-commerce system operates because of an Internet portal that combines the websites of armed forces and commercial manufacturers. The system was too much of a hacker's interest, and they began to pay more attention to it than the Pentagon's information systems combined. In 2011, there were nearly 22,000 attempts to infiltrate and remove information from e-commerce systems, and in 2012 this number increased to 27,000, according to the Computer Security Institute, in the second half of 2013 the number of hacker attacks increased by 33% compared to the same period in 2012 (Komarov, 2013).

William Barr, the English vice president of the insurance group, announced the following facts:

- 90% of organizations detect violations of information systems annually;

- 80% of them confirm financial losses;

- Only one MIMOA virus has resulted in damage of more than £1.8 billion;

- In October 2012, a cyber-attack in 1 hour disrupted nine of the 13 major computers that control the global Internet movement;

- More than £38 billion worth of private information is stolen annually (Efremova, 2018).

Independent experts estimate that firms in developed market economies spend 15-20% of their net profits annually on combating industrial espionage (Eliseev, 2018). Demonstrated statistics show that this type of crime continues to evolve. Moreover, the main problem with the dynamics of the new phenomenon is that computer crime, as a component of general crime, is gaining momentum and is being interpreted by the nature of transnational crime.

Specialists note that these crimes threaten the economic foundations of States and the global economic system. Therefore, one aspect of their prevention is the strategy of the international fight against the potential threat of cybercrime offences. Cybernetics is the science of general laws for receiving, storing, transmitting and transforming information in complex management systems (Novikov, 2015).

Thus, "cyber technologies" should be understood as those that include computers and their carriers. One of the first such strategies was demonstrated in London in 2002, where the first International Congress "E-CRIMECONGRESS 2002", an initiative of the National Centre for Combating High Technology Crime, took place. 400 delegates from all over the world took part in the event, including representatives from Russia. The event was based on the Project Trawler strategy developed by the Association of Police Officers (ACPO) and the Computer Crime Working Group and published by the National Bureau of Criminal Investigation (NCIS) in 1999.

Discussion

The published statistical data once again confirm that the specified type of criminal acts with the use of modern information technologies constitutes a large-scale threat to all spheres of human existence in the world. In addition, it will exist as long as the humankind will be in interrelation with electronic computer systems. Nevertheless, this in no way means that we call for a boycott of the Internet and, at the same time, of all cybernetic technologies.

As researchers of our time, I.L. Bachilo and S.I. Semiletov noted: "The problems of the Internet, as a new information environment, which has received organizational and technical registration, are boundless; at the same time, they form priorities for each country and its legal system" (Bachilo, 2002). The main task of all States parties to the European Convention is to cooperate, combat and prevent these crimes.

The trend of the increase in these crimes in Russia repeats the global one - the annual growth of two or three times. According to foreign experts, it is caused by this:

The high potential and professional level of Russian hackers, which is often mentioned by representatives of foreign intelligence services;

Political instability in society.

In our opinion, these and other factors influence the dynamics of crime in the sphere of information technologies, so we believe that the way to reduce these statistics is the fruitful cooperation of the involved agencies, both state and international levels, which are designed to combat this illegal phenomenon. In this regard, we support the opinion of those who are of the view that it is advisable to establish relevant units within the structures of the FSB, the Ministry of Internal Affairs and the Federal Tax Service of the Russian Federation. As a positive factor, it should be noted the activities of the Department for Combating Crimes in the Sphere of Information Technologies (Department "K") established in the Ministry of Internal Affairs of the Russian Federation, among the priorities of which was also identified the fight against crime in global computer networks.

For national cybersecurity, it is vital to focus on infrastructure protection, the effective fight against cybercrime and the country's defense capability (Estonia, 2014).

In this regard, in 2016, communication engineers of the Russian Ministry of Defense completed the deployment of a new communication system, the "Closed Data Transmission Segment". Among the specialists, the system was named "Military Internet", as service members can only use it. The system does not communicate with the global Internet, and all computers connected to it are protected from unauthorized flash drives and external hard drives (Russian, 2016).

At the International Congress on Cyber Security in Moscow, Vladimir Putin announced a list of measures the government intends to take to protect the country from cyber threats. The list includes international cooperation, the creation of an information exchange system on cyberattacks, the use of domestic software and the training of qualified personnel.

Russian President Vladimir Putin announced in 2018 a program to combat cybercrime in Russia, which includes five priority steps.

First, Russia should develop new comprehensive solutions aimed at combating crimes against citizens in the digital environment, the president said. These solutions should contribute to more effective work of intelligence agencies in responding to cyber threats. For this purpose, the necessary legal conditions should be created, under which citizens and government agencies will be comfortable to interact with each other.

The second step will be to create a system of automated exchange of information about threats, an initiative that business has put forward. This system will be used to coordinate the actions of communication operators, banks and Internet companies with law enforcement agencies in the process of repelling cyberattacks. Better co-ordination of efforts will enable threats to be repelled more quickly.

Third, the government will seek to ensure that the software and communications infrastructure used in Russia is based on certified Russian solutions. The President noted that this means competitive products of high quality, and that such a policy should not harm competition.

The fourth measure will be to improve the level of training of Russian IT specialists, for which purpose the practice-oriented methods will be more intensively implemented, as well as the advanced domestic and foreign experience will be used.

As a fifth measure, Russia intends to improve its cyber threat data exchange with other countries. In the near future, the government will decide which agency will be responsible for this, Putin said.

The President also said that the international community should work out the "rules of the game" in the field of digital technologies, which are common for all countries, universal and common for all international standard, which will take into account the interests of each country.

Putin noted that the activities of the states, which are guided only by their own interests, undermines the information stability in the world, and that the international community has already had cases to see this. In addition, the President stressed the importance of freedom of communication and communication, as well as the unimpeded exchange of experience and ideas in the digital age, and stressed that security measures should not be taken at the expense of progress and innovation.

Putin said that at the end of the first quarter of 2018 there was an increase in the number of hacker attacks on Russian resources by a third compared to the same period last year. In this regard, he noted that he believes that

countering such attacks and ensuring cyber security is a task of the state level.

It is necessary to solve this problem by joint efforts of law enforcement, business, public organizations and citizens, the president believes. He also cited data from the World Economic Forum, according to which the damage caused by hacker attacks in the world amounted to about $1 trillion in 2017. Putin warned with reference to experts that in the absence of necessary measures this figure would grow.

CONCLUSIONS

Despite the problems of economic, political and legal nature that exist in Russia, our state is gradually moving forward, integrating with the world standards of international fight against computer crime. At this stage, attention is already being paid to the question of the optimal combination of legal and preventive measures, the development and implementation of criminal legislation and the application of other norms designed to regulate and establish liability for crimes in the field of computer information technologies.

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Code in the system of alternative regulatory legal acts: priority issues

Código en el sistema de actos jurídicos reglamentarios alternativos: un asunto prioritario

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ABSTRACT

Modern practical jurisprudence faces many difficulties caused by inconsistencies in the current legislation. This problem concern the collision between codified and special legislation. We have formed a unified approach to solving the conflict of norms of codes and other federal laws with the help of general scientific methods (analysis, synthesis, and analogy), and special, private scientific methods (formal legal, functional methods, and method of legal modeling). We have formulated a collision rule according to which the norm of a special law takes precedence over the norm of an ordinary law (including codified one). Mentioning or not mentioning the code about the admissibility of the adoption of a special law in a particular case has no legal significance. We believe that the thesis that the codified act automatically acquires increased legal force in relation to uncodified laws, which is widespread in modern science, should be recognized as incorrect.

Keywords: Collision of law; codified law; special law; legal effect of the law.

RESUMEN

La jurisprudencia práctica moderna enfrenta muchas dificultades causadas por inconsistencias en la legislación actual. Este problema se refiere a la colisión entre la legislación codificada y especial. Hemos formado un enfoque unificado para resolver el conflicto de normas de códigos y otras leyes federales con la ayuda de métodos científicos generales (análisis, síntesis y analogía), y métodos científicos privados especiales (métodos formales legales, funcionales y métodos de modelado legal). Hemos formulado una regla de colisión según la cual la norma de una ley especial tiene prioridad sobre la norma de una ley ordinaria (incluida una codificada). Mencionar o no mencionar el código sobre la admisibilidad de la adopción de una ley especial en un caso particular no tiene importancia legal. Creemos que la tesis de que el acto codificado adquiere automáticamente una mayor fuerza legal en relación con las leyes no codificadas, que está muy extendida en la ciencia moderna, debe reconocerse como incorrecta.

Palabras clave: colisión de leyes; ley codificada; ley especial; efecto legal de la ley.

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INTRODUCTION

In modern Russian legal science, the opinion about the special - increased - legal force of the code in the system of sources of a particular branch of law is firmly established. The fact that the legislator has given the status of a codified legal act to the legislator automatically places it at the top of the industry pyramid. Moreover, indeed, there is no doubt that the Civil Code, and the structure of labor law by the Labor Code (Makovskii, 2009) rightfully crown the structure of civil law.

It is for this reason that the attention of the reader familiar with the text of a particular code does not stop at introductory provisions fixing the provision of this act among other legal acts. Thus, a provision, the standard version of which is established, for example, in paragraph 2 of Article 3 of the Civil Code of the Russian Federation, is perceived quite routinely:

> "The civil legislation consists of the present Code and other federal laws (further - laws) regulating relations specified in points 1 and 2 of article 2 of the present Code accepted according to it. Norms of the civil right, containing in other laws, should correspond to the present Code".

The same provision (with minor variations) is found in other codified acts (Osborne and Charles, 2007). From these and similar provisions it follows that if a provision of another law does not comply with the provisions of the Code, it is not applicable. The conflict of laws rule established through this is as follows: when a codified act collides with an uncodified priority, it has the first one (Braginskii, 2009).

It would seem that there is nothing wrong with this rule: the Code, playing a systemic role within the legal industry, is entitled to claim a special status. Therefore, giving it a little more legal force seems to be quite justified.

However, the indisputability of this idea disappears as soon as we turn to other conflict of laws rules. A really stalemate situation becomes when a code with "increased" legal force comes into conflict with a special uncodified law.

For example, Clause 3 of Article 103 of the Civil Code of the Russian Federation (as amended before September 1, 2014):

> "The executive body of the company may be collegial (management board, directorate) and (or) sole (director, general director).
>
> At the same time, Article 69 of the Federal Law "On Joint-Stock Companies" of 1995 stated:
>
> «1. Management of the Company›s current activity is performed by the sole executive body of the Company (Director, General Director) or the sole executive body of the Company (Director, General Director) and the collegial executive body of the Company (Management Board, Management Board)».

Thus, within the meaning of the Federal Law "On Joint-Stock Companies" the executive body could not be represented only by the collegial executive body. At the same time, a special law in comparison with the general law (the code) even narrows down the range of opportunities provided by the law, i.e., from the point of view of the subject of civil law is less attractive. The question arises: which of the two acts (code or special law) is to be applied? In addition, how will the answer be affected by the fact that a special law turns out to be "less advantageous" for the law enforcer?

The general theory of law has long ago developed a hierarchy of conflict of laws rules:

1) "Lex superior derogat legi interior";
2) "Lex specialis derogat generali";
3) "Lex posterior derogat priori".

Schematically, the hierarchy of these rules looks like this:

Absolute priority rule of law industry: rule on resolving conflicts of law of different legal force – industry priority rule – rule on common and special norm – temporary conflict resolution rule.

The value of this hierarchy is that it clearly establishes the sequence of application of individual conflict of laws rules: primacy always remains over the norm of greater legal force (rule 1 always wins rule 2 and 3). In the absence of a hierarchical collision, primacy remains a special norm (rule 2 wins 3, but not 1). And only in the absence of all other collision relations, priority is given to the rule later (rule 3 is subordinated to rule 1 and 2).

For us, this means that, since the code has "increased" legal force, the abovementioned conflict should be resolved according to the first rule on the priority "lex superior". The rule about "lex specialis" is not used at all as having a lower specific weight. In the conflict between Clause 3, Article 103 of the Civil Code of the Russian Federation (as amended before September 1, 2014) and Article 69 of the Federal Law "On Joint-Stock Companies", it is necessary to recognize the superiority of the Civil Code of the Russian Federation.

After all these arguments, the question naturally arises: why do all these numerous special laws exist, if they immediately yield their positions to the codes, if they do not coincide in their content? Obviously, a special law will be effective only if it duplicates the provisions of the code. Then the need for such a special law will be doubled. So, the "lex specialis" rule practically does not seem to have a chance to be applied to the code. We will try to understand these and related issues.

DEVELOPMENT

Code as a law of "increased" legal force? History of the problem

Legislator, in fact, points to the mandatory consistency and even compliance with the Civil Code of all other civil law laws (Pablo, Norge, 2015). This means that in the event of a conflict or even more so, other federal laws are not applicable. Article 4 of the Law of the Russian Federation "On the Implementation of Part One of the Civil Code of the Russian Federation" clearly states that until the laws and other legal acts in force on the territory of the Russian Federation are brought into compliance with the Civil Code of the Russian Federation, they are applied insofar as they do not contradict the Civil Code of the Russian Federation.

Article 3.2 of Part I of the Civil Code of the Russian Federation, adopted in 1994, gave rise to an extensive scientific discussion on the legal force of the codes in the domestic legal system. Apparently, the general opinion is steadily inclined to the recognition of some kind of legal supremacy of the code in relation to the entire sectorial regulatory framework headed by this code. This view of the code's provisions is called "primus inter pares" (Henderson, 2010).

Let us cite the opinion typical of this concept: "The legally fixed priority of the Civil Code is a manifestation of its legal force, which allows this normative legal act to take a place in the system of horizontal hierarchy (hierarchy of civil law federal laws) between federal constitutional and current (non-codified) federal laws" (Ruzanova, 2007). The idea of the supporters of the concept of "primus inter pares" is quite clear: the code has a higher legal force and therefore has priority over the current federal law (even if the latter contains a special rule of law!).

Or the proponents of the idea of "primus inter pares" choose an intermediate version: it is assumed that p. Article 3 (2) of the Civil Code of the Russian Federation justifies the precedence of the Code over "ordinary" federal laws, at the same time allowing the existence and priority application of special laws, but only in case of direct reference to them by the Civil Code itself.

Thus, analyzing the item. V.A. Rakhmilovich concludes that, firstly, the norms detailing the rules of the Civil Code or establishing derogations from them are admissible only in cases and within the limits provided for by the corresponding norm of the Civil Code itself, and, secondly, in everything that is not directly defined by the norm of this special law, this civil legal relationship is subject to the rules of the Civil Code.

At the same time, the author considers this location of the Civil Code among other laws not as a drawback, but as a virtue of the new code. Since the only Civil Code does not exhaust the system of civil legislation, it is necessary, in his opinion, to take measures against the emergence of contradictions within this system. This is the reason why the norms of the code take precedence over the norms of civil law, which are outside the Civil Code. In case of contradiction between the Civil Code and other laws, courts are recommended to apply the relevant provision of the Civil Code. When the legislator admits the need to deviate from the general rules of the Civil Code, he, according to V.A. Rakhmilovich, should at the same time make an addition to the relevant provision of the Code, adding a reservation: "unless otherwise provided by law" (Falileev and Kozlov, 1997).

P.A. Falileev and V.B. Kozlov rightly point to the recklessness of this approach, since "the legislator, putting himself within the narrow limits of the Civil Code, will probably be forced in the future to exhaust the entire Code of Conduct with such reservations, and where for any reason they will not appear, there will be grounds for unnecessary disputes" (Falileev and Kozlov, 1997). In other words, to make the application of a special law dependent on a reference to it by the Civil Code of the Russian Federation means to refuse to apply another special law, which the Civil Code of the Russian Federation has "forgotten" or "failed to mention", in each specific case. Such an approach to the relationship between the Civil Code of the Russian Federation and the developing legislation is obviously wrong.

Therefore, it is necessary to realize the severity of the problem: the Civil Code of the Russian Federation (as well as any other code), which is formally the same federal law as the "ordinary" federal laws, unilaterally indicates its "increased" legal force in relation to other federal laws. Therefore, the concept of "primus inter pares" is in urgent need of theoretical discussion.

To understand the essence of the item. Article 3, paragraph 2, of the Civil Code of the Russian Federation requires a historical way of interpreting the law. The history of the formation of the idea of "primus inter pares" in the national jurisprudence is clearly demonstrated in the work of A.A. Petrov and V.M. Shafirov "Subject-Hierarchy of Regulatory Legal Acts". Here are some excerpts from this work:

"At the end of the 1950s, the Soviet legislator and legal scholars faced a problem, the solution of which required significant tension in legal theory and law. Its essence was the following. In accordance with the Law of the USSR of February 11, 1957, "On Reliability of the Legislation on the Organization of Courts of the Union Republics, the Adoption of Civil, Criminal and Procedural Codes" it was decided, "to refer the adoption of the corresponding codified acts to the jurisdiction of the Union republics" (Petrov, Shaferov, 2014).

However, in order to ensure the unity of the legal space of the USSR, a form was required that would allow unifying the future union codified legislation in a framework order. As such, theoretical science proposed the Fundamentals of Legislation of the USSR as a special kind of codified acts. These Foundations were intended to set the general directions of development of the republican legislation in a framework format. This made it possible

for theoretical science to consider the Fundamentals of Legislation "as an act of a higher rank than simple laws regulating a relatively narrow range of issues in the industry" (Scientific, 1981).

This idea was later embodied in paragraph 2 of Article 3 of the Civil Code of the Russian Federation. Discussion of the draft of the new Civil Code revealed all the contradictions of the political situation in the state. The political victory won by the supporters of liberal reforms in the economy did not seem to be strong due to the unpopularity of such a program of reforms among many party factions in the State Duma in 1993-1995.

Therefore, the new Civil Code had great hopes for a radical market transformation of the economy, which is called the "economic constitution of Russia" and even the "Free Society Manifesto" (Alekseev, 2010). The desire to make economic reforms irreversible and to prevent their revision was dictated by the content of paragraph 2 of Article 3 of the Civil Code of the Russian Federation. Through these reforms, it was as if "safe" for the future from attempts of the State Duma to correct the adopted Civil Code with the help of subsequent laws. "Civilists - developers of the Civil Code of 1994 openly called the new Civil Code "economic constitution" of the new capitalist Russia.

Apparently, they were very much afraid that the State Duma with its communist majority would "shred" the conceptual ideas of the State Duma through the adoption of specific federal laws and thus nullify the efforts of the developers of the State Duma to form the foundations of a market economy" (Petrov, Shafirov, 2014). The arguments in favor of a "larger gravitational mass" of the code, which were taken from the Soviet jurisprudence regarding the status of the Fundamentals of Legislation, were very useful. The arguments were substantiated by indications of the systemic function of the Code within the industry, its political and practical importance, its application throughout the country, etc.

The immediate effect achieved by implementing the concept of "primus inter pares" in civil law may have been positive. In the context of economic collapse, at least some stability has been achieved in the development of the sector. Nevertheless, the consequences of this step were far from certain. After all, the law enforcer naturally had a question: "If the Civil Code points to the need for compliance and consistency with the entire body of civil legislation under threat of non-application of the latter, then why do we need such legislation at all? If the "ordinary" civil law contradicts the Civil Code of the Russian Federation, it obviously does not apply; if it corresponds to the Civil Code of the Russian Federation (in detail, I suppose), then the norms of the Civil Code of the Russian Federation are sufficient. In fact, the penetration of the principle of "primus inter pares" into the body of law has devalued the traditional principles of resolving collisions of "lex specialis derogat generali" and "lex posterior derogat priori" (Barak, 2005).

Example p. Article 2, paragraph 3, of the Civil Code of the Russian Federation was extremely contagious. A number of acts introduce in their text a reference to their "increased" legal force. As a result, A.A. Petrov and V.M. Shaferov are about to become members of the Board of Directors in 2014. Fifty federal laws indicating their priority (surprisingly, but among them uncodified acts prevail). All this gives grounds to assert that the experience of the Ministry of Justice of the Russian Federation in the field of human rights and fundamental freedoms is the basis for the claim that the experience of the Ministry of Justice of the Russian Federation in the field of human rights and fundamental freedoms is the basis for its development. Article 3, paragraph 2, of the Civil Code of the Russian Federation was considered by the legislator as positive and necessary for spatial expansion.

Legal positions of the Constitutional Court of the Russian Federation on the issue of the legal force of the Code

The Constitutional Court of the Russian Federation contributed to the resolution of the issue of "primus inter pares" admissibility. In a number of its acts (mainly up to 2000), it pointed out the inadmissibility of vertical hierarchy among federal laws and formulated the following legal positions:

> 1) The 1993 Constitution of the Russian Federation itself distinguishes only three types of federal laws (the law on amendments to the Constitution, the federal constitutional law and the federal law), so arbitrary proclamation of the codes themselves as a separate version of the Federal Law does not correspond to the Constitution of the Russian Federation;
>
> 2) The code is also adopted by the Federal Assembly of the Russian Federation and according to the procedure provided for the adoption of non-codified federal laws;
>
> 3) Therefore, "by virtue of Article 76 of the Constitution of the Russian Federation, no federal law has greater legal force in relation to another federal law. The correct choice based on the establishment and study of factual circumstances and the interpretation of the rules to be applied in a particular case does not fall within the jurisdiction of the Constitutional Court of the Russian Federation, but rather within the jurisdiction of courts of general jurisdiction and arbitration courts;
>
> 4) This means that conflicts arising in practice should be resolved by the enforcer based on the conflict of laws rules on special and late rules of law by courts of general jurisdiction (Barak, 2005).

In general, the position taken by the Russian Constitutional Court (in acts prior to 2000) on the issue of "primus inter pares" should be characterized as correct. The CC of the Russian Federation did not follow the path of recognition of some increased legal force for the codes, as it instinctively realized this path as destructive for the whole system of state law. At the same time, the CC of the Russian Federation limited itself to half measures: not recognizing the principle of "primus inter pares", at the same time, it did not recognize any of the provisions of the

existing codes on their priority (for example, paragraph 2 of Article 3 of the Civil Code of the Russian Federation) contrary to the Constitution of the Russian Federation, which would be logical.

The Constitutional Court of the Russian Federation has as it were removed from the final resolution of the dispute, shifting the burden of doctrinal and practical decision on the shoulders of courts of general jurisdiction and arbitration (until recently) courts.

The acts of the Constitutional Court after 2000 concerning the "primus inter pares" finally confuse the law enforcer. Here is an example of such a highly controversial Resolution of the RF Constitutional Court.

Resolution of the Constitutional Court of the Russian Federation of June 29, 2004, T13-P:

"The Code of Criminal Procedure of the Russian Federation, which, according to part one of its article 1, establishes the procedure for criminal proceedings in the territory of the Russian Federation, being an ordinary federal law, does not have an advantage over other federal laws from the point of view of the hierarchy of normative acts defined directly by the Constitution of the Russian Federation...

In essence, the requirement of priority of the Code of Criminal Procedure of the Russian Federation formulated in the first and second parts of Article 7 of the CPC of the Russian Federation in connection with its Articles 1 and 8 and relating to the procedural law, corresponds to the most codified state of criminal law, providing the most adequate procedural form of its implementation as a substantive right. At the same time, the legislator proceeded from the special role played in the legal system of the Russian Federation by the codified normative legal act that carries out complex normative regulation of certain relations.

Consequently, federal legislators - with a view to implementing the constitutional principles of the rule of law, equality and a unified regime of legality, and ensuring State protection of human and civil rights and freedoms in the field of criminal justice - are entitled to establish the precedence of the Code of Criminal Procedure over other federal laws in the regulation of criminal procedural relations (Phelps, 2003).

At the same time, the priority of the Code of Criminal Procedure of the Russian Federation over other ordinary federal laws is not unconditional, but is limited to the framework of a special subject of regulation, which, as it follows from its articles 1 - 7, is the procedure of criminal proceedings, i.e. the procedure of proceedings (pre-trial and judicial) in criminal cases on the territory of the Russian Federation.

The Constitutional Court has mixed up to an unimaginable level several conflict of laws rules, which in principle do not allow such a possibility. At the same time, the text of the Resolution refers to some mysterious "conditional priority of the CPC" in relation to all other Federal Laws. "It seems that the Constitutional Court of Russia has tried to reconcile the irreconcilable - recognition and denial of the subject hierarchy - and has suffered a natural failure, adding only oil to the flames of discussion, because now its conclusions can be interpreted in its favor by both supporters and opponents of the subject hierarchy.

The former will leave the quotations of the motivating part of the CC's definitions with everything concerning why the provision of Article 7 of the CPC of the Russian Federation was not recognized as unconstitutional (the necessary unity of sectoral regulation, specificity of codified acts, etc.), while the latter will omit it and rely on the thesis that the CC stressed that the "subject" priority is weaker than the principles of lex special and lex posteriori, and therefore it cannot be attributed to the hierarchical one" (Petrov, Shaferov, 2014).

CONCLUSIONS

Domestic jurisprudence is in dire need of a clear doctrinal approach to resolving the conflict of norms of equal legal force (including between a codified and non-codified act). Further progress towards thoughtlessly giving more legal force to codes is completely unpromising and only generates "legal inflation". Non-critical trust in a single formal legal criterion of admissibility of a special law ("unless otherwise provided by law") also fails to withstand criticism from either a practical or doctrinal point of view (Barak, 2006). The Code is certainly not an ordinary federal law. However, its uniqueness lies in a fundamentally different level of generalization of legal material, in a concentrated expression of the method of legal regulation applicable to the subject matter. Therefore, the Code deserves attention and respect as a systemically important monument both for practice and for science of law (Hage, Akkermans, 2014). It should be followed by "the power of authority", but not "the power of force".

In this regard R. David wrote: "When it comes to the oldest and most highly respected codes, their practical significance is higher than that of other laws: there is a clear tendency for lawyers to attach more value to the principles established by these codes, as they have studied them specifically" (David and Zhoffre-Spinozi, 1988), in which they have seen the "essence of law". Therefore, we can quite well accept the admissibility of giving priority to the application of the code as a general law over a special law if the special law deviates from the "spirit" of the branch of law (when the special rule does not fulfil its purpose of continuing the general rule). However, this is an exceptional case of "son's disrespect" of a special norm in relation to the general one. For the most part, however, the code has the same legal force as the uncodified laws (Bast, Pyle, 2011).

Therefore, the only correct solution to conflict of laws cases involving the code is the following: the provision of a special law takes precedence over the provision of the "ordinary" law (including the codified one, see Vranes, 2006). Mentioning or not mentioning the code about the admissibility of a specific case of a developing special law has no legal significance. However, the priority of a special rule is not even limited to the time of adoption of the conflicting rules. (If a new rule of the code and an old special rule come into conflict, priority should be given to the old special rule).

Thus, modern jurisprudence, which is extremely disoriented by the "war of priorities" of codes and other laws, faces the task of deep and consistent understanding of the way out of the current stalemate situation, formation of a scientific approach to the problem.

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School administrators' willingness to receive inclusive education

La disposición de los administradores escolares de recibir educación inclusiva

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ABSTRACT

First objective is to investigate school administrators' readiness to accept inclusive education. Besides that, this research is also to identify the relation between teaching experience duration in school with integration program and the administrators' readiness in accepting inclusive education. This research is using quantitative design and analysed descriptively using Statistical Package for Social Science (SPSS) Version 22. Questionnaire has been distributed to school administrators (n=130) which consist of Principal, Headmaster, Senior Assistants, Special Education Coordinator, Head of Department and Head of Panel. There are seven schools (primary and secondary) with integration program involved. The result shows that the school administrators show a moderate readiness in accepting inclusive education. While based on the Pearson Correlation, there is no significant relation between teaching experience duration in school with integration program and the administrators' readiness on inclusive education [r =0.57, n=130, p>0.05]. Even though the administrators believe in the special pupil's ability but they do not have the confidence in managing those special pupils in inclusive setting. The duration of experience being in the school that has integration program does not influence their readiness.

Keywords: Inclusive Education, School Administrators' readiness.

RESUMEN

El primer objetivo es investigar la preparación de los administradores escolares para aceptar la educación inclusiva. Además de eso, esta investigación también identifica la relación entre la duración de la experiencia docente en la escuela con el programa de integración y la preparación de los administradores para aceptar la educación inclusiva. Esta investigación utiliza un diseño cuantitativo y se analiza de manera descriptiva utilizando el Paquete Estadístico para Ciencias Sociales (SPSS) Versión 22. El cuestionario se ha distribuido a los administradores escolares (n = 130) que consta de Director, Director, Asistentes Senior, Coordinador de Educación Especial, Jefe de Departamento y Jefe de Panel. Hay siete escuelas (primaria y secundaria) con un programa de integración involucrado. El resultado muestra que los administradores escolares muestran una moderada disposición para aceptar la educación inclusiva. Si bien se basa en la Correlación de Pearson, no existe una relación significativa entre la duración de la experiencia docente en la escuela con el programa de integración y la preparación de los administradores para la educación inclusiva [r = 0.57, n = 130, p> 0.05]. A pesar de que los administradores creen en la capacidad del alumno especial, no tienen la confianza necesaria para administrar a esos alumnos especiales en un entorno inclusivo. La duración de la experiencia de estar en la escuela que tiene un programa de integración no influye en su preparación.

Palabras clave: Educación inclusiva, preparación de los administradores escolares.

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1. INTRODUCTION

The Inclusive Education Program involves special needs students (SEN) in primary school alongside other typical students either in government schools or government aid schools (Ministry of Education Malaysia 2015; Ogelmen & Secer 2012; Manisah, Ramlee & Zalizan, 2006). SEN students is no longer strictly in a separate or integrated class despite being certified by a specialist and being a cardholder of the Disabled.

Before inclusive education gained serious attention in the education system, the Integrated Education Program (IEP) was an effort to provide equal educational opportunities to the disabled. The holistic development of individuals in physical, emotional, spiritual, intellectual and social terms as embodied in the National Philosophy of Education demonstrates that social is a very important aspect of communication. The isolation of SEN students through special education schools and integration programs is a social discrimination although it was originally an attempt to provide services in line with the social and intellectual capacity of the SEN students. The Salamanca Statement and Framework for Action on Special Needs Education in 1994 stated that ordinary schools with an inclusive education orientation were a way of avoiding discrimination. In World Report on Disability, countries that focus on interactive approaches and focus on inclusive school environments are increasingly favored by medically-based models that were previously popular because of the nature of education that provides services based on individual health and disability (WHO), 2011). The main focus is on an interactive approach to inclusive culture at The school is to foster a community that supports the disabled and MBK to gain access to education without being isolated. Hodkinson & Vickerman (2009) state that most facilities are built only for the normal. The disabled or SEN students do not benefit from the provision of this facility. In schools, school administrators have the right to fight for the rights of minority groups, the SEN students so that they also have the same facilities so that they also have the same access to other normal income.

2. STATEMENT OF PROBLEMS AND OBJECTIVES

More recently, inclusive education has begun to gain attention in the education system (Foreman 2008), a system that prioritizes the equality of all members of the community to participate and access to education (Armstrong 2011; Salend 2011). However, it should be noted that in most developing countries such as Asia, inclusive education has not received serious attention. According to Desai and Mitchell (2009) only one percent of children with special needs have access to education in Asia and between these countries, Vietnam is identified as one of the countries that represents the most significant developmental process of inclusive education. Another scenario of inclusive education in Senegal, West Africa, which is a non-state-developed country, has become aware of the importance of inclusive education and is committed to increasing inclusive education in 2015. This raises the question of whether Malaysia is also ready for an inclusive education. take this for granted.

Many studies have been conducted on inclusive education, especially in regard to teachers' perceptions and attitudes. There are two possible findings: positive or negative attitude. In a separate study, Ramlee and Zalizan (2006) found that in Malaysia, teachers have a positive attitude towards inclusive education and they also believe that inclusive education can help MBK and prime students to interact and indirectly reduce stereotypes of prime students towards SEN students. Inclusive education as one of the branches of education adds to the need to focus on the skills that teachers need in order to meet the needs of the SEN students which are unique but at the same time must be fought for equal rights (Jones & Vail 2013). Therefore, school administrators' knowledge of inclusive education that considers their readiness to receive SEN students in inclusive education is extremely important. School administrators are the main drivers of education policy because they make important decisions in assisting the policy-making group of teachers. It is also intended to encourage collaboration between ordinary teachers and special education teachers thus enhancing professional skills and development (Foreman, 2008).

Inclusive education, which still shows less progressive growth in Asia as stated by Desai and Mitchell (2009), has also led to the inclusion of Asian education as much as it refers to the international practice of multinationals, most of which are now led by advanced countries in the field education (Armstrong 2011). In addition, Armstrong also mentions that economic factors, logistics, teachers' attitudes and skills, parental and cultural attitudes have contributed to the existence of a gap between the theory and practice of inclusive education in Asia. For example, according to Hill and Sasipin (2013) in Thailand, teachers involved in inclusive education have less knowledge of special education in general and lack sufficient skills and training to teach SEN students. In this regard, school administrators play an important role in helping teachers cultivate an inclusive environment in the school. In Tuaran District, inclusive education is already in progress in schools with (IEP). However, there are still few studies conducted specifically to study matters related to inclusive education in terms of teachers, students, infrastructure, implementation and so on. Therefore, this study was conducted to obtain information on inclusive education in Tuaran District with the following research objectives:

i. Identify the willingness of school administrators to receive inclusive education.

ii. identify the relationship between the duration of teaching experience in schools with IEP and the readiness of administrators to receive inclusive education

3. METHODOLOGY

This study used quantitative design and was descriptively analysed using the Statistical Package for Social Science (SPSS) Version 22. Application form was distributed to respondents (n = 130) who were school administrators consisting of principals, teachers, senior assistants, education coordinators special, field chair and committee chair. The schools involved are seven primary and secondary schools with an integrated Special Education Program in Tuaran District, Sabah. A pilot

study was conducted in the Ranau District and a Cronbach Alpha value of 0.91 was obtained. A continuum of models has been the basis of this study, which is a combination of related models. Hodkinson and Vickerman (2009) highlight two key models that illustrate how ideological and inclusive education are viewed from various perspectives as can be seen in Figure 1.

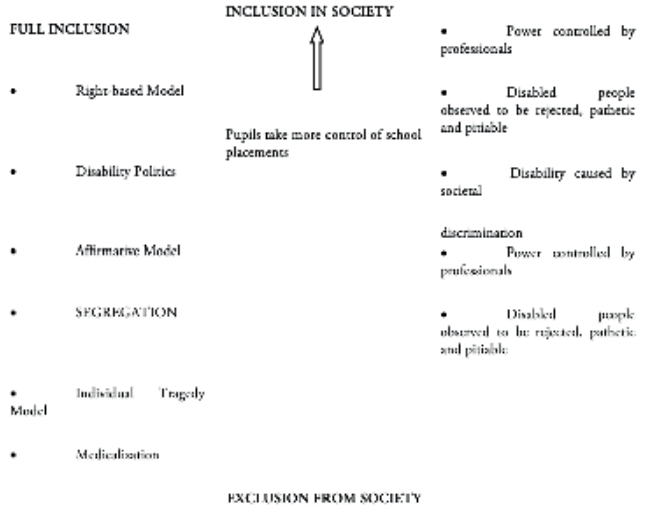

Figure 1. ***From segregation to inclusion: a continuum of models***

This model shows the true direction of inclusive education, which is the transition from SEN students isolation from mainstream to single learning in one classroom. While in exile, the SEN students seemed to be treated, provided with services as their disability required. This led them to be controlled by professionals and regarded as those who needed sympathy. Therefore, what they will learn is under the control of those who have the right to decide. However, in inclusive education, SEN students is entitled to bertanggungjawab terhadap pendidikan masing-masing, mempelajari bidang yang mereka minati. Mereka juga boleh bersosial with other ordinary students and are viewed as capable individuals and can progress in their areas of interest even though they have disabilities in other areas such as learning or physical.

4. DATA ANALYSIS

4.1 Respondent Demographic Information

This section will discuss the background of the respondents based on four aspects namely gender, academic level, duration of teaching experience in schools with PPKI and positions. The results of the data analysis are presented in the form of frequencies and percentages. Table 1 shows the demographic information.

Table 1: Response profiles by gender

	Frequency	Percentage (%)
Gender		
Male	41	31.5
Female	89	68.5
Total	130	100
Academic qualifications		
Certificate	2	1.5
Diploma	12	9.2
Bachelor	97	74.6
Scholar	18	13.8
Doctor of Philosophy	1	0.8
Total	130	100
Period (year)		
<1	4	3.1
1&2	6	9.2
3&4	12	9.2
>5	108	83.1
Total	130	100
Position		
Principal	2	1.5
Headmaster	2	1.5
Senior Assistant	23	17.7
Head of Field	14	10.8
Chairman of the committee	81	62.3
Coordinator	8	6.2
Total	130	100

4.2 Identify the willingness of school administrators to receive inclusive education.

Studies show some things about administrators' readiness to accept special needs (SEN) students. Of the 78.4% administrators who believe that SEN students are capable, 43.1% believe that SEN students can compete in the mainstream, 85% believe SEN students need social learning in the mainstream. More than 50% of administrators have never taken courses related to SEN. And only 13.1% agree and 5.4% strongly agree that they can easily manage SEN students.

Table 2: The readiness of administrators to receive inclusive education

SEN (Special Needs)

No	Items	1 Strongly disagree	2 Do not agree	3 Not sure	4 I agree	5 Strongly agree
1	I believe in the ability of SEN students	2.3% (3)	0.8% (1)	18.5% (24)	53.8% (70)	24.6% (32)
2	I have attended courses related to SEN.	38.5% (50)	17.7% (23)	12.3% (16)	17.7% (23)	13.8% (18)
3	I take care of SEN students easily	15.4% (20)	23.1% (30)	43.1% (56)	13.1% (17)	5.4% (7)
4	I'm excited for SEN students	4.6% (6)	6.9% (9)	35.4% (46)	46.9% (61)	6.2% (8)
5	I believe in the ability of SEN students to compete in the mainstream class.	9.2% (12)	9.2% (12)	26.2% (34)	43.1% (56)	12.3% (16)
6	I believe that the academic ability of SEN students depends on the difference in the level of student learning and not the influence of teacher teaching.	2.3% (3)	9.2% (12)	22.3% (29)	53.8% (70)	12.3% (16)
7	I believe the achievement of SEN students will improve as they study with other Pupils in the mainstream.	8.5% (11)	13.1% (17)	37.7% (49)	35.4% (46)	5.4% (7)
8	I'm more confident in dealing with students with physical disabilities.	13.1% (17)	14.6 % (19)	48.4% (63)	16.9% (22)	6.9% (9)
9	I'm more confident in dealing with students with low cognitive levels.	9.2% (12)	19.2% (25)	45.4% (59)	20.8% (27)	5.4% (7)
10	I am more confident in dealing with SEN students with moderate behavior.	6.2% (8)	16.2% (21)	41.5% (54)	30.8% (40)	5.4% (7)
11	I believe PK students need the social learning that exists in the mainstream class.	4.6% (6)	6.2% (8)	23.8% (31)	53.1% (69)	12.3% (16)
12	I believe SEN students can achieve better academic levels if they are early integrated.	4.6% (6)	13.1% (7)	26.9% (35)	40.8% (53)	14.6 (19)
13	SEN students' self-esteem will increase if they remain in the mainstream class.	7.7% (10)	22.3% (29)	36.2% (47)	26.9% (35)	6.9% (9)
14	SEN students do not interfere with the learning of mainstream students if they are inclusive.	9.2% (12)	13.1% (17)	33.8% (44)	32.3% (42)	11.5% (15)

4.3 Identify the relationship between the duration of teaching experience in schools with PPKI and the readiness of administrators to receive inclusive education

Based on the Pearson correlation, there was no significant relationship between the duration of teaching experience and the willingness of school administrators to receive inclusive education, [r = 0.57, n = 130, p> 0.05].

Table 3: Output for Pearson correlation analysis

Correlations			
		Experience	Readiness
Experience	Pearson Correlation	1	.050
	Sig. (2-tailed)		.575
	N	130	130
Readiness	Pearson Correlation	.050	1
	Sig. (2-tailed)	.575	
	N	130	130

5. DISCUSSION, RECOMMENDATIONS AND IMPLICATIONS

Studies show some things about the readiness of administrators to receive SEN students. School leavers have high confidence that SEN students has their own capabilities and that they can compete in the mainstream. In addition, the Administrators also have high confidence that the social learning climate that exists in the primary classroom is very important for SEN students in their learning. However, most school administrators are not sure whether inclusive education can help improve SEN student's education and self-esteem. Although more than half of administrators agree that SEN students does not interfere with the class even though it is inclusive, almost half are also unsure about it. However, they believe that if the SEN students is integrated early, this could help improve the performance of the SEN students The administrators have shown a lack of confidence in managing the SEN students either with physical impairments, low cognitive levels or with moderate behavior problems. However, among all the categories, school administrators are more confident in managing MBKs with physical disabilities than the other two. This may be because more than half of school administrators have never attended courses related to special visitors, let alone those specifically related to inclusive education. This study shows little difference from the study conducted by Manisah, Ramlee and Zalizan (2006) on primary teachers in Malaysia. 66% of respondents agreed that SEN students should be taught along with other ordinary students in inclusive classes. After 10 years, school administrators showed a better acceptance of up to 85% agreeing to this. This shows better development as time goes on. It is also an indication that inclusive education may have a brighter future if more educators are aware of the importance of inclusive education in education.

The findings of this study also indicate that the duration of teaching experience in schools with PPKI does not help administrators improve their readiness for inclusive education. Time and experience have no direct impact on admin readiness. They need something to help them understand and are then ready to receive inclusive education. On the whole, school administrators have a modest willingness to receive inclusive education.

5.1 Implications of the study

School administrators are the ones who have the implications of this study. They need help to increase their readiness for inclusive education as more than half of school administrators have never attended any special education-related courses. Through courses, seminars or workshops, school administrators can be exposed to the essence of inclusive education and emphasize on the equality of rights to access to education so that they are prepared to meet the goals of Malaysia Education Plan with 75% of MBK enrolled in inclusive education menjelang 2025.

This study also provides the favorable implications for mainstream teachers who teach in inclusive classes. Salend (2011) states that mainstream teachers can increase their confidence in teaching effectiveness and better attitude towards SEN students. Like ordinary students, many mainstream teachers are also not exposed to the needs of special education students. It is only when dealing with MBK in the real teaching that the mainstream teacher is able to grasp the real differences that exist between the average student and the SEN students. Therefore, teachers proactively set the example for ordinary students to respect diversity in inclusive classes. Foreman (2008) also associates teaching experiences in inclusive classroom with professional development of teachers. Through discussions and collaborations with special education teachers, mainstream teachers can learn a variety of new teaching techniques and may differ from what is implemented in the regular classroom. In addition to the following courses and seminars, many tips, suggestions and sharing about the SEN student's world and their needs. This, of course, promotes the teaching of professionalism as well as gaining new knowledge and contributing ideas to others. Planners of inclusive education strategic plans will also get the impression that school administrators cannot wait to receive inclusive education over time. More effort should be made to realize 75% of SEN students are enrolled in inclusive education by 2025 compared to only 30% by 2015. In the past 10 years, school administrators need to be assisted to enable them to mobilize the implementing group of teachers in the school to begin to inculcate school culture are inclusive. It should be noted that school administrators still have a modest degree of readiness in expressing some uncertainty in the various aspects of MBK management in inclusive education as well as their knowledge of special education in general.

CONCLUSION

The readiness of administrators to receive inclusive education is a major factor in determining the success of inclusive education in schools. School administrators are those who form between policy makers and policy makers. The Ministry of Education has developed a well-planned, strategic and thoughtful education policy that will respond to the challenge of disregarding the right of everyone to get an equal education. However, without the willingness and willingness of all school administrators, inclusive education is difficult to run according to plan. This, of course, has a more significant impact on the implementation level of mainstream teachers and special education. Despite the positive attitude towards inclusive education, without the support and good understanding of the school administrators, teachers cannot do anything. Without the development of conducive infrastructure and facilities, inclusive education is not easy to implement. Therefore, teachers are not only the main focus in the implementation of inclusive education but also the school administrators to ensure that the quality of inclusive education is truly quality and not merely to meet the demands of education policy.

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Economic and legal subordination in modern trends of labor law development

La subordinación económica y legal en las tendencias modernas del desarrollo de la legislación laboral

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ABSTRACT

The article discusses some trends in the development of labor law in Russia, taking into account foreign experience. We consider relations that were not previously formally regulated by law (for example, those arising from actual admission to work by an unauthorized person) or regulated by civil law from the scope of labor law. We noted that in cases where it is impossible to draw a conclusion about the sectoral nature of contractual relations and dependence of the employee, the Labor Code of the Russian Federation prescribes that they should be considered as labor relations. We also discussed the study of the evolution of the employer's power, subordination as a specific feature of labor relations. We came to conclusion that the new expansion of labor law should be based not on legal but rather on economic interrelations between employee and employer.

Keywords: Subject of labor law; labor relations; subordination of the employee.

RESUMEN

El artículo analiza algunas tendencias en el desarrollo de la legislación laboral en Rusia, teniendo en cuenta la experiencia extranjera. Consideramos relaciones que anteriormente no estaban reguladas formalmente por la ley (por ejemplo, aquellas derivadas de la admisión real al trabajo por una persona no autorizada) o reguladas por la ley civil desde el ámbito de la legislación laboral. Observamos que en los casos en que es imposible llegar a una conclusión sobre la naturaleza sectorial de las relaciones contractuales y la dependencia del empleado, el Código del Trabajo de la Federación de Rusia establece que deben considerarse como relaciones laborales. También discutimos el estudio de la evolución del poder del empleador, la subordinación como una característica específica de las relaciones laborales. Llegamos a la conclusión de que la nueva expansión de la legislación laboral no debería basarse en interrelaciones legales sino más bien económicas entre el empleado y el empleador.

Palabras clave: Sujeto del derecho laboral; relaciones laborales; subordinación del empleado.

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INTRODUCTION

The problem of differentiation of an employment contract and contracts related to work regulated by civil law was one way or another considered by all authors describing the employment relationship (Tal, 1913; Alexandrov, 1948; Karpushin, 1958). A detailed analysis of the differences between an employment contract and a contract of subcontract (Nurtdinova, Chikanova, 1995; Akopova, 2003) or in general from contracts related to the performance of work and provision of services, and subsequently was given quite regularly in the legal literature (Bondarenko, 2003; Mikhailenko, 2008; Prasolova, 2016; International, 2016). Despite the abundance of criteria, the constitutional features of an employment contract (i.e., those by which its legal nature is determined) are somehow reduced to an indication of the non-independent, dependent nature of the work. On the one hand, this has allowed some authors to question the possibility of further preservation of the employment contract outside the framework of civil law (Sannikova, 1999; Braginsky, Vitryansky, 1998), and on the other hand, encourages a more detailed study of the subordination of the employee and the phenomenon of employer power.

Methods

The analysis of the labor legislation of Russia, as well as individual European countries is carried out. At the same time, closer attention is paid to the regulation of labor-related relations in France, as in this country labor law is traditionally regarded as independent from the civil law of the industry. In addition, the materials of law enforcement practice are analyzed, including analytical data of the International Labor Office, indicating the current state of the labor market and the prospects of legal regulation of labor relations.

Special legal research methods, including comparative legal research, are also used.

DEVELOPMENT

Results

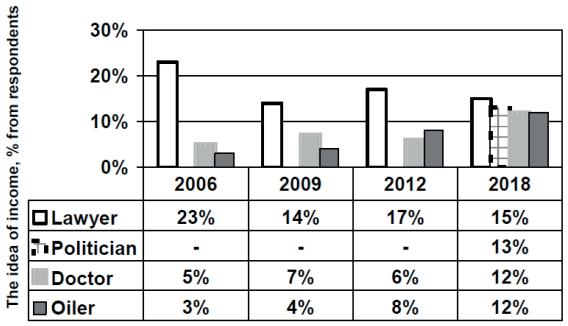
The preamble to Recommendation No. 198 of the International Labor Organization "On Labor Relations" stresses that "the protection of workers is at the core of the mandate of the International Labor Organization and is consistent with the principles set out in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and the Decent Work Agenda" (Evaluation, 2018).

In this regard, the goals and objectives of the labor legislation proclaimed in Article 1 of the Labor Code of the Russian Federation - the protection of the rights and interests of workers and employers, as well as the coordination of their interests - appear to be rather programmatic, since, in fact, the Russian labor legislation continues to shift the emphasis on the protection of the interests of the employee as a more vulnerable party to the labor agreement.

Statistical data published by the International Labor Organization testify to the vulnerability of workers. The International Labor Office estimates that, despite the trend of reducing poverty in the workplace (the number of extremely poor workers is expected to decrease by 10 million a year in 2018 and 2019); there has been little progress in this area on the global labor market.

In 2017, more than 300 million workers in emerging and developing countries recorded a standard of living below $1.90 per person per day. Overall, progress in the fight against poverty in the workplace has been too slow, and the number of extremely poor workers, according to ILO estimates, exceeded 114 million in 2018, or 40 per cent of all employed people (Evaluation, 2019). Also worrisome is the fact that a large number of workers are informally employed (including the "self-employed" and those working for family businesses), which means that formally they may not have an employment relationship, and in the worst case these relationships are in the informal economy. According to ILO, in 2016, such employment accounted for 61 per cent of the world's labor force (Work, 2019).

Against this background, the situation on the Russian labor market looks much more optimistic. According to a survey conducted by the All-Russian Center for Public Opinion Research (hereinafter - VCIOM), the vast majority of Russians (85% of respondents) like their work, and even without financial necessity, more than half of those surveyed would continue to work in the same place (Prestige, 2018). At the same time, the most profitable profession of lawyer continues to appear to the population, although the gap with other areas of activity, which are among the top three leaders, has narrowed significantly (Bonnechére, 2008) - see Fig. 1.



	2006	2009	2012	2018
Lawyer	23%	14%	17%	15%
Politician	-	-	-	13%
Doctor	5%	7%	6%	12%
Oiler	3%	4%	8%	12%

Fig. 1. Changes in the population's perception of the profitability of professions, according to the data of the All-Russia Public Opinion Research Center (http://wciom.ru).

Since the end of the 19th century, the European legal science has seen a revival of interest in subordination as an element of the characteristics of the employment contract. Thus, the problem of subordination arose because of the change in traditional views on the subject of the employment contract. From the point of view of the 19th century liberals, the manufacturer bought a "labor force", which, once bought, was in the loyal disposal of the owner, "as a good father of the family. At the same time, the personality of the worker was as if outside the scope of contractual analysis (ILO, 2019). Subsequently, this position underwent serious changes. Today, it is obvious that the personality of the worker is inseparable from the labor force, and when the worker is subject to the rules of internal labor regulations, the latter inevitably falls under the employer's power. The International Labor Conference, which met in Geneva in June 2019 on the centenary of the International Labor Organization (ILO), once again stressed that labor is not a commodity (Bulletin, 2017).

Characteristically, not only legal but also economic dependence is of great importance today. Already at the end of the 20th century, in some foreign countries there was a tendency to expand the scope of labor law and to extend some of its protective functions to the categories of workers who are not employed.

The trend towards externalization of an enterprise concluding subcontractor contracts for non-core work, which has been outlined since the 80s of the last century, is accompanied by the use of formally independent work of such subcontractors. However, numerous court practices suggest going beyond appearances. Here are some examples from the French courts.

Contractor and safety at work: the Guegan case. The labor inspector found that construction workers work at heights without fall prevention devices. The employer, speaking before the court, argued that the workers were contractors who worked at their own expense, were registered in the register of professions and were free to choose their partners. However, it turned out that two of them had been working for the company until 1977, and only Guegan, which supplied them with equipment, large equipment, compensated for the downtime in the opening of construction sites.

The Court of Cassation reiterated the finding of the Court of First Instance that "the so-called contractors were included in the complex of economic dependence and legal subordination relations and that their relationship with Guegan was, in spite of the appearance of a relationship between employees and the employer" (ruling of the Criminal Chamber of the Court of Cassation of 29 October 1985) (Bulletin, 2018).

A simple partnership agreement masking a hiring relationship. The Guillemin chauffeur signs two agreements with the Sovetra partnership: the partnership agreement and the car rental agreement. Having been the victim of an accident and claiming social benefits as an employee, he contacts Conseil de prud'hommes (the body competent to deal exclusively with labor disputes), which takes over the case on the basis of the existence of an employment relationship and states: "The establishment of a simple partnership involves joint contributions... Guillemin has made no contribution other than to its labor force, which is characteristic of each employee" (ruling of the Social Chamber of the Cassation Court of 17 April 1991) (Cour, 2011).

In 2000, the French Supreme Court considered a case in which the relationship between a taxi driver and a dispatching firm was formally based on a contract for the "leasing of a vehicle equipped as a taxi", and the amount paid to the dispatcher was defined as a rent. Despite this, the court admitted that the contract concealed the employment relationship, since the driver was bound by a number of strict obligations regarding the use and maintenance of the vehicle (up to and including the prohibition of his own use of the vehicle) and was in a state of subordination (Antimonov, Grave, 1955).

Thus, recognizing the contract as a labor contract, the courts assessed not so much the circumstances that indicate the legal subordination of the performer to the employer (regulation of the labor process, compliance with the working time regime, labor discipline), but took into account its economic dependence, which is not removed due to the registration of the employee as an entrepreneur.

The scope of application of the French labor legislation is extended not only under the influence of judicial practice declaring the existence of an employment contract where a subordination link is established. The legislator, taking into account the situation of economic dependence of certain categories of persons (for lack of legal status), forces to spread certain provisions of the labor law in the obvious absence of an employment contract: in particular, with regard to managers of dependent enterprises who are not employees (managers of gas stations and grocery stores), who are theoretically small independent traders, but are equated with employees on the grounds of their complete economic dependence Certain provisions of the French Labor Code (Code du travail) also apply to domestic workers; the presumption of an employment contract also applies to professional journalists. First of all, these are the provisions guaranteeing the minimum wage, as well as the norms on compensation for damage caused to the employee (ILO, 2019).

It should be noted that the Russian legislator does not push the participants of legal relations into too rigid a framework, leaving them the right to determine the sectoral nature of the contract depending on the degree of subordination of the work performer they need. Economic dependence alone (in the proven absence of legal de-

pendence) is not enough to apply to the participants of the legal relationship concerning labor, certain institutions of labor law.

At the same time, if the parties have fixed the existence of labor relations in the contract, calling it labor relations, the lack of legal subordination will not affect the revaluation of the industry affiliation of relations as civil law. In particular, a domestic or remote worker does not fit into the traditional picture of legal subordination. Of course, the employer may also exercise certain powers in relation to such an employee, but the control and subordination are carried out in fundamentally different, more lenient forms, or may not exist at all, which allows the parties, taking into account the expediency of control over the labor process, to initially choose the industry type of contract.

The analysis of changes in the legislation of the Russian Federation over the last decade shows some expansion of its scope. In particular, this can be said in connection with the addition of Article 19.1 of the Labor Code of the Russian Federation (introduced by Federal Law No. 421-FZ of 28 December 2013). Essentially, this rule means the introduction of a presumption of an employment contract in the regulation of labor-related relations. Taking into account that labor relations arise in relation to labor performed "in the interests, under the management and control of the employer" (Article 16 of the Labor Code of the Russian Federation), in case of irremediable doubts about the independence of the executor under the contract related to the performance of any work, the judge, guided by the third part of Article 19.1 of the Labor Code of the Russian Federation, must make a decision on the recognition of the relationship as labor relations, which ultimately should increase the number of cases of labor relations.

It should be reminded that such a presumption had already been in force at the initial stage of development of the Soviet state in respect of certain types of work, provided that the performer - a natural person - is not an entrepreneur (Skobelkin, 1999). Of course, the current legislation presupposes labor-law regulation of contractual relations related to labor only in disputable situations, and the parties are not deprived of the opportunity to conclude civil law contracts on the performance of works (provision of services). Another solution to the issue would be unacceptable, as it would deprive the parties of the possibility to determine the nature of contractual relations themselves. Let us remind you that such proposals were expressed in the science of labor law even before the adoption of the Labor Code of the Russian Federation (Skobelkin, 1999). (Krasavchikov, 1966). The norm according to which the provisions of the labor legislation would be applied to any labor agreement under which an individual is the executor, would infringe the constitutional right of citizens to freely dispose of their abilities to work, including for entrepreneurial activity.

Another area of expansion of labor law is the recognition of labor relations arising from the actual admission to work by an unauthorized person. In 2013, the Labor Code of the Russian Federation was supplemented by Article 67.1, which established the consequences of such permit. As a result of these changes, the relations regulated by labor law have arisen since the beginning of work "in the interests of the employer", regardless of whether the employer's representative had the powers necessary to conclude the contract. This is evidenced by the employer's obligation to pay such an individual for the time actually worked (work performed). However, such relations can hardly be considered labor relations within the meaning of Article 15 of the Labor Code of the Russian Federation: they are not based on an employment contract and are temporary in nature, as they exist until the employer learns about the unauthorized admission to work. After that, the latter must decide either to confirm the conclusion of the employment contract - in this case, the relationship is considered to be an employment relationship from the moment of actual commencement of work - or to refuse to recognize them as an employment relationship. Unfortunately, the legislator did not specify a time limit within which the employer should make a decision, nor did it indicate the reasonableness of the time limit for finding out what had actually been admitted.

Previously, such an employer-approved relationship based on the actual permit was outside the scope of the legal regulation. By pointing out that the Labor Code had excluded them from the scope of labor law norms until 2013, indicating that an employment contract was concluded only with the admission to work of an authorized representative, the conclusion was drawn about the regulation of their civil legislation. However, the most relevant in this situation obligation from unjustified enrichment, in accordance with Article 1102 of the Civil Code of the Russian Federation, may arise only in relation to the unjustifiably acquired or saved property. At the same time, according to Article 128 of the Civil Code of the Russian Federation, the results of the work and provision of services are not related to the property, but are separate types of objects of civil rights, which excludes the possibility of incurring obligations from unjust enrichment in the cases under consideration.

Assignment of these relations to subject labor is also partially conditioned by subordination, since the work performed in the interests of the employer is most often performed under the management and control of the direct supervisor, which does not appear to be different from the manifestation of the employer's mastery over other employees. However, given that the person who assigned the functions of the employer did not in fact have the necessary authority, the relationship between such a person performing the work and the employer becomes an employment relationship only with the subsequent approval of the employer of the actions of an unauthorized person.

Discussion

Without going into detail on the criteria of differentiation of an employment contract and contracts concerning work, which are regulated by the civil legislation, it should be noted that the definition of the branch belonging

of employment (in the broad sense) relations can be complicated by the fact that one of the principles of civil law is the freedom of contract (Article 1 of the Civil Code of the Russian Federation). This means, in particular, that it is allowed to conclude other agreements not named in the Civil Code of the Russian Federation. At first glance, it allows the parties to conclude a civil law contract similar to a contract of reimbursable services, but providing for the implementation of certain activities, with detailed regulation of its process (at the same time establishing property liability for deviations from this process).

However, given the general principles of civil law, which postulate equality of parties and autonomy of their will, such relations are excluded from the scope of the industry. The civil law contract should not regulate the direct process of work execution. Otherwise, in the order provided for by Article 19.1 of the Labor Code of the Russian Federation, one can raise the issue of recognition of such an agreement as an employment contract.

It is impossible to assert that the regulation of organizational relations is not characteristic of civil law at all. Thus, the idea of existence of non-property obligations was developed by O.A. Krasavchikov (Krasavchikov, 1966). However, organizational elements in civil law contracts are auxiliary in relation to property and cannot constitute the content of an independent obligation.

At the same time, Article 15 of the Labor Code of the Russian Federation indicates that labor relations arise with regard to labor performed "in the interests, under the management and control of the employer". Thus, when delimiting multi-sectoral labor contracts, the relations of subordination, traditionally singled out by the Western science of labor law, come to the fore again.

The phenomenon of the employer's power (including the theoretical justification of its limits) has been studied in detail in the legal literature. The evolution of ideas about the master's power, about its correlation with other types of social power (including the state power) can be traced, in particular, to the works of L.S. Tal (Tal, 1913), L.Y. Gintsburg (Gintsburg, 1977), T.Yu. Korshunova, A.F. Nurtdinova (Korshunova, Nurtdinova, 1994), A.S. Kudrin (Kudrin, 2016) and other scientists (Kovalenko, 2014). L.S. Tal was one of the first to pay attention to the fact that subject labor relations are inevitably associated with temporary "subordination of labor force of one person to the purposes and power of another" (Tal, 1913). Back in the beginning of the XX century, he pointed out that "only in the slave economy workers as carriers of labor force were identified with the instruments of production, and ... could be the subject of the right of ownership" (Tal, 1913). However, in his modern legal consciousness the concept has already been established that the right of the owner to own the tools of production does not imply the right of the owner to own the workers and employees.

L.Ya. Gintsburg called this element of the labor legal relationship "authoritarianism", which, in his opinion, manifests itself in three forms: 1) decision-making power (the right to give mandatory operational instructions in the process of labor); 2) normative power (the right to issue general norms) and 3) disciplinary power of the employer (the right to impose penalties on violators of law and order) (Gintsburg, 1977).

Speaking of the current state of the employer's power, T.Yu. Korshunova and A.F. Nurtdinova also distinguish its three aspects: normative, directive and disciplinary. "Normative power, - the authors point out, - consists in the issuance of binding regulations (orders) for the staff (acts of the master's power). The Directive allows disposing and managing the labor force, including employment, transfers, dismissals, determining the organization of production and labor, the number and structure of personnel, the order of work, control the performance of employees' labor duties.

The disciplinary authority finds expression in the right of the employer to impose disciplinary sanctions on employees who violate the established rules, up to and including dismissal for guilty actions. In other words, the relationship between the manufacturer and the worker, which is voluntary at the moment of the agreement, when the contract of personal employment is concluded, actually turns into a compulsory one as soon as the performance of duties begins" (Korshunova, Nurtdinova, 1994).

A similar transformation has taken place in the perceptions of the power of the employer in the European science of labor law. "The contract, - notes M. Bonesher, - can no longer be a purely material exchange between labor (goods) and remuneration; subordination allows relations between individuals. An employee's object of work (things) is transferred from the theoretical scheme to the working subject. However, for civil law regulation, the parties to the contract are a priori equal. The main purpose of labor law is to restore equality in contractual relations, which is obviously not established with equality of the parties"(ILO, 219). Thus, the modern legal doctrine is characterized by the opposition between formal and legal equality and actual (sometimes identified with economic) equality (Cradden, 2017).

A.M. Kurenna emphasizes the same criterion: "An important characteristic of hired labor is that it is a work of a non-self-contained nature (in international legal terminology, there is a term dependency, which helps to define the essence of hired labor in many ways)" (International, 2016).

As noted by N.L. Lyutov, in some legal systems, the legislation explicitly recognizes the existence of "border" types of workers who are not fully recognized as workers under the employment contract, but they are nevertheless guaranteed separate labor rights (Inter-sectoral, 2016). At the same time, the norms of labor law are applied to

the relations with their participation by analogy. Thus, in Germany, the main features of the category of persons similar to employees (quasi-workers) are fixed by law (in Article 12a of the Law on Collective Agreements). These include: a) economic dependence (as opposed to personal dependence or subordination); b) the need for social protection due to the fact that: work is performed in person, essentially without the help of subordinate workers; work is mainly performed for one person or the worker counts on one person as a source of more than half of his total income (Chesalina, 2018).

The most detailed criteria for economic dependence are set out in Spanish law and practice: it is assumed that at least 75 per cent of the total income an employee receives because of his or her professional activity for the benefit of the client. In addition, there are certain additional requirements or restrictions, such as having their own workplace, equipment and materials; prohibiting the employment of employees; delegating work to third parties; opening their own office or premises accessible to the public, or operating as a legal entity (Comparative, 2015). Similar processes are observed in other European countries (Gerasimova, Lyutov, 2017) and Central Asian countries (Suleimenova, 2015). In Europe, this is connected to the activities of the European Union aimed at harmonizing national labor law systems within the EU (Lyutov, Golovina, 2018).

CONCLUSIONS

Despite the fact that the civil legislation is based on the principle of freedom of contract, the possibility of treating this freedom as an opportunity to conclude an agreement on the performance of work under the control and subordination of the contractor to the customer, not named in the Civil Code of the Russian Federation, is excluded. This would contradict the general principles of civil law, which postulate equality of the parties and autonomy of their will. Despite the fact that the regulation of organizational relations to a certain extent is characteristic of civil law, organizational elements in civil law contracts are auxiliary in relation to property and cannot constitute the content of an independent obligation.

Thus, a civil law contract should not regulate the direct process of execution of work; otherwise, in the order provided for by Article 19.1 of the LCRF, one can raise the issue of its recognition as labor. Taking into account that Article 15 of the Labor Code of the Russian Federation (LCRF), in characterizing labor relations, emphasizes their occurrence with regard to labor performed "in the interests, under the management and control of the employer", in delimiting multi-sectoral labor contracts, the subordination relations traditionally singled out by the Western science of labor law come to the fore again.

Analysis of the legislation and court practice of some European countries allows us to identify a certain trend in the regulation of labor (in the broad sense) relations, indicating the expansion of the scope of labor law. Even in those countries where labor law is not considered as an independent branch of law, we can talk about the application of certain institutions of legislation (minimum wages, regarding labor protection), traditionally used only for the labor contract, to the relations with the participation of quasi-workers, that is, regarding legally independent labor.

In France since the end of the XX century, the judicial practice of recognition of relations as labor relations is formed at revealing the signs of subordination connection. In addition, the legislation is changing, extending certain provisions of the Code du travail to legally free persons who are economically dependent on the counterparty (managers of dependent enterprises who are not formally hired employees), which makes it possible to assert that it is economic dependence that may become a new basis for the expansion of labor law both in the EU countries and in Russia.

The introduction of Article 19.1 into the Labor Code of the Russian Federation, part three of which establishes a presumption of labor relations in the event of irremediable doubts, may be considered as certain steps in this direction. In this case, the legislator did not take into account the legal dependence that the interested party could not prove, but rather the economic dependence of the executor. At the same time, it is not a question of excluding certain relations from the scope of civil law, as the parties still have the right to determine the sectoral nature of their relations taking into account the degree of control they need in each specific situation (home-based work, distance work and similar atypical forms of employment, depending on the actual circumstances, may be regulated by both civil and labor legislation at the choice of the parties).

In addition, the scope of labor law is broadened to include relations that were not formally regulated by law (for example, those arising from actual admission to work by an unauthorized person). The legislator does not point to the formal subordination of such an "employee" as a necessary condition for the payment of his or her labor - it is only a matter of the fact that the work took place "in the interests of the employer". The abovementioned feature is sufficient for them to be covered by separate provisions of the labor legislation on remuneration of labor (Article 67.1 of the Labor Code of the Russian Federation). Obviously, the legislator also took into account the considerations of economic dependence of the contractor, equating it, albeit temporarily, with those working under an employment contract in terms of remuneration.

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The Influence of Formal Authority and Delegator Teaching Style on Students' Enjoyment In The Business Studies Subject

La influencia de la autoridad formal y el estilo de enseñanza del delegado en el disfrute de los estudiantes en la asignatura de estudios empresariales

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ABSTRACT

The purpose of this study was to examine the teacher's teaching style and students' attitude towards the business studies subject. The samples were 189 upper six students who took business studies subject. This study used the survey method. Descriptive and inferential statistics used were Pearson correlations. The study found that the personal model teaching style was the preferred teaching style. Students' attitude towards the business studies subject was at a moderate level. Correlation analysis revealed a significant positive relationship between teachers' teaching style and students' attitude toward business studies subject. The results of Pearson's correlation test found that two types of teaching styles that were formal authority and delegator style had a significant relationship with the sub-constructs of attitude namely enjoyment.

Keywords: Teacher's Teaching Style, Students' Attitude, business studies subject, Grasha's model, Gogolin and Swartz model.

RESUMEN

El propósito de este estudio fue examinar el estilo de enseñanza del maestro y la actitud de los estudiantes hacia la asignatura de estudios de negocios. Las muestras fueron 189 estudiantes de los seis primeros que tomaron asignaturas de estudios empresariales. Este estudio utilizó el método de encuesta. Las estadísticas descriptivas e inferenciales utilizadas fueron las correlaciones de Pearson. El estudio encontró que el estilo de enseñanza modelo personal era el estilo de enseñanza preferido. La actitud de los estudiantes hacia la asignatura de estudios empresariales fue moderada. El análisis de correlación reveló una relación positiva significativa entre el estilo de enseñanza de los maestros y la actitud de los estudiantes hacia la asignatura de estudios empresariales. Los resultados de la prueba de correlación de Pearson encontraron que dos tipos de estilos de enseñanza que eran autoridad formal y estilo delegador tenían una relación significativa con las subconstrucciones de actitud, a saber, el disfrute.

Palabras clave: Estilo de enseñanza del profesor, Actitud de los alumnos, asignatura de estudios empresariales, modelo de Grasha, modelo de Gogolin y Swartz.

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1. INTRODUCTION

The business studies syllabus was designed in 1998 to enable students to understand and appreciate the three sub-areas that were business, management and entrepreneurship, which were considered to be the key components (Majlis Peperiksaan Malaysia 1998). In line with this development, Nor Aishah (2013) stated that business education was intended to provide students with a real-life form of education so that they could become proficient in understanding the nature of the economy besides providing alternative job skills as a potential entrepreneur. However, based on the STPM exam results analysis report for business studies subject from 2013 to 2017, it was found that the students who were fully passed showed inconsistent trends with increasing and decreasing percentages during those years. In 2013, the percentage of fully passed candidate in business studies subject was 83.87% compared to 82.54% in 2014. This indicated a 1.33% decrease. Meanwhile, in 2015 and 2016, there was a 1.23% and 1.80% increase of 83.77% and 85.57% of the candidates fully passed in both years. However, in 2017, the percentage of fully passed candidates for this subject was 80.78% which was a significant decrease of 4.79% (Majlis Peperiksaan Malaysia 2013-2017). Therefore, the researcher was of the view that this inconsistent trend was related to the students' attitude towards the subject. In addition, researchers argued that although there were many factors contributing to this problem, one of them were the incompatibility between teachers' teaching style and students' learning style. This inconsistency was due to the teaching style used by the teachers that made the students lost interest, which ultimately influenced the attitude of the student and the level of achievement in the subject. This phenomenon, supported by Ford & Chen (2001) and Richardson & Tring (1997) in their study, found that the use of different teaching styles could influence students' achievement and attitude according to the level of teaching and student academic achievement. According to Abd Rahim (2005), one of the reasons for the decline in students' achievement was that many teachers take it easy and teach without demonstrating their professional expertise, especially in terms of teaching efficiency and failure to apply learning psychology knowledge to create a stimulating learning environment to enhance students' achievement. Abd Rahim' statement was supported by the study of Abd Majid (2002) who found that the teachers' teaching styles and practices were still teacher-centred. This teaching style still used the facts and content delivery as well as lacked of the practice of inquiry, constructivism, mastery, contextual and other teaching approaches that engage students in learning.

Such a scenario was because teachers were unable to apply what they learned at the university and teaching colleges in their teaching context. The failure of teachers to value individual differences, student-centred teaching and integrated teaching strategies were some of the causes of lack of interest in their teaching style. In addition, teachers were well-versed in the psychology of learning at university and teaching colleges that still prioritize teachers' knowledge of individual differences. Similarly, in the field of pedagogical knowledge, teachers had learned a number of teaching strategies and modules that could capture the interests, attitudes, needs, and individual differences of students. However, there were some teachers who were still unable to demonstrate effective teaching style. Researchers acknowledged that teachers often faced a variety of problems in creating a learning environment that improved students' achievement. Teachers often faced classroom situations that were less conducive, small and packed. In addition, there were too many students in a classroom. This classroom environment made it difficult for teachers to apply the concepts of individual differences, student-centred teaching and integrated teaching strategies. As a result, there were a number of teachers who might turn back to the use of lectures which was a teacher-centred teaching style, from student-centred teaching strategies that ultimately impact student interest, attitude and academic achievement. Based on these issues, the question was whether there were any proactive efforts by the Ministry of Education in improving the image of the teaching profession? Were there any courses or programs related to the teaching style in order to provide exposure for teachers in schools? Why they were lack of modules related to the teaching style published by university lecturers in the form of books, journals, or magazines in each school to serve as a guide for teachers to strengthen their teaching style in schools? Why these modules were available only in universities and teacher colleges?. In particular this study attempted to answer the following questions:

1. What kind of teaching style for business studies that the student most interested in?
2. What is the level of students' attitude towards the subject of business studies?
3. Is there a significant relationship between the teaching style and the students' attitude towards the business studies subject?
4. Is there a significant relationship between the teaching style and students' sub-construct of attitude the towards the business studies subject?

2. LITERATURE RIVIEW

The study of Dressel and Marcus (1982) and Woods (1994) found that the discipline-centred and teacher-centred style of teaching caused students to passively accept teaching materials as they have to accept the modules and teaching materials used by the teachers. Meanwhile, only student-centred teaching style would keep students engaged in learning activities. According to John Lackey (1996) lecture method was a reflection of teacher- centred style and a passive example to students while student-centred style, instruction was more focused on the student and the cognitive development of a student. The goal of the teacher was to help students understand knowledge formation as a process rather than a product. Grasha's (1996) study on 761 college classrooms involved in various fields of study. The teaching style was categorized into four groups. Thus, Grasha found that the most dominant teaching style used among the teachers in the college was group 1 (expert / formal) 38%, group 2 (personal / expert / formal) 22%, group 3 (facilitator / personal / expert) 17% and group 4 (delegator / facilitator / expert) 15%. According to Grasha, teaching styles created a classroom atmosphere. For example cluster 1 (expert / formal) indicated that teachers were trying to create a fresh and modern classroom environment. Felder & Henriques's (1995) study showed that incompatible teaching style with students' learning style could significantly affect student learning, attitude, behaviour, and motivation. According to Felder & Henriques, incompatible teaching style with student learning style would cause students to become bored and likely to become frustrated and quit their learning activities. Their research was supported by the study of Hyland (1993). In addition, a study by Roslind (2003) on 260

Form 2 and Form 5 students at a secondary school in Seri Aman district, Sarawak found that teachers had used all five Grasha's teaching styles model in Malay Language teaching. Three dominant teaching styles used by teachers had been identified namely formal authority style, personal model style and facilitator style. The most dominant style between the three teaching styles was the personal model teaching style. Roslind's statement was in line with the results of Nasir's (2006) study of 180 students from six schools in the district of Semporna, Sabah, which found that there was a significant relationship between all teaching styles and students' attitude towards history subject. Student attitude towards teachers' teaching style based on grade achievement of history in PMR found that only the formal authority teaching style was significant while personal and facilitator style model were not significant. His research analysis found that personal model teaching style was the dominant teaching style. However, a study by Siti Zubaidah (2006) on 120 Form Four Science students in Sepang district showed that students preferred teachers to use facilitator teaching style than other teaching styles.

Students' attitude toward a subject especially science according to Gogolin and Swartz (1992) was measured from six aspects: perceptions towards the teacher, concern on science, the importance of science to the society, self-concept in science, enjoyment of science and motivation for science. Whereas students' attitude towards business education according to Donald et al. (n. d.) was influenced by the classroom environment, whether it was through the use of business textbooks, teachers' exposure to business, lectures on business opportunities held in schools or students' exposure to practical training related to business. The results of the study of John et al. (2008) of 441 university students comprising 244 business studies respondents and 197 non-business studies respondents found that education pedagogy of business studies had an impact on students' attitudes and personalities especially in making decisions. Business students were found to be less ethical such as selfish and deceptive in the decision-making process compared to students who were not in business. Nor Aishah & Affzalina (2017) did a study on 308 final year undergraduate degree students from several Public Universities in Selangor who were taking Science courses. The purpose of ths study was to identify the level and relationship of entrepreneurial attitudes, entrepreneurial thinking and entrepreneurial behavior with the level of business planning. The results showed that the level of entrepreneurial attitude, thinking, and behaviour towards the level of business planning among students was at a moderate level. The correlation analysis showed that there was a significant, positive but weak relationship between entrepreneurial attitudes, thinking and behavior with the level of business planning. The implications of this study were to help education administrators innovate and transform the business and entrepreneurial education curriculum especially in the higher eduction institutions to better cultivate a high level of entrepreneurial characteristic among students.

3. METHODOLOGY

This was a survey study. Data were collected using a set of research tools containing a set of questionnaires. The questionnaire consisted of three sections: (i) biodata, (ii) teachers' teaching style, (iii) students' attitude towards business studies. There were 189 upper six students in seven secondary schools in Johor Bahru district. All of them were students who would be taking the Malaysian Higher School Certificate (STPM) examination and taking the business studies subject. Statistical data were analysed using descriptive and inferential methods. Descriptive statistics used were the mean value to determine the style of teaching that the students most interested and the level of students' attitude towards the business studies subject. The inferential statistics used were Pearson's correlation, to test the correlation between teachers' teaching style and students' attitude towards business studies subject.

3. RESEARCH TOOL

A set of questionnaires was used to obtain the biodata, teachers teaching style and students' attitude towards business studies. The questionnaire measuring teachers' teaching style was translated through the method of 'translate and re-translate' from the original questionnaire developed by Grasha (1996). The questionnaire consisted of 40 items constructed on a 5-point Likert scale. These items measured the subjects' behaviour that reflected the teachers' preferred teaching style. The reliability coefficient (Alpha Cronbach) of this questionnaire was 0.81. To measure students' attitude toward business education, researchers had used questionnaires developed by Gogolin & Swartz (1992). The questionnaire was translated using the 'translate and re-translate method' and had 40 items constructed on a 5-point Likert scale. These items measure students' attitudes toward the subject of business studies. The reliability of this questionnaire was 0.76.

4. THE PILOT STUDY

A pilot study was conducted on 30 upper six students who would sit for the STPM exam and took business studies subject. These students had a background similar to the study subject. The purpose of this pilot study was to obtain the reliability of the two research tools used, which were teachers' teaching style and students attitude towards the business studies subject.

4. RESULT

A total of 189 students participated in the survey. Of these, 54 were male and 135 were female students. There were 130 Malay students, 38 Chinese and 21 Indian students. In addition, out of the 189 students, 88 had business experience and 101 students had no business experience. The students were divided according to the teachers' teaching style and the students' attitude towards business studies of their choice. For the purpose of analysis, the teaching style had been divided into five styles namely expert, formal authority, personal, facilitator and delegator style. Meanwhile, students' attitudes had been divided into 6 constructs namely perceptions towards the teacher, anxiety, importance to the society, self-concept, enjoyment and motivation.

Table 1: Mean score of teaching style which the students were interested

Teaching style	N	Mean	Standard deviation
Expert style	189	3.9358	0.45649
Formal Authority Style	189	3.5489	0.61122
Personal Model Style	189	4.0390	0.48980
Facilitator Style	189	3.9716	0.53168
Delegator Style	189	3.7169	0.54736

Table 1 showed the type of teaching style that business student most interested in were personal model, followed by facilitator style and expert style. While the delegator style and the formal authority style were the teaching styles the students were less interested.

Table 2: Mean scores of students' attitude towards business studies subject.

Students' attitude	N	Mean	Standard Deviation	Level of attitude
Attitude towards business studies	189	3.0920	0.22479	Moderately positive

Table 2 showed that the students' overall attitude towards the business studies subject was moderately positive.

Table 3: The correlation analysis of the relationship between teachers' teaching style that the students were interested and students' attitude towards business studies subject.

	N	r	r^2	Significance
Teachers' Teaching Style that the Students were Interested and Students' Attitude towards Business Studies Subject	189	0.346	0.12	0.000**

** Significant at the level of k <0.01 (two-tailed) α

Table 3 showed the significant relationship between the teachers' teaching style and the students' attitude towards the business studies subject. Pearson's correlation analysis found a low correlation between teachers' teaching style and students' attitude towards business studies subject. This low r value indicated that the relationship strength of the two variables was low but their relationship was acceptable.

Table 4: Correlation analysis of the relationship between teachers' teaching style that students were interested and the sub-construct of students' attitudes towards the business studies subject.

Teachers' Teaching Style	Expert Style	Formal Authority Style	Personal Model Style	Facilitator Style	Delegator Style
Attitude Sub-Construct Perception towards the teachers					
r	0.281	0.142	0.247	0.234	0.199
Sig.	0.000**	0.052	0.001**	0.001**	0.006**
Anxiety					
r	- 0.069	- 0.002	- 0.190	- 0.190	0.370
Sig.	0.344	0.976	0.800	0.795	0.616
Importance to the society					
r	0.212	0.189	0.313	0.232	0.246
Sig.	0.003**	0.009**	0.000**	0.001**	0.001**
Self-concept					
r	- 0.330	- 0.360	0.007	0.290	- 0.007
Sig.	0.651	0.622	0.923	0.690	0.923
Enjoyment					
r	0.143	0.221	0.122	0.159	0.277
Sig.	0.050	0.002**	0.095	0.029	0.000**
Motivation					
r	0.255	0.331	0.213	0.197	0.291
Sig.	0.000**	0.000**	0.003**	0.007**	0.000**

** Significant at the level of k <0.01 (two-tailed)

Table 4 showed that there was a significant relationship between the teaching style of teachers and the sub-constructs of students' attitudes towards the business studies subject. The results showed that two types of teachers' teaching style - formal authority style and delegator style had a significant relationship with the significant level of p<0.01 with the

sub-constructs of attitude which was enjoyment.

5. DISCUSSION

Based on the results, it was found that interest in the teaching style played a significant role in shaping and influencing students' attitude towards a given subject. The study also found that students were more interested in the student-centred teaching style than teacher-centred. Therefore, teacher needed to have a teaching style that suits the needs and abilities of the students in the classroom to help them received the delivered lessons effectively. The results of the statistical analysis showed that the teaching style of business teacher that the students were most interested in was the personal model. The results of this study were similar to those of Roslind (2003) and Nasir (2006). Thus, referring to Grasha's (1996) teaching style model, the researchers concluded that students were interested in the personal model teaching style because the teacher played the role as a model or approach for students to follow during the teaching and learning process. In addition, the role of the teacher as a mentor required the student to make direct observations and to follow every approach or method the teacher had introduced in order to provide insight and improve the quality of students' achievement. In addition, the teacher always played a role in teaching students how and what students needed to do to master a certain topic. Attentive and friendly teachers shared their experiences by providing illustrations and examples to enable students to adapt to the realities of their daily lives.

In addition, the results of the statistical analysis showed that students' attitude towards business studies subject was at a moderate level. This was because five out of the six sub-constructs of attitude that were perceptions towards the teacher, anxiety, self-concept, enjoyment and motivation; student expression of business education showed that at least 35% of respondents did not receive positive feedback. The findings of this study were in line with the findings of Norhatta (2003) which showed that the level of knowledge, skills and attitudes in business and entrepreneurship was moderate among students.

Similarly, the findings showed that there was a significant relationship between teachers' teaching style and students' attitude towards business studies subject. However, Pearson's correlation analysis showed low correlation. Referring to Grasha's (1996) teaching style model, researchers concluded that the relationship between teachers' teaching style and students' attitude influenced one another. This was because teachers were intermediaries of teaching and learning factors such as teaching and learning environment, content, student conditions, school system, students' socio-culture and so on. These factors slightly influence the teaching style that the teachers wanted to apply to students. These scenarios gave teachers an opportunity to explore the needs of students in their learning activities. The ability of teachers to take into accounts various factors in creating an effective teaching and learning environment would ultimately influence students' attitude towards the subject. In addition, referring to Gogolin and Swartz's (1992) model, researchers found that students' attitude was influenced by a number of factors that shape that attitude whether it was positive or negative in the course of action. Therefore, the teachers should play a role in shaping students' positive attitudes through their roles as advisors, knowledgeable individuals, lecturers, assessors, discussion leaders, and counsellors. These roles form the basis of the interaction between teachers' teaching and students' learning that would create compatibility or incompatibility in the learning activities that ultimately leads to the development of a more positive student attitude. The researcher thought that the teaching style of teachers could be attributed to the opinion of Peacock (2000) who showed that the teaching style and the compatible learning style made students more confident and trusting the teachers and could develop a more positive attitude. It was acknowledged by Felder & Henriques (1995), Hersey et al. (1992), Hyland (1993), and Tudor (1996) that showed that teachers' teaching style was related to students' attitudes, behaviours and motivations.

In addition, Pearson's correlation analysis revealed the existence of a significant relationship between teacher teaching style and sub-constructs of attitude toward the business studies subject. The findings showed that two types of teachers' teaching styles, formal authority and delegator styles had a significant relationship with the significant level of $p<0.01$ with the sub-constructs of attitude which was enjoyment. According to Grasha (1996), formal authority teachers thought that teaching should be in the standard forms that included the teaching goals set by the school, the expectations and rules of student behaviour as reflected in the school rules. The teachers with this teaching style were structured, rigid and less flexible in the teaching and learning process. In addition, this formal authority style restricted students' critical and creative thinking because teachers considered their way was the best. However according to Noriah et al. (1999) the formal authority style had always been restricted by rules and laws that emphasized creativity. When teachers were creative in their teaching, students would enjoy and be interested in the knowledge presented. This was acknowledged by Grasha (1996) and Roslind (2003) in their study which showed that formal authority styles were among the most commonly used teaching style among college and school teachers. According to Grasha (1996), this teaching style was practiced because the teachers tried to create a fresh and modern classroom environment. Meanwhile, teachers with delegator style paid attention to students' ability to function autonomously. Students are encouraged to carry out their assignments individually or in groups. The presence of teachers was only as a source of reference that would provide help or guidance when the students requested them. In addition, teachers with this style helped students to feet like they were independent learners (Grasha 1996). For example, after the teacher presented a topic, the student would conduct a group discussion, and then the student would do a presentation to present the findings to the whole class using ICT materials. Therefore, students would enjoy having the autonomy to carry out a learning activity that fitted into the 21st century learning activities. According to Nor Aishah (2018), in business and entrepreneurship education, a learning approach that promoted adventure, exploration and continuous search among students was the appropriate and effective way of educating students to understand, appreciate and pursue careers in that field. Indirectly, this would shape students' self-esteem, self-confidence and high leadership potential. Therefore, researchers believed that teaching

styles (formal authority / delegator) should be practiced by teachers in creating a creative and enjoyable atmosphere of teaching and learning according to the 21st Century Learning.

6. CONCLUSION

Based on the discussion and the summary of the results, it was clear that the students' interest in the teachers' teaching style played an important role in shaping and influencing students' attitude towards a given subject. The study also found that students were more interested in the use of a more student-centred teaching style than the teacher-centred. Therefore, a teacher needed to have a teaching style that suits the needs and abilities of the students in the classroom so that they could enjoy engaging in a variety of learning activities. At the same time, it helped students to easily master the knowledge that the teachers conveyed.

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Challenges of criminalization protest and corruption by looking at international documents

Desafíos de la criminalización de la protesta y la corrupción a través de documentos internacionales

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ABSTRACT

With the passage of the Islamic Penal Code of 1992, the legislator took a critical step contrary to the provisions of international documents such as the Political and Civil Covenant and the Universal Declaration of Human rights and other documents criminalize behaviors that are critical of human rights, both in terms of punishment and in non-compliance with the principles and principles of criminality. As provided in Article 286 for severe on-the-ground corruption with a view to development in various fields, the death penalty has been specified. The perpetrators of these crimes and deviations from the substantive principles of security crimes, such as riots and corruption on earth, present challenges that will be addressed in this article, first explaining the importance of the right to life and the death penalty in international documents and the Iranian legal system.

Keywords: Principles, Human Rights, On-Earth Corruption, rebellious

RESUMEN

Con la aprobación del Código Penal Islámico de 1992, el legislador dio un paso crítico contrario a las disposiciones de Los documentos internacionales como el Pacto Político y Civil y la Declaración Universal de Derechos Humanos y otros documentos penalizan comportamientos que son críticos de los derechos humanos, tanto en términos de castigo como en incumplimiento de los principios y principios de criminalidad. Según lo dispuesto en el Artículo 286 para la corrupción severa en el terreno con miras al desarrollo en varios campos, se ha especificado la pena de muerte. Los autores de estos crímenes y las desviaciones de los principios sustantivos de los crímenes de seguridad, como los disturbios y la corrupción en la tierra, presentan desafíos que se abordarán en este artículo, primero explicando la importancia del derecho a la vida y la pena de muerte en documentos internacionales y el sistema legal iraní.

Palabras clave: Principios, Derechos Humanos, Corrupción en la Tierra, rebelde.

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Introduction

A review of international human rights instruments shows that international human rights instruments tend to abolish the death penalty from the list of countries' penal systems. A review of Article 6 of the Covenant on Civil and Political Rights is well-represented, and the wording of these documents is set out as if the death penalty were an unpopular punishment that should be abolished from the scene of human life. Punishment should not be used in any way for crimes relating to property, economic and political crimes, and in general, crimes which do not involve coercion or coercion. Essentials such as the principle of legality of offenses and penalties, the principle of proportionality of penalties, profits and non-exchange or Lawlessness, transparency, and comprehensiveness of the law are also essential in criminalizing the formal principles that the most prominent of these principles are the public and fair trial in a competent court, the presumption of innocence, the trial of reasonable time, the trial without unnecessary delay, the presence of the court, and personal defense by an elected lawyer. See Articles 286 and 287 of the Islamic Penal Code of 2013 for criminalization and prosecution of rape and corruption offenses. Many of these principles have not been adhered.

in this article, first, while discussing the importance of the right to life, we address the objections and criticisms that exist in the field of human rights in imposing the death penalty for extrajudicial and extrajudicial crimes, and then addressing the most important and substantive modalities to be observed in International documents are needed, but we have not been involved in the criminalization and investigation of these crimes.

1. The importance of the right to life and the death penalty in international documents and the Iranian legal system

The right to life and its prohibition is recognized in Islam and in international human rights instruments. One of the most important issues of the Universal Declaration of Human Rights is the right to life and protection of human life and health. Therefore, in order to protect human life, international instruments are geared towards abolishing the death penalty from the list of countries' penal systems. In this article, we review international documents and regulations in this regard.

A. The Covenant on Civil and Political Rights

The right to life is one of the most fundamental human rights; the other right enshrined in international human rights instruments is the right to life. The importance of this right is such that it cannot be violated even in an emergency. As stated in Article 4 of the Sassi Civil Covenant Law: "The right to life is an inherent human right. This right shall be protected by law and no one shall be deprived of his life without authorization. Article 6 of the Covenant on Civil and Political Rights stipulates that in countries where the death penalty has not been abolished, the sentence shall not be limited to the most serious and serious offenses under the law in force at the time of the commission of the crime, nor shall it be prohibited by the provisions of the present Covenant and the Convention. The punishment for the crime of mass murder is inconsistent.

B. The Universal Declaration of Human Rights

Article I of the Universal Declaration of Human Rights states:

1. Life is a gift from God and the right to life is guaranteed to all human beings. All populations, governments, and individuals are obliged to protect and defend the right to life against any abuse and to interfere with any natural disruption such as diseases and human disasters, and it is not permissible to sever any part of the body without the right to worship.

2. It is forbidden to use any means to destroy the fountain of human life, both wholly and in part.

3- Preserving human life as long as God wants it to, whether it be protecting one's life from the oppression of others or abusing oneself.

And Article 3 of the Declaration states "Everyone has the right to life, liberty and security of person."

Article 5 of the Universal Declaration of Human Rights states: "No one shall be subjected to torture or to any form of torture or to cruel, inhuman or degrading treatment or punishment."

Article 13 Residence: Everyone has the right to the protection of the law against arbitrary interference with his privacy, family, home or correspondence. »

The Declaration does not explicitly mention the death penalty, but Article 3 protects the right to life. Article 5 also prohibits cruel, cruel and inhumane punishment. If we consider the death penalty subject to torture and cruel punishments, then we can conclude that the declaration was intended to abolish the death penalty. (Although the minority's opinion that they wanted the death penalty to be announced was not met with everyone's consent and did not refer to the punishment in the final text.

C: The International Criminal Court

Article 5 of the Criminal Court is within the jurisdiction of the Tribunal. (A) The crimes of genocide; (b) The crimes against humanity; (c) The crimes of war (d) The crimes of rape.

Article 77 lists the penalties applicable. 1. Subject to Article 10 of the Statute, the Tribunal may impose one of the following penalties on a person convicted of an offense set forth in Article 5.

(A) Imprisonment to a certain extent not exceeding thirty years; - Life imprisonment provided that the importance of the offense commits, as well as that of the offender and the circumstances of the offender.

Paragraph 2 - The Court may order, in addition to detention, that: (a) The penalties shall be in accordance with the criteria set forth in the Rules of Procedure and Evidence of the Court; (b) the proceeds of property or property derived directly or indirectly from the commission of the offense; May be recorded without prejudice to the rights of any third party in good faith.

Subject to the conditions which any State may determine in accordance with paragraph (b) of Article 103, States Parties shall be bound by the sentence of imprisonment and may in no case change it. The only authority that cannot rule on an appeal against the decision of the court or a judgment of conviction or punishment of the court is the court itself.

It is noted that the International Criminal Court has abolished the death penalty in general

D: The death penalty in regional documents and treaties

The principle of the European Convention on Human Rights is based on respect for the private life of individuals and the punishments. Article 3 The European Convention on Human Rights refers to the right to life and prohibits deliberate cessation of service. Article 3 prohibits torture and inhuman or degrading treatment or punishment in all its member States. The right to life in the Treaties is not absolute and subject to conditions. However, Article 15 of the Convention cannot be violated in times of war or when a nation's life is in danger. But other restrictions are likely to be contained in Article 15 (2) itself (death due to legitimate acts of war). The statute of limitations explicitly reserved the right of States to enforce the death penalty issued by a court in the case of a crime legally entitled to such punishment. Except as otherwise provided in the Convention, the intentional death of a person is contrary to the provisions of the Convention; accordingly, international human rights instruments seek to abolish the death penalty from the list of penalties of countries.

The review of Article 6 of the Covenant on Civil and Political Rights illustrates this fact well. The wording of these documents is set up as if it were an unpleasant punishment that should be abolished from the scene of human life. Additional protocols to these documents have been drawn up to abolish the death penalty, Confirms this claim. The second Peruvian Protocol to the Covenant on Civil and Political Rights, the Second Protocol to Civil Rights - for the Abolition of the Death Penalty, is the sixth protocol to the European Convention on Human Rights concerning the abolition of the death penalty. The 1990 Protocol to the American Convention on Human Rights are international documents aimed at abolishing the death penalty for Ted Vienna.

It should be noted that according to the Human Rights Committee's interpretation, this punishment should not be used in any way in relation to property, economic and political crimes, or crimes that do not involve coercion.

E: life imprisonment penalty in Iranian legal system

Some of the most important crimes punishable by death under Iranian law include:

Murder for adultery, relative adultery, adultery with father, non-Muslim adultery with Muslim woman, adulterer, rape and reluctant adulterer.
Sodomy
Moharebeh and on the ground
Rebellion
Killed for adultery for the fourth time after being thrown three times
Interrogation for the fourth time after thrashing three times
Drinking water for the third time after exceedingly twice the limit
Execution for robbery for the fourth time after three times the limit
Execution for adultery

Death penalty for offenders who are subject to the death penalty under the Narcotics Act if they meet one of the most serious conditions of corruption on earth: a) cases where a criminal or at least one of the partners has committed a weapon while committing a crime; With intent to deal with agents, firearms or predators b) if he or she has the role of abuser, financial backer, or transition agent, or of children or adolescents under the age of 18, or manslaughter, To use. (C) If he or she commits a crime, subject to the law, has a definitive sentence of death or imprisonment of more than fifteen years for all the offenses committed. Substances referred to in Article 8 shall be deemed to be more than 2 kg.

Punishment of retribution for premeditated murder

Notwithstanding the international orientation towards the abolition of the death penalty from the list of penalties of countries, it is noted that our country anticipates the punishment in the above cases and the addition of the

death penalty for offenders and corruption on earth to the list of criminal offenses. It has applied international pressure and has drawn international criticism in this respect, which is worthy of reviewing the rules and considering the principles of criminalization of such jurisprudent crimes as well as observing the principle of proportionality and the principle of law. Being offenders and other principles for committing these cholera behaviors In view of the risks to security and a more appropriate penalty to be determined.

2. Challenge in human rights criminalization of perpetrators and corruption

By examining the provisions of international instruments such as the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights, and the International Covenant on Economic and Legal Rights, and with regard to Iran's accession to the Covenants, some of the principles and arrangements sought by international legislators in Baghdadi's criminality and corruption on earth have not been respected, and this has led to criticisms of human rights over the imposition of the death penalty for these crimes. Among the most important principles that are essential to criminalizing conduct in accordance with international documents are the principle of legality and necessity of punishment, the principle of reasonable time, and the use of defense counsel in all stages of Darcy's challenge. In the above-mentioned principles, we focus on rebellious criminality and corruption on earth.

A. The principle of legality of crime and punishment

Article 29 of the Universal Declaration of Human Rights states that "Everyone has the right to freedom of expression only subject to the restrictions provided for by law and solely for the purpose of providing for, recognizing and observing the rights and freedoms of others for the purposes of morality and the common law and order. The conditions of democratic society have been established.

Article 4 of the International Covenant on Economic, Social and Cultural Rights also provides "... in respect of the rights provided for in the present Covenant in any State. A State may not subject such rights to any restrictions other than those provided by law. And only to the extent that it was constitutional in nature and ... »The Article 12 of the Political Covenant on Civil Rights states that restrictions on the right of movement of persons are not permitted. "Except as Restricted by Law ..." Articles 19, 21,22 and Articles 2, 8, 9 and 10 of the Convention on the Principle of Legality with Interpretations such as "Determined by the Question of Law, as Provided by Law, The law, by law, is referred to by law and in accordance with the law

According to international law, the law must be of the required quality, meaning that it must be formally published and its content clear and unambiguous and made in a manner that is predictable to anyone. Also, in this law, the details and conditions of any restrictions on public rights and freedoms must be fully stated so that individuals can know their territory and limits. In addition, the law must be transparent and, thus, prevent tyranny in legislation.

Now, considering these three features, it can be said that Article 286 of the Islamic Penal Code of 2013 does not have all the above-mentioned characteristics. This article does not have the necessary transparency because it uses vague and widespread rhetoric. Extreme difficulty makes it difficult for the defendant and the judge to identify, meaning that it is not clear to the defendant whether the act committed by the defendant may be subject to extensive, extensive, or severe restraint. The vocabulary used in the context of the material is generalizable and interpretable, for example, one of the conditions necessary for the realization of corruption on earth is the widespread use of matter.

In the criminalization of rebellion, Article 287 of the Islamic Penal Code does not mention the number of rebel groups, and there is no clear and transparent legislative position. This article refers to the group, despite its stipulation (Article 186 of the Act). The former Islamic punishment, approved in 1991, for armed uprising (as stated) appears to be regarded by the legislator in Article 287 of armed uprising as a systematic activity, because if it had not been, there was reason to refer to the group. There was no mention of the person in the matter. But the minimum number of groups is not clear.

Another ambiguity in the article is that the armed uprising does not mean entering the armed phase, but it is necessary in practice to seize weapons against the very basis of the state. In addition, the expression used in Article 287 indicates that those who They are considered to be gardens that themselves have actually taken up arms. But the vague point is that the article states that if a weapon is used, but not told by a person or group, Dr. Mir Mohammad Sadeghi said in the book Crime Against Security: "If only armed rebellion by the group would have been a rebellion All members and supporters (which was the position of Article 186 of the Islamic Penal Code of 1991), in other words, if the term refers to the use of a non-individual group of weapons if the weapon is used, then The armed uprising against the basis of the Islamic Republic of Iran's government has indicated that there was no longer any need for "if used weapons" in the article."

Therefore, it can be said that Article 287 has brought two separate offenses. One is that the group has used a weapon against the basis of the system, and the other that a particular defendant has used a weapon. Note that if groups use weapons, not groups.

Therefore, the legislature has taken steps to address these issues without regard to the principle of transparency and quality that has been emphasized in international documents such as the Political Covenant on Civil Rights and the Universal Declaration of Human Rights, and has thus provided the basis for human rights criticism, It is

therefore necessary for the legislator to adequately amend the aforementioned regulations so that the judicial system of the country will not be ambiguous in enforcing the law and that the minimum will not be deviated from fair and equitable principles.

B: The principle of necessity

In international human rights instruments, the principle or principle of the necessity to impose restrictions on the rights and freedoms of individuals and, in the first place, the necessity of applying these restrictions through criminality, the necessity of intervening in human rights instruments has come to pass. Articles 21, 22, 23 of the Covenant on Civil Rights, Articles 4 and 8 of the Covenant on Economic, Social and Cultural Rights Articles 6, 8, 9, 10 and 11 of the European Convention and Articles 15, 16 and 22 of the American Convention on Human Rights.

Despite Iran's adherence to the Covenant on Civil and Political Rights, and Economic, Social and Cultural Rights, but with some investigations into crimes against security, it is observed that, despite the essentiality of criminality, severe penalties have been imposed for some crimes. For example, in some of the provisions on rebellious criminality and on-earth corruption, severe punishments were not required in some cases to be met with lighter penalties, but severe penalties such as the death penalty or imprisonment were possible. It's been a long time. In this section we refer to the above.

1. Stimulate and unseen in subversion

Iran's Law before the Revolution, Article 14 of the Press Law passed in 1334, incited and encouraged people to commit a crime or crime that pointed to the country's internal or external security and provided for a specific criminal policy. Article 15 of the Act criminalized the commendation and praise of conduct contrary to the security of the State. Given that these two articles included any encouragement (before committing the crime) or praise (after committing the crime).

After the Islamic Revolution and in the Press Law of 1364, the limits of the press have been determined to determine and rank the material that is harmful to the Islamic Republic (Article 6) and to explicitly incite people to commit crimes or crimes against the security or foreign policy of the country, if any. It shall be punishable by a vice punishment of the same offense and, in the absence of any effect on it, by an independent penalty (Article 25). M. Effective instigation of combat forces or persons serving in the armed forces refers to rebellion, fleeing, or failure to perform military duties to overthrow the government or defeat its own forces.

In this article, intent to overthrow - albeit with no effect, that is, the armed forces do not respond to the instigations of the individual - results in the offense of Moharebeh (Article 287 of the Islamic Penal Code for such activities as new offenses). Has been criminally charged and returned to pretrial detention as a result of preliminary injunctions, but given the fact that the sentence is a death sentence and has been imposed on the moharebeh for four offenses and has the power to impose a sentence on the judge.

Interpretation in favor of the defendant demands that the same sentence be served on moharebeh), But if there is no intention of overthrow, if sentenced to work, imprisonment from 2 to 10 years and if not effective, punishment is lighter.

The legislator has also stipulated in Article 498: "Everyone shall, by any name, title, or office in any overseas overseas establishment under any name, title, or office with the purpose of undermining the security of the country, by any creed, class or population. And, if convicted, Mohareb is sentenced to two to ten years in prison.

Article 499 of the said law refers to membership in groups or populations or quasi-populations of the said article and for which a punishment of imprisonment is provided. Article 500 of the aforementioned law also criminalizes any kind of propaganda against the Islamic Republic in favor of organizations and groups opposed to the system.

2. Conspiracy to commit a crime solely by agreement

Article 610 of the Islamic Penal Code (Ta'zir) of 75 concerning offenses against security provides: "Whenever two or more persons gather or collude to commit crimes against domestic or overseas security or provide the means to commit it, "They are sentenced to two to five years in prison if they are not held liable for war crimes."

Article 611 has stated about other offenses (whenever two or more persons come together to take action against the public or the population or property of the people and have the necessary administrative arrangements but fail to do so without a will of six months to They will be sentenced to three years. "

With reference to Articles 610 and 611 of the Penal Code of 75, it is clear that the commission of a crime under Article 611 (conspiracy to commit other offenses) is subject to the existence of two other conditions in addition to obtaining an agreement to commit a crime between two or more persons. First of all, the contractors must "have the necessary administrative arrangements" and have failed to act without their will, while neither of the two conditions mentioned is necessary for the fulfillment of Article 610 collusion but merely for an agreement on security-related

offenses. Domestic and foreign crimes are punishable and punishable under Article 610.

C: Inappropriate punishment

In the legal systems of many countries today, the right not to be subjected to inappropriate punishment is one of the fundamental principles of Wendy's law in the criminal law domain, a right that derives directly from human dignity. Many international, regional and national human rights instruments have been identified. At the international and regional level, Article 5 of the Universal Declaration of Human Rights (1948), Article 7 of the Convention on Civil and Political Rights (1966), Articles 2 and 4 of the Convention against Torture and Other Cruel, Inhuman or Brutal Punishment (1984), Article 5 of the Convention American Human Rights (1969) Article 3 of the European Convention on Human Rights (1950), Article 5 African Charter of Human Rights (1981) Article 49 of the European Union Charter of Fundamental Rights (2000) explicitly or implicitly prohibits the principle of proportionality between the offenses and the punishment of improper punishment. Emphasis added. The prediction of such provisions in the international human rights system actually indicates that today the period of absolute criminal and monopoly rule has ended in criminalization, punishment, prosecution and punishment of citizens.

The main cause of inappropriate punishments in the international human rights system as well as in domestic legal systems is the prohibition of the use of a human tool by respect for his or her inherent dignity. In the Iranian legal system, the principle of prohibiting inappropriate punishment is not provided for in any of the laws and regulations. The penalties provided in many criminal laws do not conform to the basic criteria of proportionality.

The right not to be exposed to inappropriate punishment is one of the most important ways in which this type of criminal justice can continue to exist. This right is therefore protected at international and regional level, such as Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention on Human Rights. It should be noted, therefore, that the criteria for proportionate punishment as a pillar of punishment in the criminal justice system are based on a relationship between crime and punishment, each based on the type and extent of the harm, the nature of the offense and the personal characteristics of the offender and the victim's guilt. Is. In this way, the prohibition of inappropriate punishment can be combined with both positive and negative approaches. On the one hand, the criminal justice system does not impose disproportionate penalties (on the other hand) and penalties on the other hand for those cases which are exceptionally in certain circumstances (involving a criminal or a victim or a criminal) by means of means. Fit to fit.

Criticism of Article 610 of the Islamic Penal Code for imposing inappropriate punishment is that the minimum punishment provided for by the law for the offense of collusion for a crime against security (which includes prosecution and corruption on earth) is the minimum legal punishment for Many crimes against security are greater. Such an approach cannot be defended from the point of view of the principle of proportionality of crime and criminal justice, and it indicates to what extent the legislator seeks criminal and enforced prevention of crimes against security ultimately establishing a public order and guaranteeing sovereign rights.

It is also one of the criticisms of Article 286 regarding corruption on earth that is why the article is set to include false broadcasting on a television program that has millions of programs. One jurist writes: "In the light of the recent provisions of Article 698 of the Islamic Penal Code and the principle of the legality of the crime, the scope of the article cannot be substantiated verbally, citing its irrationality, "Because logic is not something that can be invoked in the abolition of this principle and so the relevant institutions must take action to amend it by amending the law."

. In the on-the-ground corruption debate, the legislator has imposed the most severe punishment, namely execution, for acts that are not too severe. For example, even a deputy in a corruption case under Article 286 is subject to the death penalty. This punishment is disproportionate to the punishment of other crimes for aiding and abetting a criminal offense.

Article 287 of the Islamic Penal Code provides for the death penalty legislator, while such punishment in Islamic law is referred to as "murder of the rebel" or "jihad against the rebels", which differs from trial and conviction. And especially if those who have taken up arms with their religious coordinates as weapons.

Therefore, the imposition of penalties without regard to their proportionality is contrary to the requirements of the international instruments referred to. And Iran has adhered to some of these international laws, such as the Covenant. The prosecution and execution of some of the inappropriate punishments in Iran has always been objected to by organizations and in particular by human rights organizations, and by international problems. WikiLeaks is one of the penalties for a wide range of charges against Iran, while the international community is seeking to have the death penalty removed from the list of legal penalties or to reduce its application.

Principal 3: The publicity of the proceedings

The publicity of criminal proceedings has been an important feature of the prosecution system; the mixed system has tried to address this issue at the trial and criminal trials, although the preliminary investigation phase is being conducted in secret. The publicity of the trial is an important sign of fair trial, meaning that public opinion is on trial today. One of the challenges today is to extend the sovereignty of governments to expand public oversight of the city,

ensuring the safety of government officials or government officials. The principle of openness of trials as one of the criteria for observing human rights in criminal proceedings is one of the most important guarantees for the judicial security of individuals. Since the judiciary, like other government agencies, is trusted by the public, through open public hearings, its performance is monitored directly by the public and by public opinion, and it is protected from bias and, through oversight, the judicial security of individuals is adequately maintained and guaranteed.

Therefore, the openness of the hearing will allow the public to be monitored and the administration of justice a fair way forward.

The need for open trials in Article 10 of the Universal Declaration of Human Rights states: "Everyone has the right to a fair and public hearing by an independent and impartial tribunal for the determination of his rights and obligations or of criminal charges." The first paragraph of Article 14 of the International Covenant on Civil and Political Rights (1966) also includes the principle of openness of trials. Although this principle is found in the human rights documents and the Constitution of the Islamic Republic of Iran (Article 165), it is not practiced in practice and is generally interpretable as excluding the justices of the judiciary and having no motive for public presence or lack of awareness of the issue. The implementation of this principle has become important. The secrecy of the trials may prevent undue disclosure of the judicial system and lead to the perversion of justice.

Governments in the security-oriented approach and in the fight against a generation of crimes, particularly transnational organized crime and transnational crime, argue that safeguarding the security of the country from fair principles and hold arbitrary hearings in secret.

Article 165 of the Constitution of the Islamic Republic of Iran states: Public trials shall be conducted and the presence of persons shall be permitted unless it is contrary to the public's discretion or public order to determine whether the court is public. Article 168 of the constitution states: The investigation of political and press crimes is open and is attended by juries in the courts of justice. At present, according to the definition of political crime in the Political Crime Act of 1395, there are some exceptions to the political crime and consequently there is a definition in the new Islamic Penal Code as a punishment in the chapter. Thus, for the sake of rhetoric, Vatican was not politically motivated for security reasons, which was argued to be a public commentary on the constitution referred to in the constitution.

Principal 4: Immediate Receipts

The principle of due process is set out in the reasonable time limit of Article 14 of the Covenant on Civil and Political Rights, and it stipulates that "... any person shall, without prejudice, be entitled to the full guarantees of full enjoyment of the... "Therefore, compliance with international standards is considered. Criminal proceedings in its particular sense involve criminal court proceedings, and the main task of the trial begins from the beginning of the hearing and its role in this in terms of its effect, the defendant's final writing is more prominent. A hearing means a hearing at which you will adjudicate or hear. The fact is that the purpose of a fair trial is to ensure that the defendants are not charged for a long time until the charges are established. In other words, to file a lawsuit at the appropriate time, which is not too fast, urgent, nor too long. As in a conventional trial, the ruling prevails without undue delay. Avoiding speedy and non-observance of defendants' rights of defense is also expedient, with immediate and out-of-court criminal proceedings not being followed by ordinary due process. Persons charged with criminal offenses must have adequate opportunity and facilities to provide their defense against the allegations made against them. Therefore, investigating a charge in a reasonable time is one of the most important criteria in a fair trial.

Compliance with Reasonable Time Limits, for the first time in Iran, has been enshrined in the Code of Fair Procedure as one of the principles of fair trial. In such a way as to violate the fundamental principles of the law, such as the principle of innocence, the right to be accused as soon as possible, the enjoyment of defense rights, such as the right to a lawyer, the enjoyment of a forensic expert ..., the guarantee of nullity, Speedy, fast-paced data can be approached in a fast-paced, inquisitive manner.

In some cases, and in particular in security-related cases, such as riots and corruption on earth, real-time and It goes out of its way, and in all these cases all the efforts of the courts and the authorities of the criminal justice system are focused on speedy investigation and determination of the defendant's duty to respond to public opinion and the minds of the offender. The court, instead of focusing on fair and equitable proceedings. In a security-centric approach, there is a tendency to maintain security. This is an urgent and out-of-date consideration, contrary to the provisions of Article 3 of the Criminal Procedure Code of 2013 and international documents, including Article 11 of the Universal Declaration of Human Rights and Article 14 of the Covenant on Civil and Political Rights, which it ratified on 7 May. 1354, its provisions are necessary for the Iranian judicial system, and any urgent proceedings without regard to the guarantees of due process and to the exclusion of public opinion are contrary to the provisions of this article.

Principal 5: Restriction of the right to defend

The focus of fair and equitable proceedings, based on human rights standards to which Iran has acceded, as well as domestic law, such as the constitution, considers the use of lawyer services as the primary rights of the parties.

The right to have a lawyer under the Covenant on Civil, Political Rights, and Article 14 of the Covenant, is explicitly stated: "Everyone has the right to stand trial and to defend himself, in person or by his own lawyer, in the absence of a lawyer. "The right to have a lawyer shall be informed that, in cases where the law requires, the court will appoint a lawyer for him or her.

The right to have a lawyer appears to have a high degree of enforcement under the Covenant on Civil and Political Rights and is explicitly provided for in Article 14 of the Covenant.

Note to Amendment 48 of the Code of Criminal Procedure, passed in 2013, restricts the right to choose lawyers from among jurists approved by the judiciary. "In crimes against national or foreign security and in organized crime punishable under Article 302 of this Code. At the preliminary investigation stage, the litigants choose their attorneys or attorneys from among the official lawyers of the judiciary who are approved by the judiciary. The names of the lawyers are announced by the head of the judiciary. »

In criminal offenses and corruption on the ground, as they are considered crimes against security, in accordance with Article 48 of the Code of Criminal Procedure, the election of a lawyer must necessarily be from a lawyer approved by the judiciary.

By enforcing a note and limiting the right to free access to a lawyer, which is the most important form of access to justice. Practically, it results in corrupt practices, including the consequences of the unity and focus of the judicial authorities involved in the cases under consideration, namely the judge, the narrator, the mediator and the lawyer, and the undermining of the right to self-defense and the violation of the principle of proportionality, impartiality in defense and independence. The power of attorney is that of sovereignty. The security of the public has also been hampered by the choice of a trusted lawyer, and the mistrust of the defendant and his relatives to lawyers who have a clear relationship with the plaintiff and the bailiffs. It should be noted that without such limitation, in accordance with Article 100 of the aforementioned Law, access to information classified by the claimants may be prevented.

In criticism of this note, Dr. Najafi Tavana, the head of the Bar Association, told the board of directors of the Bar Association: "The principle is unjustified and the lawyer has the right to attorney under law. Selective selection of lawyers from the legal community cannot be due to lack of standard and meaning and legal and religious reference. In principle, such a jurisdiction is unjustified and, when not qualified, is legally entitled to attorney. The crimes in Nusra, this article, and the organized crime referred to in Article 302, Criminal Court One, constitute a significant proportion of the country's criminal offenses that require the use of qualified and experienced defense lawyers. Is it not a right to deprive a client of a specialist lawyer and deprive a lawyer of access to these cases? "

Another human rights violation is against the principle of equality of arms because of this notion of the judiciary and the defense of a subsidiary, a judicial system, and a position that the appellant is also appointed to. The judiciary is a community. The union of these three pillars in one system destroys the principle of equality of arms and undermines the rights of the client or the public. If the purpose of the proceedings is to establish judicial justice, one party should not be actively prosecuted, and the other party should not be prosecuted.

Therefore, this note has introduced an inappropriate restriction on the right to self-defense, one of which is the right to choose a lawyer, and has considered the judiciary inaccurate in criminal offenses against domestic and foreign security, including in Baghi and on earth.

Given that, in principle, the current practice of human rights violators is the issuance of resolutions by the United Nations Commission on Human Rights and to a higher degree of political, economic, economic and other sanctions, which in addition to its negative consequences, Dismantling the international image of the country in the minds of the International Assembly and leading to global rejection. Domestic law should therefore not be detached from human rights standards in internationally accepted documents.

From the topics discussed in this study, it can be concluded that

1- The importance of the right to life and its prohibition is recognized in Islam and in international human rights instruments.

2. By examining the provisions of international documents, despite the anticipation of the death penalty for the most important crimes, the position of the documents towards the abolition of the death penalty is in the list of countries' penal system. The important point is that, according to the Human Rights Committee's interpretation, the death penalty should not be used in relation to property, economic crimes and crimes that do not entail coercion.

3. In the Islamic Republic of Iran, the death penalty was envisaged in nine cases prior to the adoption of the Islamic

Penal Code of 1992, but with the passage of that law, the death penalty for aggravated assault and aggravated assault was added.

4. With these interpretations, the legislator, despite the policy of decriminalization, provided for in the Fifth Amendment to the International Documentation Schedule to Abolish the Death Penalty from the List of States, with new offenses in addition to the imposition of severe capital punishment, The list of security offenses that have been deviated from some substantive and substantive principles, the most important of which have been avoided in criminal cases, is the principle of legality of penalties; the legislator's position is not clear for the reasons stated; Being, like imposing severe punishment on people who provoke subversion Committing or colluding to commit a crime solely by agreement, including the principle of proportionality of penalties, such as the death penalty for assisting in the on-the-ground corruption, and the execution of persons opposed to the armed uprising system, as a rebuttal if required by jurisprudential sources. In addition, They have been mentioned to the substantive objections and challenges to the form, as opposed to the international instruments adopted by the legislature, there are challenges that include urgent and out-of-date processing of the offenses, both referred to in the Covenant on Civil and Political Rights. In Islamic Penal Code and Criminal Procedure Law and the Right to Defend, which, contrary to Article 14 of the Covenant on Civil Rights, is expressly limited to the choice of security offenses, including rebellion and corruption on earth, under Article 48 of the Code of Criminal Procedure of 2013 Lawyer is one of the lawyers approved by the judiciary who complies with international human rights standards It has wings.

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The ruling layer in the teachings of G. Mosca, V. Pareto and classics of Eurasianism: comparative legal analysis

El estrato dominante en las enseñanzas de G. Mosca, V. Pareto y los clásicos del eurasianismo: análisis jurídico comparativo

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ABSTRACT

The purpose of this paper is to compare the concepts of ruling selection and the leading layer in the works of G. Mosca, V. Pareto and the teachings of the Eurasians. In the course of their work, the authors find common and special features in these ideas and try to predict possible ways of applying the Eurasian doctrine to the Russian political reality. The authors ask about the preconditions for the formation of an original Eurasian view of the elite and the relevance of this concept in modern Russia. In the final part, the authors come to intermediate conclusions of the scientific research, which can serve as a basis for further study of the topic. The work can be useful for legal theorists, elitologists, politicians, as well as those who are interested in the Eurasian doctrine.

Keywords: Elite, lead layer, ruling selection, political elite, elitology, eurasianism.

RESUMEN

El propósito de este artículo es comparar los conceptos de selección dominante y la capa principal en los trabajos de G. Mosca, V. Pareto y las enseñanzas de los euroasiáticos. En el curso de su trabajo, los autores encuentran características comunes y especiales en estas ideas e intentan predecir posibles formas de aplicar la doctrina euroasiática a la realidad política rusa. Los autores preguntan sobre las condiciones previas para la formación de una visión euroasiática original de la élite y la relevancia de este concepto en la Rusia moderna. En la parte final, los autores llegan a conclusiones intermedias de la investigación científica, que pueden servir como base para un mayor estudio del tema. El trabajo puede ser útil para teóricos legales, elitólogos, políticos, así como para aquellos que estén interesados en la doctrina euroasiática.

Palabras clave: Elite, capa de plomo, selección gobernante, elite política, elitología, eurasianismo.

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INTRODUCTION

The development of modern Russian society depends to a decisive degree on the ability of the country's elite to consolidate society and mobilize all strata of the population to achieve socially significant goals. These processes testify to the change in the role of the elite as the governing layer of society. Such an approach to understanding the elite has been established in the conservative legal thought of Russia, where the elite was identified, first of all, with the authority, God's choice, ideological inspiration of the people.

The growing contradictions in the field of national economy, socio-political sphere, spiritual and cultural life gives rise to a number of questions about the correlation between the interests of political elites and the diverse interests and needs of society, about the measure of social orientation of the modern political elite, thus actualizing the interest in the problem of studying the Russian elite.

Undoubtedly, turning to foreign mechanisms of reproduction of elite, it is necessary to pay attention and to domestic vision of the given question, including, addressing to a heritage of a historical-legal, political-legal science. In the conditions of revival of the Eurasian ideas and creation of the new Eurasian space, that part of conservative legal ideology of Russia, which is connected, with the doctrine of Eurasians acquires the special urgency. Undoubtedly, the attention to the Eurasian political and legal doctrine is now focused not only on the part of Russian science, but also abroad, because the creation of the Eurasian economic space, which is justified to some extent by the ideas of the concept studied by the authors, has a significant impact on the global economy and politics (Sergi, 2018).

Dividing the elite into the leading layer and the ruling selection, ideologists, classics of Eurasianism in detail concern the functioning of these components, their purpose, role and nature of interaction (Vasiliev, 2016).

The authors of this paper hypothesize that traditionalist legal values still prevail in the Russian legal consciousness, which have a direct impact on the preservation of a conservative approach to the definition of the concept of the elite, and thus the social order and legal system in modern Russia.

To test this hypothesis, researchers carry out a comparative analysis of the definition of the concept of elite, data by G. Mosca and B. Pareto, as well as the Eurasians, and then turn to the historical experience of defining the elite and studying the current understanding of the issue by Russian citizens. Such a systematic, consistent study of the proposed topic is conducted for the first time and allows us to assume that the authors of the paper believe that Eurasian ideologists have formulated a special vision of the theory of the elites, based on the historical experience of Russia, as well as the mentality of Russian (at the time - Russian) society.

Theoretical bases of research. Conceptual design of elite science took place at the end of the XX century in the works of Italian sociologists V. Pareto and G. Mosca. The main directions of elite theory were developed by G. Lassuell, C. Mannheim, R. Mills, I. Schumpeter and others. The theoretical basis for the studies of Russian elites has been expanded by the works of G.K. Ashin, M.N. Afanasiev and other authors. Stratification studies of post-Soviet ruling elites were conducted by O.V. Kryshtanovskaya and V.V. Radayev, A.B. Dooka, O.V. Gaman-Golutvina, V.G. Ignatov, N.Y. Lapina, A.M. Starostin, A.E. Chirikova are devoted to studying the political activity of elites at the regional level. As an empirical basis of the author's work, he used sociological and statistical data from the platforms Colta.ru, "Kommersant", "Medusa", as well as data from his own sociological research.

Practical and scientific significance. The scientific significance is conditioned by the absence of studies of the Russian elite as a historical and legal category. In the present work, the concept and types of elite are considered through the prism of the mentality of the people, conservative thinking and attitude to power structures. The originality of the work lies in the atypical formulation of the author's question about the concept of the elite, the promotion of his own interesting hypothesis.

Methods

The work uses a civilizational scientific approach, which is followed by the Eurasians themselves. With this approach, the national (or ethnic) identity always bears the imprint of civilization itself, because it is carried out within the framework of civilizational (conscious or unconscious) identification.
At the first stage of our work, we analyzed the achievements of foreign science concerning the theory of the elite. The theoretical basis of this stage of research was the works of V. Pareto and G. Mosca, classics of foreign elite. Using methods of analysis, synthesis, induction and deduction, it was possible to determine the fundamental positions of the concepts of these scientists, as well as to formulate the main similarities and differences in their views.
The fundamental question of the second stage of this study was the ratio of the concept of the elite in the foreign concepts of G. Mosca (1939) and B. Pareto (1935) with its Eurasian interpretation. The authors were interested in such aspects of the topic as functional and substantial characteristics of the leading layer and the ruling selection. The research was based on the works of N. Alekseev (2000), N. Trubetsky (2000) and P. Savitsky (1997). By the method of analysis, synthesis and comparison of the above-mentioned authors, the concepts of the leading layer and ruling selection, criteria of differentiation of these terms and their functions were determined. Applying the historical and comparative method, we explained why the Eurasian understanding of the ruling selection and the leading layer is different from the developments of classical elitism.
The third stage is an empirical study conducted through a Survio-based questionnaire. 144 Russian citizens aged 18 to 60 participated in the survey. Respondents had to answer five questions concerning the understanding of the elite in modern society. When answering the first question, it was necessary to choose the most accurate notion of elite,

according to the respondents. Definitions given to the elite by foreign scholars - founders of elite theory, modern Russian scholars, as well as Eurasians - were used as answer options. In the second question, it was suggested to choose the features that characterize the elite. In the third question, the participants were asked to choose a drawing that most fully reflects the concept of "elite". In addition, participants were asked to choose from among the leading public figures of citizens, who could be called the elite. Since this article is a peculiar result of the research, the authors also publish the results of the survey in part in order to make the material more concise and concise.

DEVELOPMENT

Results

The results can be summarized as follows.
1. Views of G. Mosca (1939) and V. Pareto (1968) is based on the elitist worldview, which took place in ancient philosophy and was most fully formulated by Plato (2019), who strongly opposed the admission of demos (people) to the management of the state, called it a "crowd", hostile wisdom, associated virtue, courage and intelligence as the highest dignity of people with belonging to the aristocracy, knowing how to manage the state.
In addition, it is possible to find sketches of the theory of elite at Confucius, Machiavelli, Carleil, and Nietzsche. According to Machiavelli, who replaced ethics with a value-based knowledge of the power structure, representatives of the ruling class are divided into "lions" who have a sense of loyalty to the state, are conservative, are not afraid to use force, and into "foxes" - sly, cunning, unscrupulous reformers, i.e. they should be both strong and cunning (Machiavelli, 2004).
1.1 In theory B. Pareto people are always governed by elites, except for a short period. In his understanding, the history of humankind is a history of replacing certain elites with other elites.
After reading Pareto's theory, it is possible to determine that the elite are those who have received the highest index in their field of activity, who have reached the highest level of competence ("Treatise on general sociology").

B. Pareto singled out "the highest classes" or aristocracy, which are understood as "people who occupy a high position according to the degree of their influence and political and social power" (in the etymological meaning of the word: aristos - the best). At the same time, most members of the elite in this concept have a certain set of qualities - whether good or bad - that provide power.

Besides, he divides the "upper layer" itself into subgroups, pointing to the heterogeneity of the elite: the ruling elite, the non-controlling elite, the political elite. At the same time, a specific layer of people cannot define the elite, or the upper class, or the aristocracy (Pareto used these terms interchangeably), because the social classes are not homogeneous.

Naming the story "the cemetery of aristocracy", he deduced the law of circulation of the elite, according to which the old elite captures a new and vice versa, and this struggle is the cyclicality, circulation, renewal of the elite. According to R. P. Marco, the law of circulation of V. Pareto's elites has a more profound meaning than simply the transfer of power from group to group - its basis is the redistribution of wealth (P'erez-Marco, 2014).

Repeat with N. Machiavelli, he divided the elite into "foxes" and "lions," the first of which hold power through diplomatic intrigue and cunning, and the second with force (Machiavelli, 2004). At the same time, Pareto drew attention to the positive aspects of such governance, pointing out that the elites, especially the ruling class, are well aware of the unequal distribution of materials and intangible assets in society and their interests. At the same time, the elite acts more logically than illogically, thus remaining afloat.

1.2 Based on the ideas of G. Mosca, it is possible to define the elite as the most politically active people, oriented to the power, organized minority, managing the unorganized majority.

G. Mosca argued that in any type of society at any point in history, there are two classes of people - the class that rules and the class that is ruled (1939), and in this sense was repeated by W. Pareto (1935). The first class of society consists of a few and is endowed with all political power and privileges, while the other class is composed of a large number of people and is subordinate to the first class.

In the elite, there is always a leader, and this is not necessarily the one who is endowed with power through the law or the one who is known to everyone. However, under certain conditions, the entire power is concentrated in the hands of this person.

The ruling class or the head of state must be concerned about the thoughts and feelings of the masses in order to get their support; otherwise, they will not be able to rule.

According to G. Mosca, the historically ruling class is trying to justify its existence by using some universal moral principles, superiority, etc. According to G. Mosca, at a certain stage of historical development, the ruling classes are no longer able to justify their power solely by actual ownership of it, so they need to look for another justification - the moral and legal basis, or "political formula", which should support the beliefs and moods of society or its overwhelming part.

G. Mosca, like C. Pareto singled out two types of elite - the ruling class and the second layer. Since the ruling class cannot lead and direct society sufficiently, the second layer performs an auxiliary function in this matter. At the same time, the members of the ruling class should be recruited almost entirely from the representatives of the society itself, the overwhelming class.

Despite the fact that the views of G. Mosca and B. Pareto differed significantly from each other, they show a common "Machiavellian" spirit - the elite is equated to power, the entire historical path of the state is the struggle of the elites and the opposition of different elites ("coming", "going away") to each other in the distribution of power and economic benefits.

2. Undoubtedly, the conclusions of the Eurasians go back to Plato's philosophical ideas, "for whom the question of conscious organization of the ruling selection in the state was the most basic and important political issue. In addition, Plato noted that the problem rests on the organization of the leading stratum or "ruling selection", which would not allow the authorities to break away from the people.

Turning to the understanding of the Eurasians of the leading stratum and the ruling selection as a way to organize the elite in the Eurasian society, we can note the following fundamental theses.

2.1 The leading layer is recognized as a natural necessity of any state. Indeed, it is inconceivable that the very existence of the state machine without the asset that drives it, as well as the impossibility of progress (any - political, economic, spiritual, etc.). Moreover, in the environment of this stratum, one can always clearly identify a certain state (governmental) asset, i.e. the ruling elite. It should be noted that the very idea of singling out two stages of the elite - the leading stratum and the ruling selection - is in a sense a repetition of the ideas of Italian thinkers.

In a general view, the leading layer performs the following functions: "Moral, not violent" leadership (the analogy with G. Mosca, who singled out such leadership in the case of exhaustion of all other motivations, and in the history of Russia at the time of the emergence of the Eurasian ideology, as it seems to us, they are exhausted), the embodiment and adherence to the state idea (ideocracy, Eydos according to Plato - "the thoughts of God"), a gradual self-renewal: a sharp change of composition leads to inevitable collapse, an example - The socialist revolution in Russia. It should be noted that in this case, ideologists do not mention the change of elites by means of struggle or cunning, we are talking more about the renewal of the natural (according to the Eurasians - even the "natural", as well as the tree gradually grows with new leaves). Undoubtedly, observing the experience of bloody transformations of the Russian state on the way to socialism, the Eurasians could not allow any other solution to this issue.

2.2 At the same time, a group of government activists with power (in the theory of N.N. Alekseev (2000) - the "ruling selection") ideally performs a political function, represents the people on the basis of the "old" principle rather than the class principle (an exclusively Eurasian thesis), and ensures the enforcement of law under the threat of coercion.

Thus, the categories of the leading stratum and the ruling selection are not identical, just as the elite itself is not identified by the Eurasians with the aristocracy. Note: the Eurasians have never used such phrases as "ruling class", "leading class", even in passing. We have listed the functions of each stratum of the elite above, and their principal difference is that the ruling stratum is formed from the stratum of the leader, who is the "pillar of the state" not only on the basis of political power or morality, but also represents the cultural, (ideological, economic and other) color of the nation. The leading layer is formed on the basis of the worldview, personal contribution to the life of the state, replenishing with new forces, which seems to us to be an original vision of the methods of selection of the elite, although somewhat utopian. The Eurasians denied the possibility of its merger with the apparatus of state coercion, because in this case, the leading selection can inevitably turn into a kind of bureaucracy, "devoid of creative ideals".

2.3 It is impossible to determine exactly what is the key criterion for dividing the leading stratum from the rest of the population of the state. N.N. Alekseev saw this criterion in the "moral leadership", but did not explain what exactly to mean by it. N.S. Trubetskoy (2000) rightly pointed out that there is a precise relationship between the type of selection, on the one hand, and the form of government, on the other, which is seen as the influence of the theory of the elites of G. Mosca and B. Pareto.

N.S. Trubetskoy singled out three main types of selection of the ruling stratum: aristocratic (military-aristocratic, bureaucratic-aristocratic, and oligarchic), democratic (plutocratic-democratic, ochlococratic) and ideocratic, and the ideocratic type of selection was thought to be futuristic in many ways. Thus, in the aristocratic selection of the ruling stratum is selected because of the nobility of origin, and the political system in this selection is expressed in absolute monarchy or despotism. The scientist contrasted the democratic and aristocratic type of elite selection with the ideocratic type developed by the Eurasians, which intersects with Schmitt's philosophy. We believe that the Eurasians have gone a little further in this matter, but a significant issue is the procedure of selection of citizens to the elite only based on their support for the idea ("the idea of the ruler", "eidos") of the state.

P.N. Savitsky noted: "The leading layer is the first reality that they see in the state life. In any state order, it is possible to distinguish the domination of a certain group of people united by one or another feature... Elements of this kind are available in any state order: they can be found in the aristocracy, in gerontocracy, and even in plutocracy" (Savitsky, 1997).

Examples of the leading stratum N.N. Alekseev (2000) at different stages of Russia's development are the princely squad, the service class of Moscow rulers, the nobility of the imperial period, the Communist Party.

2.4 It seems to the special authors that the position noted by N.N. Alekseev is that the leading stratum, united not by the class principle but by the principle of service (the ideal of the Eurasians), can be in power only when it acts "under the banner of ideas and ideals that will be consistent with the spirit of a given historical epoch".

Discussing the ideocratic type of the state, M. Bassin, S. Glebov and M. Laruel (Bassin et al, 2015) believe that the "idea-governor" is understood by the Eurasians as the main link between the ruling layer and society. It seems that the moods of the Eurasians in this regard are somewhat romantic and arrogant, but they themselves refer to historical examples of how the Russian state has managed to embody, if not the state of ideocratic character, then at least some of its features concerning the relations between the authorities and the people. Therefore, in the study of the elite in Eurasia, it is not superfluous to turn to the historical preconditions for the formation of such a concept, such an understanding of the phenomenon.

Speaking about the criteria for the selection of the elite in Russia, it can be noted that in ancient Russia the criteria for elitism were physical strength, courage, ability to possess weapons, high position and respect in their environment. In Kyivan Rus' and other princedoms, the important criterion of an elitism also was considered an origin and nobility of the sort guaranteeing to the person, which possesses them, a place in elite.

In the XII-XV centuries. - The national elite was differentiated into the main group of boyars and a minor group of so-called "boyar children". To take part in law-making processes could only full boyars. In addition, the transition from "boyar children" to full-fledged boyars was possible only when the boyars' offspring achieved an appropriate level of experience and professional and business qualities.

One of the most important criteria taken into account in the formation of the elite in the policy of Ivan IV, who sought to replace the traditional boyars' elite, in the loyalty of which he had doubts, was considered personal devotion of subordinates to the top manager. In fact, the Tsar laid the foundations for the use of the political search for the formation of the elite. The selection of oprichniki was carried out by a special commission, which included A. D. Basmanov, A. I. Vyazemsky and P. Zaitsev, who carefully studied the pedigrees of the candidates in order to exclude persons who had direct connections with the aristocratic environment.

Since the middle of the 16th century, such a form of elitist representation as cathedrals has been manifested. In the XVII century. Zemstvo councils solved the most important political and legal issues and by virtue of the nature of the councils took into account all the major countervailing factors. The best representatives of all classes were present at the cathedrals. When making decisions, the Council was guided by the interests of the entire population and tried to reflect this in law-making activities.

With the advent of Peter the Great, the principles of formation and the role of the social elite have changed dramatically. All this was replaced by a new elite, which was formed according to its own individual achievements in public service, which was identified with the service to the emperor in the first place, and then to the state as the property of the Tsar.

The criteria of elitism in the Russian Empire underwent significant changes after the fall of the tsarist regime and the establishment of Soviet power in October 1917. A significant part of the former political, law enforcement and religious elite was destroyed during the revolution and repressions. Starting from this period up to December 1991, membership in the Communist Party of the Soviet State became an integral criterion of social elitism and a condition for participation in law-making processes.

The authors will not be original if they note that although the definition of the concept of the elite is historically variable, and the criteria for its selection correlate with the "spirit of the era", the latter are still "cumulative" in nature. In other words, with the emergence of new approaches to the definition of the elite in Russia, the previous approaches do not disappear for the moment, and for some time "experience" themselves and are used as auxiliary, although not necessarily publicly available.

Since the idea of the Eurasians is a special way of Russia as a Eurasian state, we can say that the theory of the ruling selection and the leading layer of Eurasians is an adaptation of the views of G. Mosca and B. Pareto under the Russian reality that is proved by historical preconditions of formation of elite in Russia. The authors do not undertake to assert that the Eurasian ideologists did it purposefully, as the concept of elite appears in the Russian language a little later, but intuitively, spontaneously such understanding has developed, including, thanks to the civilizational approach. And this is not only and not so much about the "special way of Russia", Slavophilism (according to some scientists, the source of Eurasianism) and conservatism, but rather about a sober view of what is available at hand - historical experience, geographical location, diversity of ethnicities and cultures, mentality and mentality.

At the third stage of the research we asked ourselves what the elite is understood by the modern Russians, because it is necessary to note that the understanding of the elite is historically variable and corresponds to one or another trend, political situation, level of economic development, etc. One could not ignore the fact that M. Laruelle (Laruelle, 2015) considers the doctrine of the Eurasians forgotten, far from being understood by modern citizens

and used exclusively to justify the foreign policy pursued by the Russian government today. The authors note that they have found the origins of the Eurasian concept with modern ways of selecting the elite, and tried to find out which of the interpretations of the elite is closer to modern Russians and how much the Eurasians were able to predict, feel what they themselves call the "spirit" of the Russian people.

Surprisingly, but the most popular definition of the elite was the Eurasian one. It is noteworthy that the surveyed citizens chose from a variety of proposed definitions of the elite those in which power, political influence and power were taken as determinants (the authors of these definitions are D. G. Kozlov). Mosca, V. Pareto, A. Toynbee, M. Weber and others.

Despite the fact that such a vision is more in line with Western concepts of elites, this phenomenon is easily explained by the fact that in the Russian legal consciousness there is a stereotype that "he who is above the position is right", which is remotely reminiscent of the structural interpretation of the elite. If we look at the variants lower in terms of popularity, then the second place is occupied by the definitions of domestic scientists, who use the ideocratic criterion of the elite (the embodiment of a national idea, its compliance with it, the impact on social processes), and the third place is occupied by the value criterion, which indicates the need for members of the elite to have the appropriate moral attitudes and values.

In the second question of the questionnaire, we were asked to choose from a list of criteria by which respondents would identify a person belonging to the elite. The most popular answers were "high level of intellectual development" (39.1%), "Representation of the people, solving socially significant problems through state resources" (46.4%), "Management skills" (29%). Meanwhile, analyzing the results of the answer to the question "Which of the following citizens would you rank among the elite", we noticed that subconsciously more attention is paid to moral and moral attitudes and management skills, and a high level of intellectual development is evaluated only in conjunction with other characteristics.

It should be noted that as criteria of "elite" we have given all the variants of interpretation of the elite throughout the history of Russia, as well as the signs put forward by the Eurasians and Italian elite. Respondents still actively associate with the elite the nobility of the family; individual achievements in service ("to serve a place for themselves"), decency, but the physical strength, entrepreneurial abilities, direct stay in power are relegated to the background. This distinguishes the domestic understanding of the elite, its conscious image, from the Western concepts, where the criteria for the elite are a combination of professional and business qualities, hard work, ability to "make money", impeccable reputation.

Such understanding of the elite in the minds of the surveyed citizens correlates with the indicators of the answer to the third question, where one should have chosen a picture embodying the elite. Interestingly, almost 20% of citizens chose a photo as their answer, which implies the criterion of cultural and intellectual development (the second most popular answer after the image with the deputies of the State Duma of the Russian Federation). However, the criteria of closeness and loyalty to the head of state, which the authors largely associate with the "police" state, were overshadowed. Note that respondents were asked to choose the image that best fits the term, rather than the one of the elite they would like to see.

Because of a trial, small empirical study, the authors were interested in the relevance of the Eurasian ideas and their relationship to the Russian reality.

According to the results of the survey, Russian citizens really rely on the fact that the elite, the leading stratum, should be citizens who meet the criteria of representation, law-abiding, high level of spiritual and intellectual development. The question arises as to whether the Eurasian concept of the elite should be implemented or whether some of its features are already included in the recruitment procedure of the ruling stratum.

Discussions

The results of the study suggest that the Eurasian approach to the concept of the elite, although it has similarities with the Italian concepts of elite V. Pareto and G. Mosca, however, is not devoid of some originality. The historical and comparative aspect of the work shows that Eurasians still relied on the historical experience of selecting the political elite in Russia to formulate special criteria for the selection of the leading stratum.

Despite the development of studies of the elite at the state and regional levels in the post-Soviet space, however, as noted by B. Gelman, I. Tarusina (2000), most of the works are a kind of continuation of the ideas of the classical elite, while the original approaches to the definition of this phenomenon, which would be associated with the peculiarities of the historical development of the state, its economic, spiritual and moral specificity, are still difficult to find.

We believe that a modest attempt to determine the viability of the ideas of the Eurasians at the empirical level, carried out by the authors through the survey, still deserves the attention of representatives of the scientific community and public figures, because, although indirectly, but still indicates that the ideas of the Eurasians in the current stage of development of the Russian state is much closer to understanding for the representatives of the "ruling" society, rather than the ideas of foreign thinkers.

We believe it is important to note that some sociologists, journalists, and public figures have already attempted to explore the approach to understanding the elite in contemporary Russia among ordinary citizens. Thus, the colta.ru platform conducted a study "Are there any moral authorities in Russia? In our case, it is interesting to note that the top 10 moral authorities in Russia (more than 83,000 people took part in the voting) included people who could not be united in terms of education, popularity, etc. In this sense, representatives of different social groups, professions, age categories of citizens, level of education, nature of activity, etc. were elected as moral leaders, which meets the requirements of "representation".

Also interesting is the research conducted in the early 2000s by Kommersant, in which citizens were asked to choose the President of Russia from among literary characters and film characters. In contrast to these results, a similar study was conducted in 2019 by the Medusa information project, in which heroes of domestic serials became the presumed "ideal" servants of the people (Ten years, 2009).

Meanwhile, the authors have not yet found any scientifically substantiated studies of conservative legal approaches to the interpretation of the elite and their place in the minds of modern Russians. Researchers believe that the scientific work carried out will serve as a starting point for more in-depth study of this issue.

CONCLUSIONS

The results of the research showed that if we try to define the criteria of the concept of elite in modern Russia, its features, based on historical understanding of the concept, as well as based on the results of the empirical part of the work - the survey, the leading place will be taken by the signs of supra-class representation of the people, a high level of intellectual and spiritual development of members of the elite, the ability to make politically important decisions, managerial experience, moral attitudes. This vision of the elite in general is more similar to the Eurasian approach - the concept of the leading stratum and the ruling selection.

It is clear that the empirical materials collected by the authors of the research are experimental and need to be tested by means of a larger study. In addition, the authors note that they do not have an in-depth knowledge of sociology and admit that the questionnaire needs to be seriously improved, and that the theoretical part of the research can be further developed as part of a longer work on the topic.

Nevertheless, the authors disprove the assumption that the Eurasian concept of ruling selection and leading stratum is just a borrowing, a translation of the already established understanding of the elite, formulated by V. Pareto and G. Mosca. Let us agree that these ideas in some sense are similar and flow from the thoughts of the same philosophers of antiquity and the Middle Ages.

However, if we go deeper into what the named authors understand by the elite, we can see that the Eurasians have managed to make a positive sense of the word in the positive gradation of the elite, proposed by B. Pareto and G. Mosca, to adapt it to the Russian reality, to formulate their own vision of the question. We can easily explain this by the fact that the development of Russian philosophy and science, especially in the conditions of emigration, could not occur in isolation from the world's achievements, including sociology, political science and elite science.

We believe that the results of this research may serve as a basis for a more comprehensive study of this issue. The work may also be useful for comparative analysis of foreign elite and domestic political and legal science, in which the issues of the elite are directly or indirectly affected.

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Explorando la ciudad: visualidades cotidianas en Temuco, La Araucanía, Chile.

Exploring the city: daily visualities in Temuco, La Araucanía, Chile.

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La presente obra se enmarca dentro de un proceso de reflexión antropológica que implica un ejercicio de descotidianización para observar críticamente la composición estructural de la ciudad mediante la subjetividad de lo humano y la expresión fotográfica. Por lo tanto, los documentos, textos, aquí presentados hacer parte de una triangulación que involucra la reflexión antropológica y la técnica de la Street photography, que pretende otorgar al espectador una referencia poli-significacional, interpretativa, de la realidad cotidiana de la ciudad de Temuco, desde la espontaneidad que el caminar en la ciudad ofrece y desde la incertidumbre propia de explorar con otro nivel de observación la vida cotidiana.

Así, el trabajo realizado converge en un relato sociofotográfico que imprime de alguna forma parte de la esencia de la ciudad, desde las realidades de su gente, desde un punctum que nos mueve como antropólogas y antropólogos entre las formas socioculturales en sus diversas dimensiones, intentando emplazar al espectador a realizar una reflexión profunda, analógica, sobre la realidad social del contexto sureño de un Chile que vive la interculturalidad desde su constitución, pero que se ha negado constantemente a sí mismo mediante las diversas metáforas de la globalización.

De esta forma, la presente muestra es una re-presentación de la realidad que sólo intenta ser un puente crítico y reflexivo para que el lector (visual) se interiorice, aunque sea mínimamente, en la espontaneidad de la vida cotidiana en este rincón del fin del mundo. Para ello, he de presentar una serie de imágenes que nos dan cuenta implícita de ciertas dimensiones sociales complejas; la marginación, la ruralidad, la religiosidad, las costumbres, entre otras, y que a través de un discurso mimético en primera persona generan un esquema de relaciones sobre un marco estructural amplio de lo sociocultural en la región.

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Religiosidad

Espontaneidad

Multiculturalidad

Segregación

Periurbanidad

Espera

Olvido

Trabajo

Ruralidad

Third Party Funding in International Arbitration in Iran

Financiamiento de terceros en arbitraje internacional en Irán

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ABSTRACT

The present research focuses on arbitration, which seeks to examine the advantages and disadvantages of third party funding(TPF) and its differences with other forms of financial interference and determines who can act as an investor. The result of this research is that third party funding has disadvantages and advantages that in general, its advantages are dominated due to the difference in volume of funding, and investors in this area can be lawyers, insurance companies or any other person who is not prohibited by law and can be simulated and executed under the Article 10 of civil law.

Keywords: Third Party Fundings, International Arbitration, Differences, Independence of the Referee, Costs of Proceedings

RESUMEN

La presente investigación se centra en el arbitraje, que busca examinar las ventajas y desventajas del financiamiento de terceros (TPF) y sus diferencias con otras formas de interferencia financiera y determina quién puede actuar como inversionista. El resultado de esta investigación es que la financiación de terceros tiene desventajas y ventajas que, en general, sus ventajas están dominadas debido a la diferencia en el volumen de financiación, y los inversores en esta área pueden ser abogados, compañías de seguros o cualquier otra persona que no esté prohibida. por ley y puede simularse y ejecutarse de conformidad con el artículo 10 del derecho civil.

Palabras clave: financiación de terceros, arbitraje internacional, diferencias, independencia del árbitro, costos de los procedimientos

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Introduction

One of the issues that are considered for discussion is the cost to individuals. There has always been a view that the cost and timing of arbitration are less than costs of proceedings and judicial services, but this depends on the legal system of the host country, the complexity of the case and the possibility of resorting to existing jurisdictional competence. Access to justice is one of the fundamental rights around the world that has come into existence with various tools and methods to achieve this, which, of course, are not always efficient, but its advantage is sharing a global concern (Endicott, 2012), which leads to better solutions. When one of the arbitration agreement parties cannot afford the costs of arbitration, it practically deprives the right of access to justice because it does not find the opportunity to express his claims. In order to access to justice, it is vital that right holders in a judicial or quasi-judicial process can obtain the right by legal means. Here, the issue of TPF in arbitration arises and its significance is determined. It is crystal clear that in international commercial litigation, that generally the amount claimed cash is significant, if the loser party due to incapability to judge in arbitration courts, cannot claim and recover his lost rights, he will suffer of great losses. From the author's opinion, third party funding in the arbitration is a positive step towards the implementation of justice. Compared to legal litigation, the issue of a third party's funding in international arbitration is one of the new issues in the international arbitration field.

The precise definition of TPF is ambiguous, and its legal and moral exemplifications in international arbitration remained mostly unchecked (Pinna, 2010). However, definitions have been provided regarding this term, including third party funding, in particular, is a financing method that includes non-refundable funding in litigation or arbitration, which, in return, provides a share of the profits by specialized suppliers (with good faith) that are neither parties to the dispute nor closely related to the dispute and whose sole benefit is monetary (Cremades, 2011). However, who are the specialized suppliers, there is much debate that will be addressed in this article.

Many countries have accepted this legal innovation and implemented it in their legal system. Australia and England have significant experience in the TPF market. Australia was the first country to create a TPF market in arbitration and litigations (Cremades, 2013). Today, third party funding is spreading around the global. The Hong Kong Law Reform Commission has recently conducted a deep study on third party funding in arbitration, organized by a committee of experts. The committee suggested that such a reformation would be possible under domestic law. However, they stated that financial and ethical standards would be developed for this purpose (Boulle). Singapore also endorsed the adoption of its bill on the amendment of its civil law dated January 10, 2017, by abolishing the common law of quasi-crime about champerty of TPF. The framework established by law in the regulations (third party funding) was described at the appendix of the civil law. As it can be seen, countries are constantly adopting such a phenomenon and try to apply it in their own laws (CAG, 2006), which we will discuss in more detail. In addition, the International Council for Commercial Arbitration has created a special TPF team in partnership with the University of Queen Mary, London. However, third party funding in arbitration also has damages and challenges, since in fact the third party investor is not a party to the arbitration and has not a position but is beneficiary due to the funding. This can be the reason for his undue involvement in the course of the arbitration. Therefore, third party funding is in fact a two-edged knife that should be used with caution.

On the other hand, some countries prohibit third party funding in arbitration. In some systems, TPF may be considered as usury. Some legal systems also know conditional contracts illegal. However, what is certain is that the domestic laws of the countries will adapt about the various aspects of such a phenomenon, since the existence of such a phenomenon can help the realization of justice, if it is within the framework of financial and moral standards. Hence, Iran, as a funding country, needs such an important acceptance in order to ensure investors and foreign companies to achieve their rights. Apart from explicit prohibitions on some legal systems, TPF contracts may also be subject to interferences. In some jurisdictions, TPF contracts can be regulated in accordance with the definition of regulatory financial regulation. In some US states, the after the event-TPF construction is considered as a non-refundable loan (Garcia, 2018). In the Netherlands, a TPF contract between the professional parties informed of the potential risks and benefits is certainly supported by a legal court. In terms of litigation delivery to third parties, the French law is relatively complex and not regulated. Although it seems to be no guidance in judicial proceedings, French law prohibits the litigation delivery related to damages. In addition, in order to preserve the trust of society in the functioning of this system, Article 1597 of the civil law prohibits the acquisition of specific claims by individuals involved in the legal system (Barker). In Germany's law, there is little market for commercial TPF, and it is expected that market grow in the near future. Investors are usually involved in commercial litigation, part of the befor the event- LEI competition market (widely used in the German consumer market) (Cremades, 2013). In England and Wales, the principles of common law against maintenance, and champerty (as well as lawsuit) are the main obstacles to the creation of a market for litigation. Under common law, maintenance means intrusive intervention that in any way does not belong to the prosecutor or helps to any of the parties through money or other means. This assistance in prosecuting or defending litigation is by a person who has no good faith in the matter or involves interference with another person's litigation. Champerty, which is a kind of maintenance, involves support (financial or other means) from litigation and lawsuit refers to litigation stimulation. The prohibition of champerty agreements is essentially a lawsuit-investing ban. This prohibits the financial support of another person's litigation for a share in the proceeds. If a contract violates the prohibition of maintenance and champerty, then that contract is considered invalid. Third party funding in Hong Kong is in the early stages of its development compared to other countries with common laws like Britain and the United States. This is mainly used to invest in insolvency cases since funding in such cases has been permitted in Hong Kong since 2010.

In this paper, the author attempts to study the various dimensions of TPF in arbitration considering the actions of various countries, and the its capability to apply in domestic laws of Iran, according to what has been posted so far, and

that the subject of this research is completely novel. One of the challenges of this research, which we will discuss in the article, is who can be involved as a third party in investing in arbitration. To sum up, we are attempting to study this innovation from the viewpoint of international law and the rules governing international arbitration, and to study its domestic dimensions applicability. The purpose of the new laws and regulations has always been to protect the interests of individuals, and since third party funding can help to protect individuals' rights and access to justice. On the other hand, because this is a new and emerging phenomenon and lack of research in this field is obvious in our country, its importance becomes serious. The lack of such research leads to the fact that this legal innovation in our country has not taken into consideration and, consequently, no action has taken to examine its feasibility in domestic laws and ultimately its implementation. Therefore, the purpose of this study is to examine the TPF in international arbitration and, accordingly, these assumptions are introduced (Endicott, 2012) the third party funding in international commercial arbitration is effective on the performance of arbitration and at the same time, it can cause delay and miuse and can be effective in domestic law for better access to justice. (Pinna, 2010) All natural and legal persons with the required qualifications and competence may participate as third party investors in arbitration cases unless otherwise provided by law (Cremades, 2011) Third party funding in international commercial arbitration can be effective in adjudicating their rights; and (Cremades, 2013) Third party funding in international commercial arbitration may has arbitration proceedings face with challenge of delay and misuse.

Research Methodology

The method of this paper is descriptive-analytic. This paper is collected using library tools and based on the description and analysis of the contents related to the subject from foreign books and articles. After studying the intended sections, considering the organization of the paper and the initial plan, notes were taken and then in each section, these notes have been used in the topics covered by referencing the exact source. About collecting information, it has been effort to obtain context from authoritative sources.

findings

Legal implications of third party funding

In the field of arbitration, third party funding is a specialized type of financing of a dispute in which a third party provides arbitration costs to one of the parties of the dispute. Instead, the investor requests a degree of control over the case and receives a percentage of the loss determined in the event of success. If the dispute fails, the investor will not receive any damages and will pay the legal expenses of the claimant team as well as other mutual costs. The volume of litigation and arbitration costs is very high, and often exceeds hundreds of millions of dollars. This leads to attracting investors and, therefore, has its own legal effects, which, a brief description of each one is described below.

- The effect of TPF in the refereeing process: If presence of a third party funding plan is not disclosed to the court at the beginning, an arbitrator may not know that he is in a conflict of interest position (Cremades, 2007). The potential consequences of a conflict of interest between an arbitrator and a third party investor of a party may disrupt the overall arbitration process. Beyond the concerns about the legitimacy and integrity of arbitration tribunals, there is a need for an information disclosure regime that is also stimulated by third party funding agreements through concerns about effectiveness. A definitely worse scenario is that after final verdict is issued, revocation trials are based on the absence of an arbitrator's independence or impartiality due to a conflict of interest with a third party investor. Revocation translates to time and loss of significant sources that can be prevented by mandatory disclosing the third party funding measures.

- Independence of arbitrator and conflict of interests: Contrary to the principle of neutrality, which refers to the absence of a deviation and illegal mental bias of an arbitrator towards one party or issue of a dispute, independence refers to the arbitrator's relations with other parties or actors involved in a dispute, which is assessed based on an objective basis and requires that an arbitrator discloses any conflicts of interest with the parties or with third party investors. The principles of the independence and impartiality of judges also include the absence of appearances of dependency or bias. The principles of independence and impartiality are provided in the rules of the main arbitration institutions. Articles 11 and 12 of the United Nations Commission for International Trade Rules of Arbitration Laws (UNCITRAL) provide for the independence and impartiality of the arbitrators and their respective duty to disclose the circumstances, which may lead to a challenge to these principles. Article 14 (Endicott, 2012) of the International Convention on the Settlement of Funding Disputes (ICSID) requires that arbitrators have a high degree of moral integrity and be able to be independent in their judgment and Article 57 of the ICSID Convention, expresses the ineligibility of an arbitrator on the basis of any fact, of the apparent lack of qualifications required by paragraph 1 of Article 14.

Ethical Concerns and Legal Challenges

Discussion on ethical issues in common law countries focuses more on ethical rules of professional counseling than on the application of maintenance and champerty doctrines for TPF relationships. Among these cases, it appears that these jurisdiction fields are free of old doctrines of maintenance and champerty, and of the possible constraints of their TPF measures. Here are some of the key issues in this area.

- Third Party funding: Maintenance is an aid in prosecuting or defending a legal case granted to a claimant by a person who has no benefit and interest in the good faith in the lawsuit, that is, the intervention in another person's lawsuit. The champerty is an agreement between an intrusive interventionist in a lawsuit and a claimant, whereby the intervener helps to pursue the claimant and, in return, receives a portion of the amount paid. (Jern-Fei Ng, 2010) In a simple word, in USSC, maintenance helps someone else to prosecute for a lawsuit; champerty is keeping a lawsuit for a financial benefit at the end, and disputing is continues of maintenance or champerty activity. According to the definition, these doctrines prevent TPF. However, in practice, as shown later, the restrictions imposed by these doctrines are often moderated or abandoned. Theoretically, some jurisdictions of the common law still consider the intervention of a third party to be inaccurate. However, in practice, these rigorous ethical regulations have been significantly moderated in many jurisdictions and have been completely abolished in some jurisdictions. However, champerty has not yet gone away. The courts can still abandon the TPF's agreement on the basis that they are of a kind of champerty one, and therefore are contrary to public policy. In addition, some interpreters and organizations such as the US Chamber of Institute for Legal Reform (ILF) purposes reviewing the previous ban on Anglo-Saxon champerty law. Ultimately, these doctrines can be considered as a pre-existing legal framework for TPF, which has made redundant the more regulations in this area. However, these doctrines are older than the TPF industry and therefore are not ideal frameworks, especially considering the contrast between their forms and their application across different jurisdictions, and the lack of relevance to modern business transactions.

- Third party funding and usury: Laws of usury prohibit high interest rates and in relation to its historical significance, is similar to the champerty doctrine. The obvious question that arises here is whether the TPF agreements can be considered as a loan with regard to the utility of usury. In the first place, it seems that the rules of usury consider most of the funding agreements to be illegal. It is not yet clear whether all TPF agreements can be considered as loans or not. In relation to the United States, the law in most states considers fundings in TPF agreements, not their loans, because of their conditional nature. Therefore, investors are not subject to the legal restrictions imposed on interest rates by the laws of usury. However, the local ban on usury can, under certain conditions, still affect the validity of funding agreements if the investor seeks for a high rate of return and a successful lawsuit, because usury agreements are against public policy, and for this reason, one can abolish them.

- National limitations in international arbitration: The purpose of several doctrines is essentially to prevent certain procedures in the area of litigation. This raises the question of whether these doctrines are applied in the private arbitration world. It is likely that the remaining restrictions or prohibitions imposed by these doctrines will not load any burden on arbitration disputes due to the inappropriateness of the general political protection of the internal civil justice system, the system which is the basis of the prohibition of legal proceedings of the courts. In the private arbitration world, the parties' demands are mainly dominant and prominent (Kantor, 2009). There are numerous probabilities in which these doctrines can play an important role in international arbitration. First, the parties and the tribunal must obey the local mandatory laws that judgment takes place. Secondly, a court can, in executive procedures, impose its opinion on the validity of TPF agreements or decide that the TPF agreement is in conflict with public policy. One can also imagine a situation in which a claimant investor guarantees payment or satisfaction vote and subsequently no longer has a great desire to divide the amount agreed upon with the investor. In such cases, the funding client is trying to get a ruling from the local court to reject the funding agreement, which releases the invested party from its obligations. The author agrees with Rodgers' view that the champerty and the related doctrines are not types of public policy, because they targeted the parties for funding agreements, not for the ethical result of which they invested. However, many interpreters still suggest that the implementation of votes can be rejected for reasons of public policy, in spite of the fact that there is no general public in which identification and execution are actually due to the fact that an investor Is involved in trials, has been rejected (Rodak, 2006).

Moral duties of lawyer

The topics discussed in this section are of a more theoretical nature, because the local ethical rules are generally not applicable to the consultation of the parties in international arbitration. However, it seems that some investors do not want to accept that none of the ethical rules will be applied and therefore still act cautiously, for example, when transferring legal documents from or to lawyers. There are regulations to illustrate this issue that includes, confidentiality, the interests of the lawyer's ethical duties, the duty of knowing and the duty of informing a lawyer about third party funding.

Advantages of Third Party funding

Access to Justice: The importance of third party funding in facilitating access to justice is widely accepted in many jurisdictions around the world. The right holders in arbitration cases that have limited financial resources can use third party funding to pursue and resolve their claims. An increase in third party funding has coincided with a significant decline in public funding in civil matters in countries such as Britain and Australia. The British Revolutionary Court's decision in Arkin's case against Borchard Lang is considered a milestone in recognizing British courts that third party funding can provide access to justice. In Australia, the main and fundamental decision of the court regarding third party funding is the decision of the Australian Supreme Court on Campbell Cash and Carrie Petty LTD against Fastiue LTD (Scherer, 2013)

- Risk management and financial support: Third party funding not only provides financial resources, but it can also be followed up by a lawsuit, as well as providing opportunities for managing financial risks along with pursuing a

lawsuit through arbitration. A claimant can transfer some or all of these risks to the investor. The claimant will has the opportunity to obtain a successful compensation without the need to pay legal fees and other expenses incurred during the pursuit of the claim, or without the need to provide or allocate funds to deal with the consequences if the lawsuit failed (Max Bonnell, 2008). Controlling arbitration costs is one of the most worrisome issues in the arbitration community (McLachlan, 2007). The ability to distribute and share these risks with a third party may be appealing even for clients with strong business and financial flows.

- Verification: Before the agreement on the funding on a lawsuit, much extensive verification activities will usually be carried out by the investor. Some investors will carry out verification with external consultants at the expense of the client or themselves. Most verifiers invest mostly internally, relying on the skills and experience of their funding staff. An investor carefully and thoroughly analyzes and evaluates all aspects of the claim that he/she wants to accept its financial risks and analyzes and evaluates all aspects of a lawsuit that he or she has been asked to divide or control his financial risks. These factors include the prospect of litigation success, possible controversial lawsuits, the conditions of the arbitration agreement or treaty, the arbitration institution and the composition of the arbitral tribunal (if specified), the place of arbitration, the material rights of the dispute, the amount of the claim in comparison with the costs and its probable pursuing risks and the risks associated with executing and obtaining a payment under a single vote (including, for international commercial arbitrations), this question, which is a valuable asset in a government that is a signatory to the New York Convention.

-Experience: An experienced investor will be able to help the lawyer and claimant during the period of verification and arbitration, for example, in selecting advisers, experts, arbitrators and in appropriate cases related to the jurisdiction, in strategic and tactical decisions during the judgment. Given a wide range of specialized and experienced skills and consistent with their own business goals, an investor can add value to the management and resolution of arbitration cases. Usually, the investor will agree to hire the lawyer of claimant. Sometimes the claimant understands that his lawyer does not have the necessary skills and experience to conduct the arbitration and seeks help from the investor to get a more appropriate lawyer. Always, the lawyer who works for the claimant will remain the lawyer and will exclusively have duties and responsibilities to the claimant. The lawyer will probably be required to submit regular reports to the investor to monitor the progress of the lawsuit and ensure compliance with the obligations of the claimant under the funding agreement (especially in cases where there is compensation).

Disadvantages of Third Party Funding

Certain specific risks are unavoidable in third party funding in commercial arbitration and international treaties. Many of these risks originate from significant amounts of money that should be spent on the arbitration process and significant amounts that likely to be cast in the vote. Claimants and their lawyers must fully understand these risks so that claimants can make consciously and informed decisions regarding the use of TPF. The main risks associated with the ways in which most of these risks are addressed are described below.

- Unfair conditions: By providing funding, investors may find economies of scale in relation to the willingness of the investor to obtain the result of the dispute. Equally, more-endangered investors are dependent on continued cooperation and goodwill to advance bilateral efforts. In the field of litigation funding and in the case of small or unskilled claimant, the balance of economic power between the investor and the claimant has been one of the concerns of legislators (Choharis, 1995). It is a concern that an investor can, by insisting on unfair conditions in a funding agreement and using his economic position to renegotiate a situation against the claimant, at the final stage of the litigation process or in resolving a lawsuit in a way that is not compatible with the best interests of the client, it provides poor conditions. A claimant and investor may have a great deal of autonomy in designing a funding agreement and choosing the law governing a funding agreement, but since funding is not constantly regulated, this also means that the claimants enjoy low regulatory support (Pitkowitz, 2018)

- Investor's financial resources: An investor agreement to pay legal expenses of claimant and any harmful expense order may be misleading if the investor lacks sufficient capital or insurance to meet his obligations. It is important that the assets and capital structure of the investor be well understood by one of his claimants and advisers, and then it is easy to imagine the investor's ability to fulfill all the obligations that may occur under a funding agreement. Therefore, claimants must fully examine the investor's funding position and the transparency of his business structure before entering into a funding agreement. When seeking funding, their claimants and their lawyers must perform a precise validation about investors who want to invest in their claims, both because of the investor's financial position and record of backgrounds and in terms of the experience and competence of his employees.

Conflicts of Interests: The lawyer of claimant may be unreasonably affected by the investor (because the investor pays bills) and, in this case, is more in favor of the interests of the investor than the interests of the claimant. Lawyers should carefully review any relationship that maybe with an investor and ensure that all necessary information is disclosed to a client so that the client can make conscious decisions about the funding issue and the risks and benefits (Radek, 2016). This can be difficult and hard in the area of negotiation to resolve disputes, especially in situations where the investor and the claimant may have a disagreement to settle a lawsuit.

- Confidentiality and issues of special rights: The duty of a lawyer to be confidential with regard to a client seeking

funding may be compromised by providing information related to lawsuit to the investor. Usually, a confidentiality agreement will be signed between the investor and the claimant at first, or the confidentiality regulations will be inserted in the funding agreement. However, depending on any jurisdiction, the contractual rules of confidentiality may not prohibit a reader to access documents that are available to the investor if they are related to the issues (Review of Civil Litigation Costs, 2009). In addition, there is a risk that special legal right contained in the documents provided by the claimant lawyer or in the event of disputes, in cases where the other special right relationship is given to the investor, be ignored or that the relationship between the investor and the invested claimant or the claimant's lawyer for a special right claim in jurisdictions that do not recognize the special right of mutual interest does not protect. These restrictions will reduce third party funding in these jurisdictions, and if full benefits of the TPF are available, it may ultimately require the decisive authority of the court or the legislator's intervention (Appelbaum, 2005).

Disclosure of Funding and Costs: In relation to the investor and his client, the issue of disclosure of the funding agreement to third parties is fundamentally related to the agreement between them. However, a wider question arises as to whether or not the claimant is committed to inform an investor's participation in a lawsuit or a judgment. It seems that there are no relevant rules in any prominent arbitration institutions that force one party to disclose the investor. However, this information may be disclosed by the investor during the arbitration. Claimant may wish to voluntarily disclose the use of the funding, and the investor may, under any circumstances, or during verification, be informed of the funding during the arbitration period or when negotiating to resolve the dispute.

- Investors regulation: Unlike lawyers whose activity is regulated by the local community or the legal community, there is little external control over the activity of a third party investor, except where this may be due to the location of the investor company; (for example, if the investor is listed on a stock exchange) or where the investor enters into funding measures (for example, funding measures may be regulated products by law). There is currently no comprehensive global legal regime for monitoring third party investors in international commercial arbitration or treaty litigation. Given that arbitration tribunals usually do not have the power to issue judgments against third parties, the limited ability to regulate investor activity in an international context can create real problems with the arbitration. Likewise, arbitration firms have no specific rules that require a party to disclose a funding contract, so arbitrators may not even be aware of an investor's involvement. As stated above, a statutory analysis needs to analyze the rules of each relevant legal regime at the place of arbitration. Such as the National Financial Services Regulations (Perry, 2018).

Law applicable to TPF

When examining Private International Law (PIL) issues, we must distinguish between different relationships and identifying the applicable law:

- Law Applicable to the Nature of the Funding Dispute (law governing claims): Funding treaty, the law applicable to the contract itself (to the extent that it relates to funding arbitration).

- The law governing claims may also specify whether and to what extent claims for damages can be transferred to third parties.

Applicable law on arbitration agreement between Investor and host government: Funding treaty or law applicable to arbitration clause

Law applicable to arbitration itself (law governing arbitration): ICSID treaty or arbitration law of arbitration law (means the national legal system through a statutory clause)

-The law applicable to the TPF contract between the claimant and the TPF investor

-The law applicable to the legal services contract between the claimant and the legal adviser/lawyer who is lawyer of the case. Considering that, each of these rules is applicable to the ethics of the Bar Association governing the exclusive right of the client-lawyer).

- Law applicable to the ethics of professional counseling established by the Bar Association of which he is a member.

Entering into a TPF contract with a choice-of-law clause (and a sub-court selection clause) and the associated legal system - such as German or Dutch law - as substantive rights applicable in the world of international arbitration would be better and relatively easy. However, one cannot argue that a court that is definitely opposed to the TPF's participation considers such a contract to be contrary to mandatory rules.

Funding Alternative Products: Flexible contractual arrangements governing funding of third party are of high value and are structured to suit specific parties, realities, and jurisdictions involved in litigation. The authors understand that there are no products or funding measures specifically designed for an international treaty or commercial arbitrations [28]. Treaty claims have unique procedural features and create additional procedural barriers. None of the main institutional rules contains explicit law regarding funding measures. Therefore, the funding options available in international arbitrations are depended on the location of the parties, the law of the location of arbitration and other relevant laws, and the creativity of claimants and their advisors.

Lawyers in the United States often work in a consensual manner. This is not only common in lawsuits, but it also occurs in many forms in international commercial and treaty arbitration. Under a contractual fee arrangement, the lawyer will receive a percentage of each financial vote as part or all of the legal services he provides, and if there is no return, the lawyer will not receive any fees. Usually, since lawyers often risk significant professional fees, these measures are only taken by lawyers when a lawsuit is sufficiently well documented and a sufficient and appropriate return to compensate for non-payment risk to a lawyer be considered to enter into these agreements. Consensual measures between a lawyer and a claimant can allow the claimant to share the risk of paying lawyer fees.

Conditional Fee Agreements (CFAs) are a type of conditional fee agreements that are permitted in the UK and have become a common form of funding for civil lawsuit in this field. Although the agreement does not appear to be very broad, some English consultants work in arbitration under conditional measures. A CFA is an agreement between a law firm and a client stating that legal fees and costs or any portion of them will be paid in certain circumstances only if the client wins the proceedings. In these circumstances, the lawyer will receive his usual remuneration plus a successful remuneration. At present, the fee for success in England can be obtained from the loser.

In addition to the products described above that include lawyers and insurers, non-credit swaps of financial institutions may enable a claimant to reduce the inherent risks of arbitration proceedings.

- TPF Procedure: We do not know much about TPF procedures in commercial litigation. Commercial TPF investors operate in small markets with relative independence. They do not advertise extensively for their funding opportunities. However, it is clear that TPF is a comprehensive funding product and is not a contract for legal services. The TPF investor usually proposes to pay all costs imposed in a lawsuit against an agreed premium that is only payable in case of success. Successful premium can be paid in installments (for example 20% on the settlement before a hearing, 30% on court success up to € 500,000, 20% on amounts over € 500,000). TPF investors prefer high-risk commercial litigation in such areas as patent litigation, antitrust litigation, and international arbitration. There are risks include losing that case, ordering to pay your own costs and the costs of the other party, and difficulties in implementing and receiving the lawsuit. Measures may vary depending on whether these risks are shared or how the risk is transferred to the TPF investor. The risk associated with high returns in winning cases is claimed to be 30% to 50%.

Possibility of third party funding in arbitration in Iranian law

Disputes over funding contracts in countries such as Iran have always been largely due to existing political interactions. In fact, someday there may be a dispute between the parties to the contract and if the party who has lost his or her rights has suffered damage, due to the inability of supplying arbitration costs, it is barred from access to justice. Throughout the Constitution of the Islamic Republic of Iran, values such as justice, equality have been protected. Therefore, Article 9 of the Third Principle, in which the duties of the State are explained, a very essential duty has been considered: "The abolition of unjust discrimination and the creation of fair opportunities for all, in all material and Spiritual areas." In Article 14 of the same principle is also written: "It is the duty of the state to ensure the full enjoyment of the rights of men and women and to ensure the just litigation security for all and equality of the public before the law."

Principle 34 of the law states: "Litigation is an indispensable right of every person and any person may refer to the competent courts for justice for litigation. All the people of the nation have the right to have such courts available, and no one can be banned from a court that has the right to access it under the law." Constitution, which is the guider of the parliament in legislation area, has unequivocally recognized access to justice for all and emphasizes that this should be taken into serious consideration. Therefore, as a legislative pillar in the country, parliament can address this important issue, given the need for the country to be legally along with international law and other leading countries. On the other hand, the Article 10 of civil law expresses that: private contracts are permitted to the parties unless is not in explicit opposition against law. This article expresses the freedom of contracts and in fact, respects the decision of parties. Perhaps, there may be a question of its similarity with the champerty or similar institutions that have been addressed in previous discussions. Therefore, it is possible to consider such an institution in Iranian law and TPF in international commercial arbitration can be utilized under the article 10 of civil law. Hence, it is possible to design such entity in Iranian laws.

Discussion and conclusion

The growing phenomenon of TPF in international funding arbitration raises legal and ethical concerns that are largely unregulated by the core rules of arbitration entities. Given the high deterrent cost of international funding arbitration, the TPF allows a certain level of smoothing in playing field between the parties to a dispute. In some cases, foreign funding may enable investors with insufficient financial resources to initiate lawsuits against host governments and evaluate their claims based on their pros and cons.

However, by introducing another actor in this dispute, third party funding may have a destructive or even disruptive impact on the arbitration process. The purpose of this thesis is to examine the issues raised regarding third party funding in international funding arbitration and to highlight the need for an information disclosure regime to maintain the impartiality and independence of the arbitrators.

In recent years, participants in this industry have been considering increasing interest and demand for third party funding in both litigation and arbitration. This increase is largely due to the increased costs associated with pursuing high-value litigation (especially lawyer and specialist fees) in many organizations that still feel the effects of the global crisis and the need to manage their financial risks carefully related to following up on significant litigation and in some jurisdictions, third party funding for many years has been a feature of the legal landscape. Investing in litigation is one of the institutionalized parts of the justice system in countries such as Australia and other common law countries such as Britain, Canada, and South Africa.

Third party funding refers to the tension between the limited jurisdiction competency of funding courts to resolve disputes between parties and to guarantee the effectiveness and integrity of international arbitration proceedings. Third party funding introduces another actor to international funding arbitration proceedings and thus increases the likelihood of conflict of interest between third party investors and arbitrators. Transparency through disclosure can act as a guarantee of independence and impartiality in funding arbitration proceedings and eliminate some of the legal and ethical concerns stated above. In international public law, international funding arbitration is structured differently from commercial arbitration. This type of funding requires a higher threshold of transparency, by disclosing the existence and (at least) the identity of third party investors due to the public interest involved in funding arbitration proceedings that governments are the parties.

The formal or explicit rules or regulations that are disclosed by third parties invested by third parties are currently insufficient to address this emerging phenomenon. However, nonobligatory votes, decrees, laws and instructions, and recent guidelines that provide the best practices indicate for greater transparency at the international level. These developments reveal a gradual change in the regulatory framework for third party funding, which is likely to help increase the effectiveness and integrity of international funding courts.

Although there are numerous funding options available for international treaty and commercial litigation, the advantages and financial risks associated with litigation suggest that they will likely provide attractive opportunities for future third party investors, and therefore they will be a valuable source for the claimants. The challenge is to ensure that resources of claimants and investors remain in the right balance and reflect the contrast between risks and benefits. Third party funding is neither a panacea nor a pest. Rather, for proper litigation, this approach can provide significant commercial benefits to claimants, and its evolution in the field of international treaty and commercial arbitration should be fostered rather than restricted. In Iranian law, it is possible to resort to third party funding in international litigation and it can be simulated and executed under Article 10 of the Civil law.

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Favorable legal environment as a condition for the realization of criminal procedural rights and the proper performance of criminal procedural duties

Entorno legal favorable como condición para la realización de los derechos procesales penales y el cumplimiento adecuado de los deberes procesales penales

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ABSTRACT

The article investigates the problem of legal support of the participants of criminal proceedings for the implementation of the rights granted to them by the legislator and the proper performance of their criminal procedural duties. Obstacles to the implementation of criminal procedure rights and obligations of normative (gaps, conflicts of legislation) and organizational (illegal actions of subjects, their inaction) nature are identified. The existing views of scientific researchers on the correlation of rights and obligations in the sphere of criminal justice as paired legal categories are studied and analyzed. We analyzed the provisions of the current criminal procedure legislation in Russia from presence/absence of legal conditions ensuring realization of rights and performance of duties by the participants of the criminal process.

Keywords: Favorable legal environment, rights and obligations of participants, criminal proceedings.

RESUMEN

El artículo investiga el problema del apoyo legal de los participantes en los procesos penales para la implementación de los derechos que les otorga el legislador y el cumplimiento adecuado de sus deberes procesales penales. Se identifican los obstáculos a la implementación de los derechos y obligaciones de procedimiento penal de naturaleza normativa (brechas, conflictos de legislación) y organizacionales (acciones ilegales de los sujetos, su inacción). Se estudian y analizan las opiniones existentes de los investigadores científicos sobre la correlación de derechos y obligaciones en el ámbito de la justicia penal como categorías jurídicas emparejadas. Analizamos las disposiciones de la legislación procesal penal vigente en Rusia por la presencia / ausencia de condiciones legales que garanticen la realización de los derechos y el cumplimiento de los deberes por parte de los participantes del proceso penal.

Palabras clave: entorno legal favorable, derechos y obligaciones de los participantes, procesos penales.

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INTRODUCTION

In the science of criminal procedure and among practitioners engaged in criminal proceedings, there is a common view of the norms of criminal procedure law as a source of criminal procedure rights and obligations of participants in criminal procedure activities. That is, the content of the norm of criminal procedure law is considered as a rule of possible or proper behavior of participants of criminal proceedings.

At the same time, in order to properly apply the criminal procedure norms in the course of criminal proceedings in a criminal case it is necessary to clearly understand the way of their impact on the participants of the given proceedings.

It is generally accepted to subdivide criminal procedure norms by the method of legal regulation into three types.

Administrative norms in which the legislator determines the possible behavior of participants in criminal proceedings, giving them procedural rights (in particular, the victim - the right to have a representative (paragraph 8 of Part 2 of Art. 42 of the Criminal Code (CC) of Russia), the accused - the right to bring complaints about actions (inaction) and decisions of the inquirer, the head of the department of inquiry, the head of the body of inquiry, the body of inquiry, the investigator, the prosecutor and the court and to participate in their consideration by the court (paragraph 14 of Part 2 of Art. 47 of the CC of Russia). Participants may exercise (or not exercise) these rights at their own discretion. Here, the method of regulating the behavior of participants in criminal proceedings is permission.

Obligatory norms that determine the proper conduct of participants in criminal proceedings. Such norms are characterized by a mandatory method of regulation, by virtue of which participants do not have the right to choose their behavior, and must certainly obey the prescription of the law. For example, an investigator who has detained a suspect who is a lawyer is obliged to notify the Chamber of Advocates of the Russian Federation, of which the suspect is a member, within 12 hours (part 1, clause 2.2 of part 2 of article 96 of the CC of Russia).

Prohibiting norms, which contain requirements to refrain from performing any actions (mentioned in the norm) for a participant in criminal proceedings. Such norms, as in the case with binding norms, apply a mandatory method of regulating the behavior of a particular participant in criminal proceedings by using the following terms:

- Has no right" (for example, a person may not disclose the data of a preliminary investigation which he or she has become aware of in connection with his or her participation in the criminal proceedings as an interpreter, if he or she has been warned in advance in accordance with the procedure established by Article 161 of the CC of Russia (Article 59.4.2 of the CC of Russia);

- Prohibited" (for example, in the course of criminal proceedings it is prohibited to carry out actions and take decisions humiliating the party to the criminal proceedings, as well as to treat them in a manner that humiliates their human dignity or endangers their life and health (article 9, part 1, of the Code of Criminal Procedure);

- "Inadmissible", etc.

Despite the rather large amount of accumulated theoretical knowledge in the field of interpretation of criminal procedure terms, categories, institutions (Proshlyakov, Akhmatov, 2018) and scrupulous normative regulation of the behavior of participants in criminal proceedings, law enforcement practice unfortunately demonstrates a large number of difficulties arising in the use, execution, observance and application of criminal procedure norms.

These difficulties in legal science have been suggested as obstacles. Perhaps, A.V. Malko, a scholarly legal theorist, made the most significant attempt in this matter. In particular, he developed a theory of obstacles related to the optimization of legal stimulation and legal limitation, with the identification of the most typical and harmful to the legal organization of public relations and their concept, classification by various manifestations in the legal system of modern society.

At the same time, he proposed three groups of classifications of these obstacles: 1) manageable and not manageable; 2) absence of a required legal norm or a decisive legal fact and offence resulting from "shadow management"; 3) illegal incentives and illegal restrictions (Malko, 1994).

In the development of this problem other researchers from different branches of law also supported it. In particular, attention should be paid to the work of Sandra Lyngdorf and Harmen van der Wilt, which is devoted to useful guidelines for assessing "unwillingness" and "inability" in the context of the principle of complementarity to implement procedural obligations under the European Convention on Human Rights (Lyngdorf, van der Wilt, 2009).

As well as the Russian representative of the science of civil law and civil process Vavilin E.V. (Vavilin, 2009), proposed a classification of obstacles acceptable for our study, dividing them into formal and factual ones.

The first include obstacles related to the limits of the implementation of rights, certain legislative acts containing prohibitive and binding norms, as well as related to the imperfection of the formal level of the legal system (gaps, conflicts, "inconsistencies" that have lost the relevance of the prescription in the current legislation).

The second group of obstacles includes organizational obstacles directly related to the process of implementation of rights (shortcomings in law enforcement, illegal actions of citizens and state bodies, their inaction, conflict of legitimate interests of the parties, as well as insufficient material security of legal activities).

The significance of the given knowledge of the theory of obstacles makes it possible to reveal specific difficulties (type of obstacles) in the realization of rights and performance of obligations by subjects of legal relations and to establish "weak points" of the current legislation at the present stage of development of the legal system of Russia.

The subject of our research to a greater extent covers the obstacles of a formal nature, i.e. normative (covering the provisions of the criminal procedure legislation).

Formal or normative obstacles (errors or failures of the legislator in the form of gaps, conflicts, outdated provisions) should be established and eliminated, thus ensuring the unimpeded and full implementation of rights and the possibility of proper performance of duties by participants in criminal proceedings. Since this legislative activity is connected with human (legislator's) activity, its defects are undoubtedly subject to influence, so they should be identified and corrected. It is necessary to correct in such a way as to achieve such a law-applicable result when the corresponding conditions in the form of norms fixed in the criminal procedure legislation will effectively ensure the realization of rights and performance of duties in the sphere of criminal proceedings. In our understanding, the legislator should create such a legal environment for the participants of criminal proceedings, which would allow him/her to motivate him/her to use his/her rights and properly perform his/her duties in order to achieve personal or public interest.

Of course, the legal environment is only one of the many systems that are covered by the general concept of the environment - the environment of human habitation.

The encyclopedia of environmental sciences defines the environment as "the totality of all external conditions and influences affecting the life and development of the organism" (Platt, 1971), but the definition of "human environment" should go further. The human environment is more than external, since the internal and external are relative concepts, and the individual is an important component of his or her own environment. Thus, the human environment is a set of all conditions and influences that influence the behavior and development of a person as a person and society. "Conditions and infusions" change in time and space and, although often separated, are perceived and perceived by each person or society in different ways (Saarinen, 1969).

Taking into account the diversity of levels of organization of being, our world consists of a large number of environments, not one. Of course, one of such environments is the "biosphere" - the global environment. Nevertheless, there are many other environments that are as problematic, perhaps more understandable and easily treatable, and much closer to the individual than the global environment

Note that everything in the world is interconnected and therefore each environment is a system that overlaps, influences and is influenced by other systems. They resemble ecosystems (or at least are significant parts of ecosystems) in the sense that they are units of space where biotic and physical components and processes interact with each other to create models of energy and material flows and cycles. In the human environment, these components and processes, called scientific structures and functions (Odum, 1962), are not limited to those that originate from "nature". Indeed, they include social, economic and political (Smith, 1972) or cultural (Boyden, 1976).

The environment related to human activity can be the most diverse: school, university, industrial, etc. That is to say, to correspond to the space and activities that are carried out in this space. In our case, we connected our research with the right-wing space, in particular with the sphere of criminal procedure activity.

Our task is to develop and offer a theoretical model of such a legal environment, which allows a person (a right-wing subject) to achieve personal and public interests without hindrance by implementing rights and performing duties. In our case, in particular, in the sphere of criminal proceedings.

Of course, we are not the first in solving this problem. Therefore, it is fair to say that there are specific recommendations regarding the implementation of rights. For example, Ioanna Tourkochoriti has devoted her research to the problem of how best to exercise rights (Tourkochoriti, 2019).

Aim. Assessment of the current in Russia criminal procedure legislation and positions existing in legal science, concerning the efficiency of regulation of relations in the sphere of criminal process and setting the conditions ensuring the realization of rights and proper performance of obligations by participants of criminal proceedings.

Tasks. To analyze the current state of the norms of the acting criminal procedure legislation from the position of existence, the conditions fixed in it, providing the unimpeded realization of rights by the participants of the criminal proceedings and the opportunity to properly perform their duties. To study the existing views of legal scholars on the relationship between rights and obligations in the sphere of criminal proceedings. To formulate a proposal on a conceptual approach to the legal environment, which would be a guarantor of the efficiency of the use of rights and performance of duties by participants of criminal procedural relations.

DEVELOPMENT

Methods

In the course of work on the article, the authors reviewed the information, summarized and evaluated the literature on the subject of the study. The results of earlier conducted researches on the problems of formation of the legal environment, mechanism of protection of the rights of a person in criminal proceedings, correlation of the criminal procedure rights and obligations of participants of criminal procedure activity, and also a problem of maintenance of their realization, proper execution and existing or arising obstacles of their realization during criminal proceedings are analyzed.

The most significant of them are: doctoral dissertations by O.I. Andreeva, B.Y. Gavrilov, E.V. Vavilin, L.M. Volodina; candidate dissertation by I.V. Kutazova; other scientific works and analytical documents of Russian and foreign scientists and law-enforcers on the subject under study have also been studied.

International legal acts (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 and others) and normative-legal acts of national (Russian) legislation (the Constitution of the Russian Federation, the Criminal Procedural Code of the Russian Federation and others) have been subjected to critical analysis from the position of guaranteeing the realization of rights and proper performance of duties by participants of criminal proceedings.

In the course of the research, general scientific methods were used: analysis, synthesis, comparison, generalization, abstraction, induction, deduction, and system-structural methods.

Along with the general scientific methods were applied: the formal-legal method, consisting in the frontal study of the legislation governing the procedural status of participants in criminal proceedings, which allowed to study the provisions of international instruments and Russian legislation. The comparative legal method of research allowed to carry out a comparative analysis of these legal documents; the method of law interpretation, which allows to deepen and expand the results of the application of the formal legal method, to identify both literal and systemic meaning of legal prescriptions and to make a general picture of the aspects and parties of legal regulation of the behavior of participants in criminal proceedings in the exercise of their rights and performance of their duties.

Sociological methods were used to collect empirical material and substantiate the findings of the study.

Results and discussion

Investigating the legal category stated in the title of the article, E.V. Vavilin comes to the conclusion that one of the terms, which are increasingly used in the works, both by law theorists and representatives of branch legal sciences, is the legal environment (Vavylin, 2009). Indeed, the existing works devoted to the issues mentioned by us testify to the fact that their authors approach the analysis and resolution of legal problems from the point of view of their occurrence and possible resolution either in the legal environment or through its formation, optimization and development (Bochkov et al., 2007; Vavilin, 2009; Zhiltsov et al., 2013; Mochalov, 2012; Sigalov, 2008).

In legal science, there is a reasonable question, what is it about, what is this image, called “legal environment”, and whether it corresponds to the phenomenon existing in real life?

The study of the problem gives grounds to believe that the legal environment exists.

That is, it is real, like many other state-legal phenomena, the existence of which is not in doubt. This begs a legitimate question: what is it? As most researchers note, the search for an answer to this question leads to a conclusion about the variability of approaches to the definition of the legal environment.

The search for our answer will begin with the following reasoning.

What is a criminal procedure is an activity that exists through the relations that arise between the participants of a criminal case. The purpose of this criminal procedure is to protect these participants of the criminal case (and all of them, including from the state). It means that this social and legal phenomenon is centered on the individual. The personality of all participants in a criminal case. Ideally, in a rule-of-law state all persons should be equal in everything, and Russia - we believe, the rule-of-law state, therefore, persons in one of its spheres under the name of criminal justice should also be equal. Hence, as it is fixed in the criminal procedure legislation of the Russian Federation, as a beginning - the principle, the dominant feature of all this criminal proceedings should be the equality of these persons, called the participants of the criminal process.

Equality of one person in relation to another in criminal proceedings is certainly ensured by their legal status. This status is known to all to be based on rights and obligations. In this case, the rights ensure the possible behavior of the individual, and the duties - due behavior (normative).

It should be noted that the behavior of any subject in the sphere of criminal court proceedings, through his attitude to the use of his procedural rights and performance of duties depends primarily on the completeness and quality of legislative regulation of his and other participants of the criminal procedural status.

The completeness, clarity, and concentration of the fixation of rights and obligations have been mentioned and spoken about throughout the entire territory of Russia by practically all authors who study this topic (it is enough to recall only doctoral dissertations by L.M. Volodina, B.Y. Gavrilov, O.I. Andreeva and many others) (Volodina, 2003; Gavrilov, 2004; Andreeva, 2007).

Hence, we believe that the law given to the subject of criminal process and the duties imposed on him/her should cover all directions of criminal procedure activity affecting his/her moral-legal and procedural interests, and thus they should provide him/her with their effective achievement.

In this regard, it is true that Karl Marx, who was not deservedly forgotten and famous in his time, said: "There are no rights without duties, duties without rights".

In our opinion, this is the formula of a favorable legal environment for the enforcement of rights and performance of duties by participants of criminal proceedings. In order for the subject to exercise his or her rights, as well as those of other subjects, he or she should have obligations, the performance of which will lead to the creation of a favourable environment, i.e. to conditions ensuring the possibility of the realization of rights (for example, in order for the victim to exercise the right to judicial protection, he or she should fulfil the obligation to appear at the call of the investigation bodies for questioning). Conversely, the performance of duties by the subject is ensured by the presence of rights of this and other participants in the criminal process (for example, in order to fulfill the obligation of proper behavior by the person suspected (accused) - the investigating body must have and exercise the right to apply a preventive measure to such a subject, etc.).

The well-known philosopher Ilyin I.A. wrote in his work devoted to legal consciousness, that people who do not know their duties are not able to observe them; people who do not know their powers (we are talking about state officials), arbitrarily exceed them or cowardly yield to force; people who do not want to recognize prohibitions, easily forget any restraint and discipline or are doomed to legal insanity.

We see the picture where rights and obligations are guarantees for each other.

We believe that reasoning about the unilateral existence of criminal procedural rights or criminal procedural duties is not worthwhile. As a confirmation of their paired nature, we can cite the position of John H. Knox, who in his work on the Horizontal Law on Human Rights concludes that human rights are traditionally viewed as vertical, establishing rights for individuals and obligations for states. At the same time, he criticizes the proposals, which aim at a horizontal reorientation of human rights law, imposing obligations directly on corporations and other private actors. We support his position that these proposals do not take into account the horizontal implications of existing human rights law and risk undermining its structure and opening the door to new human rights restrictions (Knox, 2008).

The concept of a favorable legal environment was, as it should have been, proposed and developed by law theorists, in particular, it is enough to remember the works of N.N. Chernogor and S.N. Khorunzhiy (Chernogor, 2014; Khorunzhiy, 2014). In the sphere of civil law, this category was developed by E.V. Vavilin in his doctoral thesis "Mechanism of implementation of civil rights and performance of duties".

All of them come to a single conclusion that:

> 1. The most important element of the legal environment is a person and his or her social and legal activity aimed at perception, implementation and reproduction of legal provisions. It has a direct impact on the choice of lawful ways of activity regulated by the norms of law of social relations by the participants.
>
> 2. The legal environment is created by active and passive behavior of people in the public-legal sphere of society's life. It integrates the processes of establishment and development of legal relations in time and space.

We agree with the above position, where the individual is at the center, and we believe that in criminal proceedings it also finds its existence by means of, as mentioned above, fixing the equality of participants in criminal proceedings, which is based on their rights and obligations, which ensures their active, positive behavior.

Unfortunately, such a program of behavior of the participants of the criminal process, and thus a favorable legal environment in the current criminal procedure legislation has not yet been fully provided for by the legislator, has not yet been fixed.

We will show it on the analysis of the provisions of the current criminal procedure legislation of the Russian Federation (hereinafter referred to as the CPC of the Russian Federation).

Thus, in accordance with the provision of Article 258 of the CPC of the Russian Federation, the court has the right to impose liability on the participants of the court hearing (for example, as a victim, civil plaintiff, defendant) for violations of order in this court hearing. At the same time, the court is obliged to explain to them their "rights and responsibilities", and there is no such obligation in the legislation (see: Article 268 of the CCrimP of Russia). It turns out that the actions of the court are groundless as to the right to accept responsibility to these subjects, as they were not aware of the obligation to behave properly in the court session. That is, the court does not have a

legally fixed condition for the exercise of its right! Without conscious violation of the duty, responsibility does not come and responsibility.

Further, the right of the person in respect of whom the criminal prosecution is carried out and his lawyer-defender to participate in the evidence is significantly limited (they can not fully influence the formation of evidence), as the investigation bodies have no obligation to allow them to participate in the production of all investigative actions.

As we have previously stated, the dominant principle of the criminal process today should be the principle of adversarial proceedings, during the implementation of which, of course, the equality of the parties should be respected, as we understand it, and with regard to the implementation of the equal right of the parties to carry out investigative actions and participate in them, regardless of whose initiative they are carried out, of the bodies in the proceedings of which the criminal case is pending or at the request of the lawyer-defender and his client.

It follows from this that there should be no restrictions on the participation of a lawyer-defender in the investigation activities in case of application of part 3 of article 11 of the Criminal Procedural Code of the Russian Federation, and, accordingly, the investigation bodies are obliged to allow the lawyer-defender and provide him with the opportunity to participate in such investigation activities. If the investigation bodies are concerned about keeping the information of the preliminary investigation secret, the guarantee of non-disclosure of such information is the responsibility of the defense lawyer in the order of application to him/her of part 3 Article 161 of the CPC of Russia. At the same time, they can use the mechanism of implementation of this procedure, which was developed in his dissertation prepared under the guidance of the author of this article I.V. Kutazova (Kutazova, 2011).

Let us give another rather recent example confirming that the right of one subject of criminal proceedings can be exercised only if it corresponds to the duty of another, which should be properly executed. Thus, part 3.1 of Article 46 of the Criminal Procedural Code of the Russian Federation enshrines the following provision: from the moment a preventive measure in the form of detention or house arrest is chosen, a suspect may have (read - has the right to) visits with a notary without limitation of their number and duration in order to certify the power of attorney for the right to represent the interests of the suspect in the sphere of entrepreneurial activity. At the same time, it shall be prohibited to perform notarial actions in respect of property, funds and other valuables that may be arrested in cases stipulated by the present Code.

We consider that at understanding of sense of the given norm becomes obvious that the legislator here provides the duty of bodies of investigation, the court consisting in obligatory establishment and definition by the given subjects of property, money resources and other values on which arrest can be imposed. In addition, their subsequent obligation is logically to inform the suspect of the property and to warn him or her not to alienate it. We believe that this person is not a seer himself and, accordingly, cannot foresee what the investigating authorities or the court intend to do with his property, money and other valuables.

There are still many examples in this respect. However, being limited by the scope of the scientific article, we believe that this is enough to make sure that our ideas are correct.

Undoubtedly, our beliefs about the normative component, which fixes the basis of a favorable legal environment, are also based on the provisions of international legal acts (Convention, 1950; International, 1996; Universal, 1948), which are recognized by the entire legal world community (the Convention on the Protection of Human Rights and Fundamental Freedoms of November 4, 1950; the International Covenant on Civil and Political Rights; the Universal Declaration of Human Rights), the Constitution of the Russian Federation, and the industry-specific criminal procedure legislation, which already contain fundamental recognition of the existence of this environment.

If we take the national legislation, it is, first of all, a constitutional level where there are guarantees for the realization of fundamental natural and inalienable human rights and freedoms (Articles 20-29 of the Constitution of the Russian Federation).

At the branch criminal procedure level, the legislator has formed the most essential guarantees of the existence of a favorable legal environment as a condition to ensure the proper performance of duties by participants in criminal procedure activities in the provisions defining responsibility. Here we mean application of measures of compulsory execution of norms in which obligations of participants of criminal proceedings are fixed, in particular:

- Through the use of preventive coercive measures (e.g., an additional connoisseur, investigator, as well as the court, within the limits of their powers, have the right to choose one of the preventive measures provided for by the Criminal Procedural Code of the Russian Federation, if there are sufficient grounds to believe that the accused or suspect: 1) will escape from the inquiry, preliminary investigation, or trial; 2) may continue to engage in criminal activities; 3) may threaten a witness, other participants in the criminal judicial proceedings, destroy evidence, or otherwise prevent (Part 1, Article 97 of the CC of Russia);

- Through the use of legal remedial measures (for example, if the prosecutor finds the decision to institute criminal proceedings against the investigator to be unlawful or unjustified, he may, within 24 hours of receiving the materials on which the criminal case was based, cancel the decision to institute criminal proceedings and issue a reasoned decision, a copy of which may be immediately sent to the official who initiated the criminal proceedings

(part 4 of Article 146 of the CC of Russia);

- By means of penalties (for example, in cases of non-fulfillment by the participants of the criminal proceedings of the procedural duties provided for by the Criminal Procedural Code of the Russian Federation, as well as violation by them of the order in court proceedings, they may be imposed a monetary penalty by the court in the amount of up to two thousand five hundred rubles (Art. 117 of the Criminal Procedural Code).

In addition, the failure (improper performance) of the duties imposed by the legislator in the criminal procedure law on persons conducting the proceedings in the case may entail liability for disciplinary (for example, the imposition of disciplinary responsibility on the person conducting the inquiry) or criminal (for example, for knowingly giving a false conclusion by the expert is responsible in accordance with Article 307 of the Criminal Code of the Russian Federation).

However, as we have shown above the possibilities of legislative support of formation of the favorable legal environment guaranteeing the realization of rights and proper execution of obligations in the sphere of criminal shipbuilding are far from being exhausted. Imperfection of criminal procedure regulation in the analyzed issue requires further research of the problem of rights and obligations of participants in criminal proceedings in order to make appropriate adjustments to the current legislation on criminal procedure.

CONCLUSIONS

Thus, defining the importance of the existence of a favorable legal environment in the field of criminal proceedings, taking into account our arguments and based on existing knowledge of the essence of the legal environment, we formulate its concept. Favorable legal environment in the sphere of criminal proceedings is a balanced system of criminal procedure rights and obligations, provided with sufficient organizational and legal means (tools), fixed in the procedural legislation, creating the necessary conditions and opportunities to achieve personal and public interests of the participants of criminal proceedings.

In the end of the reasoning about necessity of creation of the favorable legal environment in criminal proceedings, it would be desirable to result the wise words expressed by the people in the form of a toast about a small bird which had desire to reach the sun. Realizing her desire, she rose higher and higher to the sun, but unfortunately, could not embody her own lanes, as burned the wings and fell to the depths of the blue sea. The moral of this folk wisdom is that our desires always coincide with our capabilities.

In view of this morality, in criminal proceedings, it would be desirable for the legislation governing it to inspire the participants to exercise the rights granted to them and to properly discharge the duties entrusted to them. In doing so, the legislation would provide the conditions that would create a real opportunity to exercise these rights and duties in accordance with the interests (needs) inherent in each participant in the criminal process, and not by coercion of others.

Hence, apart from the existing state coercion, we believe it is possible to enshrine in the criminal procedure legislation the incentives that encourage participants of the criminal process to properly perform their duties, the development of which we take upon ourselves the obligation to engage in further.

The formulated proposals on perfection of the legal basis providing realization of the rights and proper execution of duties in the sphere of criminal proceedings can be used in both normative activity of legislative bodies and law enforcement activity of law-enforcement bodies of the state.

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Developing board games to teach literary elements in 'To Kill a Mockingbird'

Desarrollo de juegos de mesa para enseñar elementos literarios en "Matar a un ruiseñor"

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ABSTRACT

The purpose of this research is to interrogate the effectiveness of developing board games to teach literary elements such as characters, setting and themes based on the literary text 'To Kill a Mockingbird' by Harper Lee. The development of board games in teaching English literature aims to help student teachers to critically examine their understanding of the approaches to teaching literature. It will further develop critical appreciation and cultural awareness for students whose English is a second language. This study is based on a course 'Teaching of literature: Reading the word and the world' taught to 45 Year 2 TESL undergraduate student teachers at the Faculty of Education, UKM. This case study was designed with four methods of data collection namely questionnaire, interview, student teachers' board games and reflective essays. In this study, the student teachers had formed six groups and then had chosen either a theme or a character such as 'Tom Robinson', 'Atticus Finch', 'Boo Radley', 'Scout Finch', 'Gender stereotyping' and 'Racism' to be developed further into board games. They later reflected on the whole process of developing board games, identifying its strengths, weaknesses and suggestions on how to improve it. Generally, the participants perceived that developing board games helps them to teach the literary elements such as characters, setting and themes to the pupils.

Keywords: Board Games, Literary Elements, Literary Text, English Literature, Teaching Literature.

RESUMEN

El propósito de esta investigación es interrogar la efectividad del desarrollo de juegos de mesa para enseñar elementos literarios como personajes, escenarios y temas basados en el texto literario "To Kill a Mockingbird" de Harper Lee. El desarrollo de juegos de mesa en la enseñanza de la literatura inglesa tiene como objetivo ayudar a los estudiantes docentes a examinar críticamente su comprensión de los enfoques de la enseñanza de la literatura. Desarrollará aún más la apreciación crítica y la conciencia cultural para los estudiantes cuyo inglés es un segundo idioma. Este estudio se basa en un curso "Enseñanza de literatura: Lectura de la palabra y el mundo" que se imparte a 45 docentes de pregrado de TESL de Year 2 en la Facultad de Educación, UKM. Este estudio de caso se diseñó con cuatro métodos de recolección de datos, a saber, cuestionarios, entrevistas, juegos de mesa para estudiantes y ensayos reflexivos. En este estudio, los estudiantes maestros formaron seis grupos y luego eligieron un tema o un personaje como 'Tom Robinson', 'Atticus Finch', 'Boo Radley', 'Scout Finch', 'Estereotipos de género' y 'Racismo'. 'para desarrollarse más en juegos de mesa. Más tarde reflexionaron sobre todo el proceso de desarrollo de juegos de mesa, identificando sus fortalezas, debilidades y sugerencias sobre cómo mejorarlo. En general, los participantes percibieron que el desarrollo de juegos de mesa les ayuda a enseñar a los alumnos los elementos literarios tales como personajes, escenarios y temas.

Palabras clave: juegos de mesa, elementos literarios, texto literario, literatura inglesa, literatura didáctica.

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1. INTRODUCTION

Despite the unique and predominant position of English language in the world's communicative sphere and in the field of education; in Malaysia, English is taught as a second language (ESL). Learning a second language assist learners to interact across cultures. While the number of ESL learners in English-speaking nations is growing dramatically, this growing demand is not met by the number of skilled ESL educators (Khalid, 2014). Therefore, it is crucial for the Ministry of Education to place emphasis on producing skilled and productive ESL educators in order to ensure goals and aims are met; as teachers are the ones who can bring the biggest change towards achieving a society who all have a commendable mastery of the English language (Thirusanku & Yunus, 2014). Teachers are the ones who will shape the young learners especially those in the primary school level. It is the first step towards achieving the goals and aspiration of the MOE. Making teaching as a profession of choice is important as to invite only the best and capable of Malaysians to join the profession (Jaggil & Taat, 2018). The importance of teacher training programme by which student teachers are taught skills and provided the necessary expertise or attitude to allow them to fulfil their duties in accordance with the required standard to take on more demanding roles in order to effective job performance (Fauziah, 2016). Teaching literature in particular is concerned with approaches that have proved useful (Khatib et al, 2011). Hence, to keep abreast with the importance of English in Malaysia, KSSM was introduced as an attempt to improve and reorganise the existing curriculum specification so that learners will be able to achieve the relevant skills, values and knowledge to face the challenges of the 21st century.

Future teachers should be well aware that teaching's ultimate objective is to encourage learning. For the most part, learning takes place in many distinct situations and environments (Cruz, 2010). Although everyone can learn, the willingness of a student to learn is essential for mastering fresh ideas, values and abilities. ESL Learners, like a native speaker; have to cope with various linguistic types and communicative functions. As Khatib and Mellati (2012) point out; irony, exposure, argument, and narration must be handled by second-language learners. One way for future teachers is by incorporating literature in the second language classroom. Literature is culturally enriching in the second language classroom (Azmi, 2014). It promotes discovery of authentic language in literature. Teaching literature in the second language classroom is engaging. It involves students in the tales they read. According to Amer (2003), learners "inhabit" the text as they focus on the development of the story. They often relate to one or more characters in the emotional turmoil that they sometimes feel. In other words, teaching literature in the ESL classroom has a beneficial impact on future teachers.

2. RESEARCH QUESTIONS

This study seeks to find answers to the following research questions:

i. What are the board games developed by the student teachers to teach literary elements based on 'To Kill a Mockingbird' by Harper Lee?

ii. What did the student teachers gain in developing board games?

iii. What are the challenges and how to improve it?

3. Literature Review

There are three theories underpinning this study. They are More Knowledgeable Other (MKO), Reader-Response Theory, Moral Philosophical Approach and board games as pedagogical tool.

More Knowledgeable Other (MKO)

Vygotsky (1978) promotes the context of teaching in which learners play an active part in learning. The "more knowledgeable other" notion is quite straightforward and quite self-explanatory. One who has a greater level of understanding than the learner is the more knowledgeable than the other (Thirusanku & Yunus, 2014). The role of MKO (More Knowledgeable Other); is to assist learning through coaching and scaffolding. During the learning process, it is the MKO provide critical advice and training. While the learner may not yet able to do something on its own, with the help of a qualified teacher, learner is prepared to undertake the assignment (Coutinho, 2007). MKO often a parent, teacher, or other adult, but this is not always the case. Vygotsky thought that an important aspect of the learning process was peer interaction. He suggested pairing more competent learners with less qualified ones to help kids learn fresh abilities (Chun, 2015). In many cases, peers provide valuable help and instruction especially during the developmental and transition phases of the student teachers; from student to teachers. It is critical when it comes to building an identity and fitting in are just one instance.

Reader-Response Theory

Louise Rosenblatt's (1978) reader-response theory is a school of literary theory focused on the reader and the literary experience, as opposed to other schools and theories that focus primarily on the author or the content and form of the work (Marhaeni, 2016). Reader-response theory acknowledges the reader as an active agent who, through interpretation, imparts "true presence" of the literary work and its significance. Reader-response theory claims that literature should be regarded as an art of performance in which each reader produces their own, potentially distinctive, performance related to the literary text (Mathis, 2016). In analysing a literary text, this theory enables student teachers to take into consideration their own private emotions and viewpoint. According to theoreticians of Reader-Response, that a certain personality reminds readers of 'Dad', or that a certain passage reminds readers of something from their childhood. As part of an interpretive community, a group of readers who not only share the same language but also share the same reading conventions; for example, making close readers part of the same interpretive community (Tan & Abdul Aziz, 2019).

Moral Philosophical Approach

A moral or philosophical approach defines or evaluates literary work in terms of its concepts and values. In literature, the philosophical method becomes much more than a novelty, it becomes human. It's about love and wisdom, and it's about

hatred and innocence. Matthew Arnold emphasis that literature should produce a better and more moral individual (Leerssen, 2006). The focused should be on stories searching for life's significance instead of romance novels or summer action movies; as they're more about having fun than thinking deep thoughts, in which was deemed to be capricious and meaningless (Bal & Veltkamp, 2013). Literature has the authority to influence the emotions and behaviours of its readers, hence the beneficial type of literary text was that of characters showcase good and noble behavior (Thexton et al., 2019). Very often morality system is based on life philosophy as literary texts teach us the most basic, vital values of the human condition.

Board games as pedagogical tool

Deep meanings in some texts may be difficult without foundational knowledge and experience (Carter, 2007). Since not all students enjoy reading; it is therefore important to integrate appropriate reading activities to enhance understanding of literary texts. The practice for teacher to integrate novels as part of language arts in literature classroom; are made possible through the application of literacy-boosting board games as one of the methods to teach efficiently as it offers limitless application of literary theory in teaching (Chun, 2015). Murray (2018) acknowledged that board games in any forms have beneficial effect on teaching and learning.

Board games play a key role in the development and growth of children. It is a significant element of brain development as it helps to develop logical and reasoning abilities, to increase critical thinking and to gain spatial reasoning. Playing board games also enables with the ability to learn, socially and communicate (Boyd, 2004).Board games especially viewed as learning spaces. This is because they allow players to acquire non-cognitive abilities such as patience or discipline that are essential for achievement in career and life. Gameplay also develops a number of cognitive skills, including critical thinking and problem solving (Sardone & Devlin-Scherer, 2016).

4. METHODOLOGY

This study embraced case study approach and thus employed four methods of data collection; student teachers' board games, questionnaire, interview, and reflective essay. The study is based on a course 'Teaching of literature: Reading the word and the world' taught to 45 Year 2 TESL undergraduate student teachers at the Faculty of Education, UKM. Therefore the Year 2 TESL student teachers were selected as respondents in order to critically examine the development of student teachers' critical appreciation and cultural awareness; as well as their understanding towards the approaches of teaching literature.

5. FINDINGS AND DISCUSSION

The findings and discussion are presented to answer the research findings. The findings relating to the research questions are presented in this section. To answer the research questions; data from the student teachers' board games, questionnaire, interview and reflective essays were analysed. The findings for the research question were further subcategorised under 4 themes namely (1) board games to teach literary elements, (2) board games to foster good practice through the principles of teaching literature, (3) cultivate in-depth understanding of the approaches to teach literature, (4) the value of developing board games to foster critical appreciation and cultural awareness, and (5) personal growth based on the process of developing board games.

Theme 1 – Board games to teach literary elements

The findings were elaborated based on the student teachers' board games on the approaches to teaching literature to teach literary elements. In this study, student teachers played the role of future teachers of literature. Based on the selected text, the student teachers had designed appropriate reading activities for the classroom. The board games were specifically designed to explore further the various characters and themes in the book. The student teachers formed six groups and then had chosen either a theme or a character they would develop further into board games. The student teachers had chosen (a) 'Tom Robinson', (b) 'Atticus finch', (c) 'Boo Radley', (d) 'Scout Finch', (e) 'Gender stereotyping', and (f) 'Racism'.

Tom Robinson – Mocking Bird

Conflict enables drastic events and confrontations that test and adjust personalities (Liu et. al. 2019). It is the key element of this board game. It features the trial scene from the novel which determines whether Mayella Violet Ewell or Tom Robinson was lying or telling the truth. The student teachers' prepares this game to create obstacles between players and their goal was to know how the conflict resolves and feel resolution (Benwell, 2002)

In this game, players can also play dumb; for instance when it's your turn to put down queens, and you happen to have two of them. Say, "What am I again?" and look confused as you look through your cards before you put them down. Your goal is to make people believe you when you're lying, and make them doubt you when you're telling the truth.

Who are in the trial scene?

What is the name of the lawyer who defends Tom Robinson? (Atticus)

What is the name of the lawyer who defends Mayella? (Mr. Gilmer)

Why could Tom Robinson not use his left hand? (His hand was caught in a cotton gin)

Atticus Finch – Snake and Ladder

Developing a solid understanding of the plot, or series of events in the story, is essential for the student teachers'

to ensure that the targeted learners fully comprehend the literary text; 'To Kill The Mockingbird' by Harper Lee. The actions of characters, responses, and other incidents are parts of plot (Atsushi & Tomoko, 2018). Plot generally manipulated for many reasons; to create suspense, build tension, and to emphasise character differences (Liu et. al. 2019). The type and order of events are often manipulated to create certain effects on the reader (Atsushi & Tomoko, 2018).

The student teachers' divided their questions in the game to suit particular parts of the plot. First, exposition; gives information about the characters as well as their problems and conflicts (Atsushi & Tomoko, 2018). Example of the questions' asked in the game are:

1) Atticus Finch worked as? (A lawyer)

2) Did Atticus have a wife who is still alive in the story? (No, she passed away)

Second, rising action; consist of a series of obstacles that arise as the main characters take action to solve their problems (Atsushi & Tomoko, 2018).

1) Atticus took on one criminal case. Who was the man that he tried to defend? (Tom Robinson)

2) Why did Atticus ask Mr. Ewell if he could read and write? What was the purpose or reason for his question? (To ensure the Dominant hand used by him)

Third, climax; the outcome of the conflict is revealed (Atsushi & Tomoko, 2018).

1) How long did Atticus own a gun? (About a year, 1 year)

2) How old was Atticus when his daddy gave him a gun? (13 or 14 years old)

Falling action; presents events that result from the climax (Atsushi & Tomoko, 2018).

Atticus forbade Scout from getting involved in a fight again. Who was the person that Scout fought?

Resolution; the end of all struggles and are over, and we know what is going to happen to the characters (Atsushi & Tomoko, 2018).

1) As Atticus is a Lawyer, when Tom's dead, give two of the characteristics that showed him once he told Ms. Maudie about the horrible news (Calm)

2) Before the final scene, Atticus thanked a person who saved his children's lives. Who was he? (Mr. Arthur Ridley)

Boo Radley - Jenga

Characterisation is an essential component of convincing a tale. Characters need to appear real in order to interest and move readers. In the literary text; 'To Kill The Mocking Bird', This was accomplished by offering information that create individual and specific characters. Character represents a person, place, or thing on which the story centres (Liu et. al., 2019). The student teachers' identify the characterisation of character; Boo Radley and construct questions allowing learners to analyse and criticise the character. In the game, the student teachers approach cultural questions such as:

1) Is Boo Radley a black or white man?

2) What was Maycomb Community's description of Boo?

3) What does Boo Radley really look like?

4) What is the gender of Boo Radley?

5) Suggest one word that reminds you of Boo Radley?

6) Does Boo Radley hate the kid?

Questions which focus on how certain cultural view others provide the student teachers' insight on the learners cultural awareness; since it is a necessity to see how such pattern functions in relation to cultural insights. The student teachers' intellectual curiosity is aroused and satisfied when they learn that there exists another mode of the teaching that would include both linguistic and extra linguistic aspects of the cultural approach (Cheng & Berman, 2012).

Scout Finch – Pin on Scout!

In Eka Roivainen's (2013) study, it mentions that the frequency of the use of personality adjectives correlates with everyday personality descriptions. An individual personality refers to one's appearance, characteristics, attitude, mind-set and behaviour with others (Bleidorn et.al. 2014). The student teachers' main focus for this game were to allow students to use the label adjectives that describe people's personality; curious, clever, short-tempered, etc. The aim is to answer the 'YES' or 'NO' questions regarding Scout's personality correctly from the excerpts given and pin a piece of Scout on her cardboard cut-out.

Gender Stereotyping – Rain and Rainbow Board Games

In addition to more particular gender-stereotypical characteristics, the game seeks to test basic elements of gender stereotypes. The tries to measure masculinity and femininity put these buildings on a bipolar spectrum and involved the measurement of easy collections of personality traits that differed between females and males on average gender-

stereotypical traits (Azhari, 2013). The 'Rain and Rainbow Board Game' harnesses the underlying message in the literary text 'To Kill a Mockingbird' by Harper Lee. The literary element focused by the student teachers' in this game zooms on the thoughts and feelings of the characters' 'point of view'. The questions constructed asked the students' opinion on competitive and dominant items as well as affectionate and gentle items such as:

1) Will you befriend a boy or a girl (depends on the gender)?

2) Can a woman be as strong as a man? Q: physically?

3) What are your thoughts on a man who wears pink?

4) Do you think it is appropriate for a man to stay in the kitchen and cooks? Give your reason(s).

5) Why man cannot be a best friend to a girl?

Racism – Save Tom!

The purpose of this board game is to teach learners to become world citizens who can become engaged with an increasingly global world (Hedayati et. al. 2015). This specific game allows student teachers to promote interaction and learning experiences that promote a variety of individual experiences and cultures (Ibrahim, 2004). The specific issues about racism which emerged in the novel had inspired learners to know about the various manifestation of racism and prejudice (Hedayati et. al. 2015).

Using the literary elements; third person limited point of view, the student teachers' asked questions' that highlighted the event happening in the story and allow students to think and reflect critically on the issue of racism.

What are the causes of racism? (Ignorance of other culture, ethnic or religion Stereotyping, The feeling of superiority)

Do you think racism is dangerous? Why? (It could cost people's life, increase crime rate, rob others' opportunities)

Choose one way on how to end racism:

Be friends only with people of the same race \

Don't interfere when people are being racist in public

Treat people equally

How do we avoid racist comments?

(a) Be sensitive

(b) Be understanding

(c) Think before speak

5) How does racism affect relationships? (Friends becoming enemies / Splitting family / Chaotic society)

Theme 2 – Board games to foster good practice through the principles of teaching literature

The questionnaire's result was calculated and the mean score of each item were obtained in order to gauge the effectiveness of board games in teaching English literature to help student teachers foster good practice through the principles of teaching literature. From the responses, all criteria scores high and extremely high within the range mean score. Based on the items in the questionnaire, the three highest score are that broad games help student teachers to; (1) promotes respect towards diverse talents and different ways of learning, (2) gained experience in creating appropriate reading material, and (3) foster professional growth.

Table 1: Mean scores items in questionnaire

No.	Criteria	Score				Mean Score
		1(%)	2(%)	3(%)	4(%)	
1.	I am able to encourage interaction between the participants during the board games session.			6 (13%)	39 (87%)	**3.87**
2.	I develop reciprocity and cooperation among the participants.			15 (33%)	30 (76%)	**3.67**
3.	Board game enables me to promote respect towards diverse talents and different ways of learning.				45 (100%)	**4.00**
4.	Board games encourage active learning.			3 (7%)	42 (93%)	**3.93**
5.	I am able to emphasise time on task.			8 (18%)	37 (82%)	**3.82**
6.	I communicate high expectations through board games.			32 (71%)	13 (29%)	**3.29**
7.	I am able to give prompt feedback.			27 (60%)	18 (40%)	**3.40**
8.	I gained experience in creating appropriate reading materials.				45 (100%)	**4.00**

9.	Board games build awareness and diversity.			18 (40%)	27 (60%)	**3.60**
10.	Board games foster my professional growth.				45 (100%)	**4.00**
11.	What do you understand about the approaches to teaching literature?	*'Short answer'*				

Score: 1(Strongly Disagree), 2(Disagree), 3(Agree), and 4(Strongly Agree)

Theme 3 – Cultivate in-depth understanding of the approaches to teaching literature

To further cultivate in-depth understanding of the approaches to teaching literature; question 11 of the questionnaire enables participants to reflect on their understanding of the approaches to teaching literature.

Table 2: Approaches to teaching literature

No.	Categories of factors	Frequency	%
1.	Introduce variety of techniques.	24	14
2.	Help student teachers to uncover their thoughts that guide them as future teachers of literature.	37	22
3.	Make tacit knowledge explicit.	26	16
4.	Chance to teach differently from the way they were taught.	15	9
5.	Choose the most suitable approaches based on learners need.	29	17
6.	How teaching is conducted in order to achieve long term objectives.	15	9
7.	The concept of inductive, deductive, eclectic, or integrated approach.	5	3
8.	Connect learners' previous experiences with knowledge of English literature.	17	10
	Total	**168**	**100**

The data showed that 22% of the student teachers' responses stated that approaches to teaching literature help student teachers to uncover their thoughts that guide them as future teachers of literature.

'In order to suit the students in the advanced level, we as a teacher need to adjust the difficulties of games by further asking them questions.'

17% mentioned that they were able to choose the most suitable approaches based on learners need.

'I need to think on what kind of literary experiences are needed by my students.'

'As an educator, I have the responsibility to teach multiple perspectives in my literature classroom. I would want to stick with a few for each literature. But whatever I decide, every critical lenses needs to be absolutely essential to the story.'

Another 16% agrees that approaches to teaching literature make tacit knowledge explicit.

'This prompt to generate their ideas, explicit their opinions, and at the same time enhance their understanding. We were able to know the students' understanding level by listening to their response. This helps them to boost confidence, develop listening and speaking skills.'

Theme 4 – The value of developing board games to foster critical appreciation and cultural awareness

Most participants agree that through the development of board games they were able to further develop critical appreciation and cultural awareness for students whose English is a second language. This statement is derived from student teachers' interview.

Table 3: Value of board games to foster critical appreciations

No.	Categories of factors	Frequency	%
1.	Form judgements of how the text works.	17	8
2.	Interpreting the ideas.	23	12
3.	Interaction with the text.	16	8
4.	Different context of debates and cognitive value within the discipline in the text and the participants.	11	5
5.	Literary standpoint and evaluation from different perspective.	30	15
6.	Evaluates the text.	21	11
7.	Reflection on own reading and thinking.	19	10
8.	Critical justification.	21	11
9.	Engaged in analysing the arguments the author is making.	9	4
10.	Gauge answers to the questions.	14	7
11.	Highlighting important points.	18	9
	Total	**199**	**100**

The data showed that 15% of the respondents agree that developing board games allows critical appreciation through literary standpoint and evaluation from different perspective.

'I really like the ideas as that we took into account the literary experiences that needed by the both genders.'

'This kind of course give me time to reflect and absorb the values when being in someone else perspectives and learned how to make a connection through the text too.'

12% stress that developing board games foster critical appreciation by interpreting the ideas.

'I can explore and learn a new way to be creative in making interpretation of literary texts.'

'The perspectives of students and teachers may be different from my point of view. The responsibility to make someone understand and able to produce their own interpretation is hard because they need to have the prior knowledge about the text from cultural, environment and language perspectives.'

While 11% of the respondents noted that developing board games enhance their critical appreciation as they able to give critical justification.

'This book is kind of like an eye opener for me. It is basically about the world through the eyes of the innocents which are Jem and Scout who are both children. They learn to see things neutral around them but with the people around them who talks about the coloured folks, they too became curious, especially when it was Tom Robinson's trial.'

Most respondent mentioned that incorporating board games in a literature classroom, particularly in a culturally diverse country; such as Malaysia, helps student teachers to foster cultural awareness.

Table 4: Value of board games to foster cultural awareness

No.	Categories of factors	Frequency	%
1.	Suspend judgements.	21	9
2.	Different situation may require different solution.	28	12
3.	How people perceive the world.	40	18
4.	Become comfortable with ambiguity.	5	2
5.	Celebrate diversity.	29	13
6.	Similarities and differences are both important.	22	10
7.	Multiple ways to reach the same goal.	18	8
8.	Interaction with different cultures.	13	6
9.	Relation between knowledge and assumptions.	15	7
10.	Diverse skills and different approaches to problem solving.	33	15
	Total	**224**	**100**

Data showed that 18% of respondents mentioned in their personal responses that the board games reflected on how people perceive the world.

'Encourage my students to learn from other people experiences. Students can look at their own responses and compare to their peers. I believe students can take away different things from every piece of literature. Therefore, sharing session allows them to see a piece of literature from different perspectives.'

'I can learn more about the background of other countries, their people, their culture and many more.'

15% agrees that board games promotes diverse skills and different approaches to problem solving.

'The experience of developing board games gave me a new sight of produce something until it happens.'

'Thankfully I have group members who are willing to give their corporations both in making our scene and also the board game.'

13% noted that it celebrates diversity.

'Teacher must be able to cater to a classroom full of diversity and the transparent nature of literature helps in this matter.'

Theme 5 – Personal growth based on the process of developing board games

Based on the findings from student teacher's reflective essay, the data was divided into 3 sections; (a) strength, (b) weaknesses, and (c) ways to improve.

Section A – Strengths

Section A focusses on investigating student teachers' personal growth and reflection of the whole process.

Table 5: Emerging themes on the strengths of developing board games

No.	Categories of factors	Frequency	%
1.	Goal-directed activities to facilitate learning process.	3	2
2.	Encourage participation and promote active learning.	10	6
3.	Promote social skills.	8	5
4.	Obtain feedback and monitor the progress of groups as they work through the task.	17	10
5.	Cooperative learning.	13	7
6.	Fun learning through board games.	41	23
7.	Additional support materials.	27	15
8.	Continuing guidance.	21	12
9.	Interaction between instructors and participants.	35	20
	Total	**175**	**100**

Result from the data showed that 23% of the respondents agreed that they were able to promote fun learning through board games.

'Considering that they might never read or encounter with the novel, we prepared an informative yet fun board game for them.'

'The board games that we have carried out was accessible, engaging, and interactive.'

It is noted that 20% stress on the importance of interaction between instructors and participants.

'The part that I liked the most was the interaction between facilitators and students. Interaction is one of the powerful weapon in teaching and learning literature. This helps facilitators to check on students' understanding, and provide assistance if necessary.'

Meanwhile 15% place emphasis on additional support materials to attract and further develop understanding.

'We also made a brochure about fun facts and fictions about the real Boo in the story and how people see him.'

Section B – Weaknesses

Section B highlights the obstacles faced by the student teachers.

Table 6: Emerging themes on the weaknesses of developing board games

No.	Categories of factors	Frequency	%
1.	Competitiveness.	12	6
2.	Less eager to contribute.	37	18
3.	Dependency.	16	7
4.	Allocated time.	30	15
5.	Anonymity.	10	5
6.	Dominating students.	21	10
7.	Socially isolated participants.	18	9
8.	Checking-answers.	12	6
9.	Participants' loss of interest.	18	9
10.	Inexperienced planning.	30	15
	Total	**204**	**100**

The result indicate that the student teachers weaknesses may affect the teaching and learning objectives. There are several obstacles which they faced while conducting the workshop, such as;

(a) Less eager to contribution from passive/shy participants (18%),

'Although we paired them up with their friends, there were some students who were quite passive and gave minimum responses. The mistake that I did was I paid less attention to the quiet one. I kept encouraging the active pupils to answer and give reasons, unfortunately, giving less opportunity for the passive pupils to voice out.'

'The first group that came to our station is quite preserved. They did not really have any reactions towards the game unless only a few of them.'

(b) Allocated time for each station (15%),

'The student play the game and answer all sort of question but sadly no one finished to before they need to change to another game as the time is up.'

'The only problem that we encountered is the time constraints.'

and (c) Inexperienced planning of the student teachers (15%).

'There was a bit of chaos in our team in terms of handling the game. The second group is more engaged in the game probably because we already saw our weaknesses from the first group and this time, we were more organised for this second group.'

Section C – Ways to improve

Section C further elaborated on few suggestions to improve the process of developing board games; derived from the student teachers' reflective essay.

Table 7: Emerging themes on ways to improve

No.	Categories of factors	Frequency	%
1.	Building rapport with the participants.	27	17
2.	Betterment of time management.	33	20
3.	Align instructions to learning standards.	19	12
4.	Encourage participation through written discussion to tackle shy participants or are from different cultures.	3	2
5.	Monitor and assist the discussion among participants by adding personal perspectives and ideas to those of the students.	7	4
6.	Gives more opportunities for participants to converse and share their perspectives.	23	14
7.	Include formative assessment.	14	9
8.	Use feedback loop concept.	21	13
9.	Opportunities for groups to reflect on their performance in groups.	15	9
	Total	**162**	**100**

The data derived from student teachers' reflective essay on a few suggestions on ways to improve. 20% of the respondents hoped for the betterment of time management.

'My recommendation would be when we do it next time we need to rearrange the time nicely so that students can actually play all of the games and they have enough time to understand what the game is about, because some of them wanted to play our group's activity yet cannot because they have to move to other places. It is such a waste when students have an interest to learn things but we can't do anything.'

17% opined that building rapport with the participants is important to develop good relationship between instructors and participants as well as the primary participants and the secondary participants.

'One suggestion I would like to give is to include some sort of ice-breaking session at the beginning of dramatisation. It could be carried out within five to fifteen minutes. As interactive and fun sessions run before the main proceedings, it will be helping students get into the situation and reduce the presence of awkwardness.'

14% of the respondents believe that they should give more opportunities for participants to converse and share their perspectives.

'We tried our best to make sure that everyone can participate in this game by asking them to take turns in rolling the dice and drawing the questions.'

6. DISCUSSION AND CONCLUSION

In light of the 21st century teaching practices, the role of a 21st Century teacher has changed dramatically. Teachers are no longer the sole knowledge provider for the students. Collaborative learning are made possible through board games. Students are able to reap the full benefit of shared learning with their peers where by the teacher act as facilitators who guide the students to search for knowledge (Yeoh et al, 2018). It is possible for the teachers to practice the new role and at the same time lead students to take the responsibility for their own learning (Ahmad et al, 2016).

Student teachers' reflection on their experience in tackling different levels of learners when implementing the board games to teach literary elements should be able to help them to analyse skills they are required to master. One of the ways to require professional skills is through the collaboration with senior teachers or through pair teaching who can guide and thus help to improve their teaching practices. The use of board games in this study was not only restricted to get students to interact with each other, as it could also be used as a medium by the teacher to monitor the students' progress, especially in English literature. Board games can be used for Learning Management System (LMS) as practiced in most higher institutions of learning (Hamdan et al, 2017). With board games teachers can cater to the needs of different levels of students, thus allowing students to develop at their own pace. This is quite difficult to be done in conventional teaching especially when the teacher has to teach students from different levels of proficiency.

The result of this study brought insight, challenges, and suggestions on how developing board games can be used to enhance understanding of the literary text and approaches to teaching literature as well as further develop critical appreciation and cultural awareness in the Malaysian classroom.

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Manifestation of Translation Strategies via Think-aloud Protocol

La manifestación de las estrategias de traducción del protocolo Think-aloud

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ABSTRACT

This study was concerned with the effect of think-aloud method on the translation process. The aim of this study was to examine differences between translators in the implementation of Newmark's strategies in translating general texts from English into Persian. Four students (three females and one male) majoring in Translation Studies participated in this study. The researcher used a mixed-method design. In the qualitative phase of the study, the data were collected through the think-aloud protocol, translation task, and cassette recorders. The results suggested that there was no significant difference between translators in the implementation of Newmark strategies with regard to translation tasks. During the quantitative phase of the study, the researcher examined the difference between the translators in implementing translation strategies while translating general texts from English into Persian. In this phase of the study, the data were analyzed using SPSS 19 performing Chi-square. The results of this phase proposed that there was statistically no significant difference between the four translators with regard to most of the translation strategies.

Keywords: Think Aloud Method, Translation Process, Translator Mind, Mixed Method Design

RESUMEN

Este estudio tuvo que ver con el efecto del método de pensar en voz alta en el proceso de traducción. El objetivo de este estudio fue examinar las diferencias entre los traductores en la implementación de las estrategias de Newmark en la traducción de textos generales del inglés al persa. Cuatro estudiantes (tres mujeres y un hombre) que se especializan en Estudios de Traducción participaron en este estudio. El investigador utilizó un diseño de método mixto. En la fase cualitativa del estudio, los datos fueron recolectados a través del protocolo de pensar en voz alta, tarea de traducción y grabadoras de cassette. Los resultados sugieren que no hubo diferencias significativas entre los traductores en la implementación de las estrategias de Newmark con respecto a las tareas de traducción. Durante la fase cuantitativa del estudio, el investigador examinó la diferencia entre los traductores en la implementación de estrategias de traducción al traducir textos generales del inglés al persa. En esta fase del estudio, los datos se analizaron utilizando SPSS 19 realizando Chi-cuadrado. Los resultados de esta fase propusieron que estadísticamente no hubiera una diferencia significativa entre los cuatro traductores con respecto a la mayoría de las estrategias de traducción.

Palabras clave: método Think-Aloud, proceso de traducción, mente del traductor, diseño de métodos mixtos

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Introduction

Research into Translation Studies, as a distinct discipline, has recently focused on process-oriented research through which the researchers can explore the mental processes of the translators (Laviosa, 2008). Translation research has undergone major changes during the last two decades, addressing psychological and cultural issues in translation (Mason, 2008), and the academic discipline of translation aims at investigating individual differences in translation (Miyake & Friedman, 1998). However, little attention has been given to the psychological traits of the learners majoring in translation. Since processes take place in the mind of translators can't be observed directly; researchers employ different methods to reveal nature of these processes.

The process-oriented analysis is a naturalistic study to investigate the translator's internal decision-making process. It is supported by instruments for data collection as consecutives or retrospective think aloud protocols (Ericsson & Simon, 1993). One of the instruments applied for achieving this goal is think aloud protocol. As explained by Jääskeläinen (2002), in think aloud technique, learners are requested to "verbalize what they are thinking while they carry out a translation task" (p. 108). The aim of think aloud protocol is to obtain a better understanding of psychological and linguistic activities involved in act of translation (Lorscher, 1991). Internal translation process concerns mental activities, which can't be studied directly, therefore tends to be studied by method that is borrowed from cognitive psychology especially verbalizing methods (Bernadette & Carl & Zock & Jacobson, 2011). Ericsson and Simon (1993) believe that verbalization take place on three levels of thought processing, level of articulation, level of description of the content and level of interpretation of thoughts.

The purpose of this study was to ask translators to produce their translations at the same time verbalizing whatever happens in their minds. Audio recordings were analyzed in order to investigate strategies applied by the translators during translation task by the use of Newmark's strategies. This study aimed at exploring the extent to which translators use Newmark (1988) translation strategies in their translations using think aloud protocols and examining the significant difference between the translators in implementing translation strategies while translating general texts from English into Persian. The present study describes translation process by observing translators' behaviors and performance. This study seeks to find answers for the following questions:

1. To what degree do translators use Newmark (1988) translation strategies in their translations?
2. Is there any significant difference between the translators in implementing translation strategies while translating general texts from English into Persian?

Literature Review

Definition of Translation and Its Nature

Hatim and Munday (2004) defined translation as "the process of transferring a written text from source language to target language" (p.6). In a developmental study by Krings (1987), translation was seen as a mediation which undergoes two main overlapping phases, namely analysis and synthesis. These phases can be investigated through a retrospective reconstruction of the process on the basis of the relationship between SLT (input) and TLT (output).

The translation model that has been proposed by Newmark (1988) and used in this study is comprehensive and has 18 categories. The followings are the procedures presented by him (p. 81-93):

> *Literal translation*: it ranges from one word to one word, through group to group, collocation to collocation, clause to clause, and sentence to sentence.
> *Through-translation (claque):* the literal translation of common collocations, names of organizations, the components of compounds, and perhaps phrases. To transfer a SL word or expression into the Target Text using a literal translation of its components.
> *Transference, (borrowing)*: transferring a SL word to a TL text as a translation procedure.
> *Naturalization:* adapting a SL word first to the normal pronunciation, then to the normal morphology of the TL
> *Synonym:* to use a near TL equivalent to an SL word in a context, where a precise equivalent may or may not exist.
> *Transposition/ shift:* a change in the grammar from SL to TL. singular to plural; position of the adjective, and changing the word class or part of speech.
> *Recognized translation:* use of the official or generally accepted translation of any institutional term.
> *Functional equivalent:* to neutralize or generalize a SL cultural word by using a culture-free word.
> *Descriptive equivalent, (expansion)*: to neutralize or generalize a SL cultural word by using a description: the meaning of the word is explained in several words.
> *Componential analysis*: to split up a lexical unit into its sense components.
> *Compensation:* when loss of meaning, sound-effect, metaphor or pragmatic effect in one part of a sentence is compensated in another part, or in a contiguous sentence.
> *Paraphrase:* amplification or explanation of the meaning of a segment of the text.
> *Note, additions, glosses*: When the translator supplies additional information in the form of footnotes, endnote, and glossaries at the end of the text, or within the text.
> *Modulation:* when the translator reproduces the message of the original text in the TL text in conformity with the current norms of the TL. the SL and TL may be different in terms of perspective.

Deletion: SL word is omitted in the TL.
Couplet: when the translator combines two different procedures.
Cultural equivalent: it is considered as an approximate translation where an SL cultural word is translated by a TL cultural word.
Translation label: an approximate equivalent or a new term that is usually a collocation.

Descriptive Translation Studies

Descriptive translation studies try to recognize the laws of translation (Toury 1980). According to Bell (1991) "the aim of translation is to produce as accurately as possible all grammatical and lexical features of the SL original by finding equivalents in the TL" (p.13). DTS was developed by Toury in his seminal descriptive translation studies and beyond (Munday, 2001). Brownlie believed that "DTS aims to describe rather than prescribe how translations should be done. The descriptive approach to translation studies laid the foundations for further developments, notably approaches using corpora and tools from corpus linguistics, as well as approaches that are sometimes referred to as the cultural turn in translation studies and which foreground the role of translation as cultural vector" (p.3). In DTS, it is necessary to analyze three aspects: the product, the process that originated the product and the function of the translated text within the textual system of the target culture (Giraldo, 2005).

The Origin of Think Aloud Method

The theory that verbal protocols can be used to elicit data on cognitive process was proposed by Ericsson and Simon (1984) and they have perceived empirical support for it. They believed that subjects can generate verbalizations subordinate to task driven cognitive processes without changing the sequence of their thoughts and slowing down. The other name of think aloud protocol is verbal protocol analysis. This technique has rooted in psychology. Psychologists use think aloud method to study processes of individuals while they are completing a task. Ericsson and Simon (1984) argued that "think aloud method traces back to the works of experimental psychology and first was described by Karl Duncker while he studied productive thinking" (p.10). According to Newell and Simon (1972), "the first think aloud tapes were transcribed in 1957 and the tradition in the use of verbal protocols was started as a technique to check computer models of information processing" (cited in Ghonsooly, 1997, p.76).

The theoretical method of TPA comes from cognitive psychology, accordingly information stored in different places, some of them in short memory characterized as easy access and limited storage capacity and some of them in long term memory which is more difficult to access and larger storage capacity (Ericsson & Simon, 1993). "Since 1980, think aloud protocol have mainly been used to ask questions about the temporal dynamics of cognitive processing. They involve asking writers to express their thoughts during a writing task without making any judgment" (p.29). The central assumption of protocol analysis is that "it is possible to instruct subjects to verbalize their thoughts in a manner that doesn't alter the sequence of thoughts mediating the completion of a task. The data collected in this way can serve as valid data on thinking." (Ericsson & Simon, 1993). Ericsson explained that the closet connection between thinking processes and verbal reports are found when participants are instructed to verbalize their thoughts while focusing on a task. This technique has come to be known as think aloud and it involves the concurrent vocalization of one's inner speech without offering any analysis or explanation (Dornyei, 2007).

According to Krings (1986), "the think aloud technique provides direct means of access to the translation process." (p.266). We can perform a think aloud interview in two way: ether the participants were asked to verbalize their thoughts as they are doing tasks (concurrent think aloud) or the participants describe their experiences after the task are completed (retrospective think aloud). Both are simple method for gaining insight into the participants' thought processes. (Tobii Technology, 2009).

Think Aloud Protocols in L2 Learning

In second language learning, think aloud protocol has been used to investigate reading and writing strategies of non- native speakers. "Leow and Morgan- Short (2004) first empirically addressed the issue on reactivity on L2 acquisition. The act of thinking aloud potentially triggering changes in learners' cognitive processes while performing a task" (As mentioned by Yoshida, 2008a, p.131). Think aloud protocol has been used to investigate the behaviors of readers and cognitive processes take place during reading (Afflerbach & Johnston, 1984). Bereiter and Bird (1985) analyzed students think aloud protocols in order to see if a particular strategy were correlated to improved student performance on the comprehension test. No correlation was found. Li and Munby (1996) examined reading strategies of second language learners. They used to think aloud protocol to investigate reading processes of these students. Their result showed that readers frequently used strategies such as translation, background knowledge, self-questioning, and finding topic sentences. Investigators have been applied think aloud method in writing processes of second language learners in order to explore writing strategies and skills of these learners (cited in Hijikata, Nakatani, & Shimizu, 2012)

Alhaisoni (2012) investigated the writing strategies used by 16 Saudi EFL. He employed think aloud method to gain insight into thought processes utilized by the Saudi learners. Also, semi structured interview was performed.

Students wrote compositions in L1 Arabic and L2 English. Analysis of the data revealed that strategies were used more frequently when students wrote in English rather than they wrote in Arabic. In addition, specific strategies used when writing in Arabic.

Think Aloud Protocol in Translation Studies

The use of thinking aloud protocol in studying the translation process provides a valuable source of data about the sequence of events that occur while translators are performing their cognitive task (Chan & Pollard, 1994). The methodology of think-aloud protocol was first validated by Ericsson and Simon in the 1980. Think aloud method originates from psychology, where it has been used to study how subjects solve mathematical or puzzles (Ericsson & Simon, 1984). Kring compared a think aloud group with a non-think aloud group and noted that thinking aloud led to more target text revisions (1986).

Jakobsen (2003) observed that thinking aloud reduces translation speed and forces translators to process text in smaller segments. Kunzli (2007) conducted an analysis of the think aloud protocols from professional translators who were asked to revise three draft translations. The analysis revealed a number of ethical problems and loyalty conflicts between different parties involved in revisions.

There are two kinds of think aloud: retrospective or concurrent think aloud. In retrospective think aloud participants should verbalize what they are thinking after completing the task while in concurrent think aloud participants are requested to recall what they are thinking during the process of performing the task (Yoshida, 2008). Eftekhari and Aiminzadeh (2012) examined the strategies 12 senior translation students of Islamic Azad University Bandar Abbas Branch apply while translating literary texts using think aloud protocols. Based on the findings, fourteen strategies were detected. Look-up was the most frequent strategy used by the participants.

Moghadas and Sharififar (2014) asked five professional translators to verbalize their mental processes while translating the text. There was a neologism in the source text. The main focus of the research was on the cognitive processes of this neologism translation. The result indicated that professional translators did not use one single way of performing a translation task and the complexity of the process of problem solving depend on the translation competence of translators.

Method

Participants

Four students (three females and one male) majoring in Translation Studies participated in this study from Islamic Azad University of Quchan. Participants have had six years of academic education in the field of translation studies. Their background knowledge of translation theories and practice would guide them in verbalizing their thoughts. Subjects were asked to verbalize whatever comes to their minds during translating text in five sessions. All of them were selected based on convenient sampling and their age was between 24 and 34. Participants allowed the researcher to record their voices. Participants were permitted to use bilingual or monolingual dictionaries in order to check the meaning of the words. Subjects delivered drafts and written translations to the researcher for further analysis.

Instrumentations

Sources of data collection in this study were think aloud protocol, translation task, and cassette recorders.

Think-aloud protocol

Think-aloud protocol is a technique in which students verbalize their thoughts as they bring into the open the strategies they are using to understand a text or to translate a text. It can be used as both an instructional tool and as an assessment of students at almost any grade level. (Coiro, 2001, p.4). The written transcripts of recordings are called think aloud protocol. Think aloud as a data collection method provides access to conscious processing and emotional responses. This method is arduous and time consuming, the resulting data usually rich. (Baker &Saldanha, 2009).

Translation tasks

It contained two short passages which were taken from select reading book intermediate level. This book was written by Lee and Gundersen in 2006.The passages of this book contained a wide range of genres collected from sources such as The Wall Street Journal, The Utune Reader and National Public Radio. The participants translated one text per session. Texts were selected through purposive sampling; it means that the chosen texts encompassed Newmark's translation strategies mostly. The field of texts was general because students need no technical skill during translation. The first task used in this study was a text of 210 words on computers. The second task was a text about culture about 240 words. The third task was the text of the first session. It was given to students in order to check that the same result were obtained.

Cassette recorder

Cassette recorder was used as a tool for recording translators verbalized thoughts and utterances. "Audio recording

of think aloud give the opportunity to capture spoken interaction of students when developing the think aloud." (Cardenas & Montes, 2008, p.208).

Procedures

The data collection for each participant was performed in the following way. The two beginning sessions were devoted to training think aloud technique to students. In these two sessions, the researcher practiced thinking aloud technique with students on 2 texts. Meetings were held in a quiet room in Quchan University. Students had 40 minutes to translate the text and answer the observer questions. First, the researcher visited each student individually. Second, the researcher sat in front of participants and observed their behaviors and performance.

Third, the researcher asked the subjects to translate English texts into Persian. Participants translated texts based on Newmark's translation model. Participants verbalized their thoughts into their mother's tongue. In the last session, students were given the text of first session. Translation tasks were the same for all participants during three sessions. Fourth, the interviewer recorded translators' verbalizations as working on the task. Later, audio recordings transcribed by the researcher. Then, the frequency and percentage of applied strategies had been identified.

Design

The present study had a mixed method design using both qualitative and quantitative research because mixed method research yields a much more comprehensive result. During the qualitative phase of the study, the researcher attempted to find out the extent to which translators use Newmark (1988) translation strategies in their translation. Also, during the quantitative phase of the study, the researcher aimed at examining the difference between the translators in implementing translation strategies while translating general texts from English into Persian.

Data Analysis

The first step in data analysis is to transform recordings into a textual form (Dornyei, 2007). Transcriptions have been analyzed in order to understand cognitive process that occurs in the black box of translator. Newmark's translation model has been consider as a criteria for evaluating students, translations. The researcher of this study used statistical software to verify the hypothesis. Data were analyzed by the use of SPSS software 19. Chi square was used to show significant difference in implementing translation strategies by students.

Results and Discussion

To testify the truth or falsity of the research hypothesis and to explore the research questions, the researcher analyzed the relevant data. In the first step of the study, to find out the degree to which translators used Newmark's translation strategies in their translations, think aloud protocol was used. In the next step, chi-square was used in order to show the significant difference between the translators in implementing translation strategies while translating general texts from English into Persian. All of the participants used bilingual dictionary except participant C who used monolingual dictionary. Participants read the text one time before beginning the act of translation. When the participants didn't know the meanings of the words they checked them in the dictionary. Sometimes, they guessed the meaning of the words. They always translate titles at the final stage. Students tried to put their translations in their mother language.

Results of Qualitative Phase (Think aloud protocl)

Result from Task One

Transcription and Analysis

Student A: [I usually read the text completely. I decide about the title at the last step…The name of author and proper nouns must be transferred into target language. I'm going to add some words to my translation version…I always circle the unknown words during first reading process of the text…I think it isn't necessary to translate the word in the parenthesis. For the word technician, I don't write an equivalent. I prefer to translate it directly…I know the meaning of the word heart but I prefer to search it in bilingual dictionary to make sure about its meaning].

Analysis of the Student A's Transcription: Translator compared English and Persian structures with each other then write best translation. During the translation process, she always concerns about Persian readers.

Student B: [First, I read the whole text. I'll translate the text paragraph by paragraph. I underline difficult words in the first paragraph then translate it completely and go to the next paragraph. I don't find the meanings of all words one at the time…I don't know the meaning of the word merger. I check it in the bilingual dictionary…I should translate see into the heart of computer connotatively because it is an expression. I think this sentence tries to tell us Suleyman is good at using computer. Now, I translate title at the bottom of paper].

Analysis of the Student B's Transcription: It is obvious that the translator prefers to check the meaning of unknown words in the bilingual dictionary in order to find a Persian equivalent. Student tried to focus on English structures

and close her translation into Persian.

Student C: [First, I read the text completely. I usually translate the title at the final stage. I read the text one time in order to underline difficult words. I will find the meaning of the underlined words in monolingual dictionary and then begin the act of translation…I think see into the heart of sth is an expression. Translator says I prefer to translate it connotatively…Now, I translate the title. I write its translation at the bottom of paper. It is a free translation because I add some words into the original text].

Analysis of the Student C's Transcription: She didn't know the meaning of many words. If she had some background knowledge about this text, she will translate the text faster. Student C utters the translation in informal manner but write it formally. This is due to the interference from L1She adds some words to the text and manipulates some parts of it. She utilized strategies inadvertently during the act of translating.

Student D: [I usually translate the text as I read it. I translate the text from A to Z and mark unknown words. I don't know the meaning of the word whiz I think it refer to the sound of bee. I check it in the dictionary. I didn't find it in the bilingual dictionary so I search it in the monolingual dictionary... I guess the word merger is related to the word disparate... I write connotative meaning of the expression can see into the heart of computer].

Analysis of the Student D's Transcription: this student manipulated the source text because he tried to convey the main idea. His translation technique is free. He wasn't too panic to be closed to English language. He attempted to translate unknown words by referencing them to other words. He guessed the meanings of unknown words then check them in the dictionary.

The Frequency of Strategies Employed by Students with Respect to Task One

The result of this section is summarized in Table 1.

Table 1.
Translation Task One with Regard to Newmark Strategies

	Student A	Student B	Student C	Student D
Strategy		Frequency		
Valid Transposition	8	7	8	7
Transference	13	10	11	14
Through translation	2	2	2	3
Literal translation	1	1	1	
Addition	1	2		3
Descriptive Equivalent	1	1	1	1
Functional equivalent	3	2	1	1
Cultural equivalent	1			
Deletion	2	2	2	3
Synonymy	1	1	2	1
Paraphrase			1	
Modulation				2
Total	30	28	29	35

Result from Task Two

Transcription and Analysis

Student A: [I always use a fixed technique during the translation process. I read the text completely and underline unknown words and difficult words at the same time in order to check them later in the dictionary. I may use both bilingual and monolingual dictionaries…Driving us crazy is an expression; I try to translate it in a way to convey its meaning. We don't have any Persian equivalent for the word traffic. I shall transfer it. The legal drinking age is a phrase that represents European's culture about drinking. We don't have an exact equivalent for this phrase so I translate it word by word…As the last step, I translate the title. I add the word journal to the title].

Analysis of the Student A's Transcription: She followed certain procedures during the translation process. After translating each paragraph, she reads the text in order to edit it. The translator paid attention to the grammatical structures during the translation process. She compared the cultural words with words in her culture.

Student B: [First, I read the whole text and underline unknown words such as hectic and warp and check them in bilingual dictionary. Since these words have several meanings, I should convey their contextual meaning. I don't translate the phrase in the air because I believe that we don't feel anything in the air. I translate next sentence at the final step because it's challenging for me. I don't know how to translate warp speed. I read the sentence again. I translate the title before editing my translation].

Analysis of the Student B's Transcription: She translated the text as usual. Some parts of texts were challenging for her. She checked the meanings of simple words in the dictionary in order to find a better equivalent. She concerned about structures. Fluency and acceptability of translation is important for her. She tried to be close as much as possible to the TL.

Student C: [I read the text completely and at the same time underline unknown words. I translate first sentence literally. I search the words hectic and warp in the monolingual dictionary. Legal drinking age refers to the American culture. This text compares lifestyles of Americans and Australian. As the last step, I translate the title].

Analysis of the Student C's Transcription: For this student, the second task was easier than the first task. The translation technique of this translator was the same as last sessions. Translator used bilingual dictionary two times.

Student D: [First, I read the text one time. Boston Globe is a proper name. I guess it is name of a newspaper so I'd prefer to transferee it. I use metonymy technique to translate steering wheel. I don't know the meaning of the word warp. I don't check it in the dictionary. I can guess its meaning from the context. Drink in this text is a cultural word. It refers to the alcoholic drinks. Not to mention is an expression that doesn't have Persian equivalent].

Analysis of the Student D's Transcription: Translation of this text was easy for the translator. He translated some words by guessing their meanings. He used dictionary two times. Because this text was about culture, translator compared it with Iranian culture. He tried to translate the text freely.

The Frequency of Strategies Employed by Students with Respect to Task Two

The result of this section is summarized in Table 2.

Table 2.

Translation Task Two with Regard to Newmark Strategies

	Student A	Student B	Student C	Student D
Strategy	Frequency			
Valid Transposition	1	1		
Transference	12	9	9	9
Through translation	3	3	2	3
Literal translation	1		2	
Addition	4	2	1	8
Deletion	1			
Paraphrase				2
Modulation	1			2
Total	23	15	14	24

Result from Task Three

Transcription and Analysis

Student A: [I read the text completely and underline its unknown words. Although this is second time I reading this text, I'd prefer to translate its title at the end. I break down theses long sentences into short sentences. When I translate this text for the first time, I had problems with long sentences. Again, I don't translate the word in parenthesis. When in English a sentence begin by phrase and comma and subject come at the end. In Persian, we reverse it.

Also, I transfer name of company directly into TL. I don't check the word October to which month refer. Driving somebody crazy is an expression. Although we have a Persian equivalent for the word email, I'd like to transfer it directly. I translate sophomore by describing it].

Analysis of the Student A's Transcription: Student translated text faster than first time. She known meanings of all words. She didn't use dictionary during the translation process. Long sentences weren't trouble making for the translator. Familiarity with the text increased speed of translation and thinking aloud.

Student B: [I always used to read the text completely and then translate it sentence by sentence. As I am reading the text, I underline unknown words. I'll edit the text paragraph by paragraph and I'll translate the title at the end. I think the familiarity with the text will have an effect on my translation. Because I am familiar to many words, I don't need the dictionary.

In the second sentence, I move the subject from end of sentence to the beginning part. I transfer name of company and persons directly into TL. I translate theses long sentences into short sentences. I translate the expression see

into the heart of something connotatively. This expression tries to show Suleyman's ability and skill in the field of computer. Now, I can decide about title].

Analysis of the Student B's Transcription: As usual, the translator talked about her translation method. She read the text sentence by sentence while uttered her thought. Student translated the text for the second time this familiarity with the text increased her translation speed. Also, she faced no new problem. Last time student had a problem with the translation of proper nouns but now this problem has been removed.

Student C: [I read the text rapidly in order to find unknown and difficult words. I translated this text before so I know most of its words. As usual, I translate title at the end. I translate words such as email, technicians as it is. See into the heart of something is an expression. These long sentences aren't trouble making for the second time. Now, I translate the title. Wall Street is name of a magazine. When you have some information about the text, you can thinking aloud the text better].

Analysis of the Student C's Transcription: Familiarity with the text had an effect on translation process. Student translated this text faster than first time. Since the student translated the text last month, it wasn't trouble making for her. This familiarity had an effect on the process of thinking aloud.

Student D: [I translate the text as I read it sentence by sentence. I translate these proper names directly.I'd prefer to give an equivalent for the word technologies but last time I transfer it directly. I don't translate the word in the parenthesis like first session. I break down long sentences into short sentences or I join sentences with conjunctions. See into heart of something is an expression I translate it sense by sense. Now, I read the translation and edit it at the same time].

Analysis of the Student D's Transcription: the researcher understood for this translator familiarity with the text increased translation speed and thinking aloud .Student didn't use dictionary. The pervious problems had been solved this time.

The Frequency of Strategies Employed by Students with Respect to Task three

The result of this section is summarized in Table 3.

Table 3.

Translation Task Three with Regard to Newmark Strategies

	Student A	Student B	Student C	Student D
Strategy	Frequency			
Valid Transposition	8	5	8	7
Transference	14	15	11	14
Through translation	3	2	1	2
Addition	1	2	1	2
Descriptive Equivalent	1	1	1	1
Functional equivalent	1	1	1	
Deletion		3		2
Synonymy	1	1		1
Total	29	30	23	30

The Quantitative Phase

To see if the difference between the translations is statistically significant, the researcher performed Chi-square. As displayed by Table 3 there was statistically no significant difference between the four translators with regard to the strategies of transposition, transference, through translation, functional equivalent and descriptive equivalent with respect to task one. Indeed, in these cases, the significant value is *more* than the alpha value of .05.The hypothesis of this study testified with regard to task one.

Table 4

The Significant Difference between Students with Respect to Task One

Strategies	Value	df	Asymp.Sig. (2 sided)
Transposition	0.506a	3	0.918
Transference	1.111a	3	0.774
Through translation	0.444a	3	0.931
Functional equ.	0.571a	3	0.903
Descriptive equ.	0.000a	3	1.000

To see if the difference between the translations is statistically significant, the researcher performed Chi-square. As displayed by Table 4, there was statistically significant difference between the four translators with regard to the strategy of addition. Indeed, in this case, the significant value is *less* than the alpha value of .05 (here, it is 0.017). However,

the researcher found no significant difference between the translators with regard to the strategies of transference and through translation. The hypothesis of study rejected with regard to task 2 because there was significant difference between translators with regard to strategy of translation.

Table 5

Table 4 the Significant Difference between Students with Respect to Task Two

Strategies	Value	df	Asymp.Sig. (2 sided)
Transference	0.923a	3	0.820
Through translation	0.364a	3	0.948
Addition	10.222a	3	0.017

Discussion

In this study, familiarity with the text and think aloud technique had an effect on translation speed and thinking aloud the text. It increased translation speed of translators. Translators translated final text faster than the first task. While in Jackobsen (2003)'s study thinking aloud delayed translation speed at about%25 and no significant effects on revision were found. Furthermore, the result of this study is in consistent with the result of Jackobsen's study. Thinking aloud forced translators to process text in smaller segments. Sometimes, they translate the sentences word by word or divided it into small units. In the study conducted by Lorascher (1991) 48 subjects verbalized their thoughts while performing the task. Reproductions had been transcribed by the researcher.

Conclusion

The most important conclusion we can draw from the study is that think aloud method has different effects on the translation process of translators. A text which was hard for one translator, was easy for the other translator. Some translators tried to be faithful to ST but others tried to put translation into their mother language. Thinking aloud can't uncover unconscious thought. The difficulty level of the text depends on translator's knowledge and translator's ability. The null hypothesis of the study was testified so we can conclude that there is no significant difference between translators regard to translation of general texts. In sum, the study concludes that attention to the black box of translator could yield useful data.

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Parliamentarianism: concept, signs, and problems of development in Russia

El parlamentarismo: concepto, signos y problemas de desarrollo en Rusia

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ABSTRACT

The article analyzes various ideas about the concept and features of parliamentarism. On the basis of the generalization of the legal literature, the following set of features of parliamentarism is denoted: 1) rule of law; 2) separation of powers; 3) participation of the parliament in bodies of executive, judicial and other branches of power; 4) accountability of the executive power to the parliament; 5) multiparty nature, the right to political opposition and ensuring the connection of the population with the state mechanism; 6) special status of the deputy with a free mandate and responsibility before the law; 7) independence of the parliament; 8) special status of the deputy with a free mandate and responsibility before the law. The concept of parliamentarism proposed to counteract state bureaucratization. We connected the idea of parliamentarism with the possibility of mitigating authoritarian tendencies in Russian political system.

Keywords: Parliamentarianism, MP, separation of powers, rule of law, multiparty politics.

RESUMEN

El artículo analiza varias ideas sobre el concepto y las características del parlamentarismo. Sobre la base de la generalización de la literatura jurídica, se denota el siguiente conjunto de características del parlamentarismo: 1) estado de derecho; 2) separación de poderes; 3) participación del parlamento en órganos de poder ejecutivo, judicial y otros poderes; 4) responsabilidad del poder ejecutivo ante el parlamento; 5) naturaleza multipartidista, el derecho a la oposición política y asegurar la conexión de la población con el mecanismo estatal; 6) estatus especial del diputado con libre mandato y responsabilidad ante la ley; 7) independencia del parlamento; 8) estatus especial del diputado con libre mandato y responsabilidad ante la ley. El concepto de parlamentarismo propuesto para contrarrestar la burocratización del estado. Conectamos la idea del parlamentarismo con la posibilidad de mitigar las tendencias autoritarias en el sistema político ruso.

Palabras clave: parlamentarismo, parlamentario, separación de poderes, estado de derecho, política multipartidista.

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INTRODUCTION

In the context of the recent strengthening of authoritarian principles of the Russian statehood, various scientific concepts are of interest, which offer directions of decentralization of administrative processes. Accordingly, within the framework of the constitutional law of Russia a somewhat forgotten theory of parliamentarism is being reanimated. During the Soviet period, bourgeois parliamentarism was considered in detail from a critical point of view. In the 90s, the idea of parliamentarism was supported, but later gave way to the concept of a strong state, the "single vertical of power". At the same time, the idea of parliamentarism is designed to resist the arbitrariness of the executive branch of power, and may be quite effective in balancing the power levers of modern Russia.

The chosen topic of the study is relevant not only for Russia, but also for the international community as a whole. In recent years, there have been works by foreign authors drawing attention to the excessive strengthening of the executive branch of government and the devaluation of democratic procedures. The point is that modern streamlined parliamentarianism is in decline due to the dominance of corporatism, party rule and strengthening of the executive branch. The weakening of parliamentarianism is determined by two opposing trends: fragmentation of party representation on the one hand, and usurpation of power by the parliamentary majority, the dominant factions, on the other. The general consequence is the replacement of the substantial legislative activity with the party-fractionation "machine", the loss of executive power in the legislative process, the delegation of legislative powers to the government, the growth of bureaucracy, populism (Sajo, Uitz, 2017).

The term "parliamentarism" itself is found in the works of pre-revolutionary authors, in the works of Soviet scientists, in modern jurisprudence, and in foreign literature. However, no universal definition of this concept has yet been developed. There are disputes about what levers can be used to ensure a balance of public power levers, as well as the reality and efficiency of the implementation of parliamentary powers. The question is raised about the effectiveness of modern lawmaking.

The purpose of the work is to conduct a comprehensive study of the category of "parliamentarism" and to review the main approaches to the perception of its features. Accordingly, along with the disclosure of different points of view on the understanding of parliamentarianism and its basic features, the aim was to propose its integration perception and authorial approach in outlining the specific features of parliamentarianism. One of the tasks was to develop general recommendations for improving parliamentarism in Russia.

Methods

The article was written using the formal legal method, the method of comparative jurisprudence, hermeneutics, synergetics and dialectics. The international acts and the legislation of the various countries, law-enforcement practice concerning questions of parliamentarism have been analyzed. Works of Russian and foreign authors in the sphere of public state law were used.

DEVELOPMENT

Results and discussions

Quite often, parliamentarism is defined as a special system of organization of state power, structurally and functionally based on the principles of separation of powers, the rule of law under the leading role of parliament in order to establish and develop relations of social justice and law and order (Large, 2004; Modern, 1999).

A vulnerability in such definitions is the reference to the "lead" role of parliament, which may be associated either with the parliamentary form of government or with some dominance of parliament over other branches of government.

Parliamentarism is generally defined through the categories of "regime" (Levin, 1960; Mogunova, 2008), "forms of public management of society" (Gabrichidze et al., 2003), "parliamentary form of government" (Arzamaskin, 2006; Von Sydow, 1997), "political system" (Rybkin, 1995), "system of public management of society" (Mishin, 1996), "some scale of social values" (Mironov, 1996), "political institution" (Alizoda, 2012), "state system" (Baglai, 2004), "principles" (Kramskoy, 2010), "a set of theoretical concepts, legislative acts, legal relations" (Rumyantseva, Gulyaeva, 2006); "a set of ideas and experience of representative implementation of the power of the people through the parliament" (Bogdanova, 2003); "socio-political and ideological movement" (Onishko, 1999). However, perhaps the most common option is to refer to parliamentarianism as a "special system of organizing public power" (Parliamentary, 1999; Kramskoy, 2013).

It is obvious that in the cases under consideration the authors speak about completely different sides or positions of parliamentarism. Without claiming to be absolutely correct, it is possible to consider parliamentarianism in constitutional law in four ways: 1) as a theoretical concept, which includes scientific developments on what parliamentarism should be like ideally; 2) as a special system of organization of public power, reflecting the essential

role of parliament in a particular state in practice; 3) as a legal institution, i.e. a set of rules of law regulating the high status of parliament in the state (and in this sense is consonant with parliamentary law); 4) as a principle of the structure of the state ("hidden" constitutional principle).

At the same time, the second semantic meaning of parliamentarism as a special system of organization of state power is central, since other manifestations of parliamentarism are derived from it. It is the peculiarities of the organization of public power that are considered by scientists when studying parliamentarism; it is the peculiarities of the organization of public power that form the basis for the legal regulation of parliamentarism in a particular country, and it is they who act as a "hidden" constitutional principle.

In order to define parliamentarianism as a special organization of state power, it is important to identify its qualifying features. In this regard, there are many points of view in legal science. At the same time, different authors may indicate the characteristics, properties, principles, and conditions of parliamentarism, which allow to characterize this legal phenomenon in more detail.

In particular, according to V.A. Shekhovtsov, the features of parliamentarism are the separation of powers, multiparty politics, and a free mandate of a deputy (Shekhovtsov, 2002). I.M. Stepanov considers the following to be signs of parliamentarism: separation of powers, rule of law, a fully functioning parliament with law making and control prerogatives, multiparty system, political and ideological diversity, recognition of rights and freedoms of citizens (Parliamentary, 1999). R.M. Romanov attributes to the peculiarities of the phenomenon under consideration the powers of the parliament in terms of lawmaking, election of the government, control over its activities (Romanov, 1998).

In V.E. Usanov's opinion, the content of the concept of parliamentarism is based on the following principles: the independence of parliament from the crown power; the presence of a system of checks and balances; the bicameral nature of the federal and polyethnic state; the maximum approximation of the parliament of the republic (monarchy) to the rule of law (Usanov, 2006). A.A. Amiantov notes the four constitutional principles of parliamentarism, which guarantee its development in the modern state - the power of the people, the separation of powers, ideological and political diversity, as well as federalism (Amiantov, 2007).

According to A.V. Vystropova, the content of the concept of "parliamentarism" includes such elements as the rights and freedoms of man and citizen, the theory and practice of separation of powers, the idea of the rule of law, the concept of formation of civil society (Vystropova, 1999).

There are many other opinions regarding the designation of the peculiarities of parliamentarism, predetermined by differences in the very understanding of the term. Nevertheless, on the basis of generalizations of various literature, it seems logical to designate qualifying features of parliamentarism from the point of view of its separation from the elements of the form of the state and the inadmissibility of literal understanding of the "rule of parliament". Therefore, in our view, the following qualifying features distinguish parliamentarianism as a special organization of public power:

1.Rule of law.

This feature of parliamentarianism is also one of the fundamental principles of modern statehood. It presupposes mandatory adherence to laws as normative legal acts adopted by the parliament (or because of direct expression of the will of the people) on the most important issues of the life of society and the state, as well as having priority over all by-laws. It is assumed that the law should be legal, that is, fair, correct, objectively necessary (State, 2007).

This ideal model, with its apparent simplicity, is difficult to implement in practice. The fact is that, firstly, in the modern state in the conditions of expansion and complication of the spheres of legal regulation, extensive law-making of executive authorities and recognition of the phenomenon of judicial law-making the difference between the law and the by-law, the "primary" and "secondary" legislator, the normative legal act and the act of interpretation of law are less and less obvious (Filippova, 2009).

In practice, this gives ground for different legal interpretations and political manipulations in specific life situations. Still, legal fixation and aspiration to implement the principle of the rule of law by different participants of legal relations allows states to develop in a fairer, more humanistic direction.

Secondly, the principle under consideration may be interpreted differently in different states, taking into account the specifics of the history of legal institutions. For example, in Eastern European states, the principle of the Supremacy of Statute Law, i.e. the rule of law, is primarily concerned. Since 2010, China has been actively developing the principle of "governance under the rule of law", which implies an emphasis on individualization within the patriarchal model of statehood (Serov, 2007). The Anglo-Saxon "rule of law" and the German-

Romanesque "rechtsstaat", "etat de Droit", "estado de derecho" are not just different linguistic expressions of the same phenomenon, denoted in the Russian translation as "rule of law", but different scientific concepts (Marchenko, 2009).

In Anglo-Saxon doctrine, the term "rule of law" is based on centuries-old judicial practice (Zorkin, 2015). In the studies of Western authors it is emphasized that the traditional Anglo-Saxon interpretation of the rule of law principle is reduced to the establishment of such a legal order, in which the court, and not the legislator would have the power to finally solve the question of what is law and what is not such (Allan, 2001; Dicey, 1992; Goldford, 2005). In the countries of the Romano-Germanic legal system, the idea of the rule of law was first theoretically embodied in the concept of the rule of law ("rechtsstaat") and only later was it implemented in practice.

This model was initially oriented to the legislative activity of the parliament and appeals to the legislative order of solving fundamental issues of law (Sampbell, 1996). However, to date, differences in the understanding of the "rule of law" in these legal systems are leveled out, since the process of convergence of the system of sources of law is underway in the respective countries (Marchenko, 2008), as well as some international perception of this phenomenon is formed.

For example, the World Justice Project, an international non-governmental organization, has developed a system of indicators for calculating the rule of law index for different countries of the world and has been applied in practice for several years now. These indicators include the degree of limitation of the powers of government institutions, the level of corruption, order and security, guarantees for the protection of fundamental rights, transparency of government institutions, compliance with the law, and the quality of justice (Zorkin, 2015). The Copenhagen Conference on Security and Cooperation in Europe (CSCE) in its Final Document expressed the will of the 35 CSCE member states to recognize that the rule of law means much more than just formal legality; it also means justice based on the recognition and full acceptance of the supreme value of the human person, guaranteed by the institutions that provide the framework for its fullest expression (Moore, 1992).

Today, the principle of the rule of law and the rule of law is often supplemented by the relatively new term "constitutionalism", which in general means, first of all, the very existence of the constitution and its active influence on the political life of the country, the rule of law and the defining role of the constitution (written or unwritten) as a basic law in the system of existing legislation, the mediated political relations with constitutional legal norms, constitutional recognition of the rights and freedoms of the individual, the legal nature of the relationship between the citizen and the citizen.

The institution of constitutional justice introduces a new dimension to the rule of law and the constitution. At the beginning of the twentieth century, this institution existed only in a few countries, and a significant political role played only in the United States. Now it is fixed by all constitutions of the second and subsequent "generations" adopted after the Second World War.

At first glance, it may seem that constitutional justice undermines the traditional principle of the rule of law, since the hierarchy of state bodies has one (usually the judiciary) that is "higher" than the representative body - parliament - and is empowered to check the legislative acts of parliament. For this, bourgeois countries have been criticized by the Soviet science of state law (Modern, 1985). Today, in the legal literature of different countries the question of the limits of interference of constitutional justice in the prerogatives of the legislator is widely discussed. Various theories of "judicial self-limitation" and "judicial activism" are being developed, individual cases of active interference of constitutional courts of some countries in political decision-making are analyzed (Crowe, 2007; Abraham, 1993; Belknap, 1999; Aloisi, Meernik, 2017; Waldron, 1998).

However, by the present time the Russian jurisprudence has accepted the arguments of foreign scientists substantiating the expediency of the existence of the body of constitutional control, which does not oppose the will of the people, because it is entrusted with the function of protection of the constitution, which is the most solemn and profound expression of the will of the people, from possible encroachments from the Parliament in case of disrespect for the Fundamental Law (Bourdon et al., 1980). Moreover, Russian scientists have introduced the category of "judicial constitutionalism" as an adaptation of the theory of the rule of law to the realities and positive meaning of constitutional justice, which implies judicial protection of constitutional prescriptions, as well as the formation of "living" constitutionalism under the influence of acts of the constitutional court (Bondar, 2013).

This approach is in line with the modern pan-European ideas about the supremacy of the constitution. Thus, the general report of the XIV Congress of the Conference of European Constitutional Courts, held in Vilnius on June 3-6, 2008, states: "Only an active position of the constitutional court ensures a real, and not an expected, implementation of the principle of constitutional supremacy" (Constitutional Justice. Bulletin of the Conference of Constitutional Review Bodies of Young Democracies. Yerevan, 2008. Issue. 2-3. C. 110-111).

2. Separation of powers with clear and effective powers of parliament.

It is obvious that parliamentarianism presupposes the efficiency of the parliament's implementation of its competence, i.e. rights and duties (powers) in certain spheres of life of the society and the state. At the same time, the modern state is characterized by legislative or even constitutional regulation of the powers of the parliament. Therefore, it is customary in legal science to classify parliaments in the form of fixing their powers on those with unlimited competence, absolutely limited competence and relatively limited competence (Constitutional, 2000).

In order to compare the content of the competence of parliaments, a more consolidated division of parliamentary powers into functions (main areas of activity) of parliament is used. Traditionally, the functions of parliament are referred to as legislative, representative and oversight functions. However, various authors additionally highlight the constituent, stabilizing, financial, foreign policy, administrative and other functions of parliament (Kotelevskaya, 1997; Kolobov et al., 1991). In this regard, it is noteworthy that there is often a scientific dispute about the allocation of the main function of the parliament. For example, Russian scientists usually refer to a representative or legislative function as such. In English legal doctrine, the "palm of supremacy" is usually given a control function. German authors prioritize the function of forming the state will in conditions of constant competition between parliament and other supreme authorities (Russian, 2006).

However, the legislative regulation of the competence of parliament is not the only factor that determines the efficiency of the exercise of its powers in practice. For example, the presence of legally defined powers of parliaments in fascist Germany or in many post-Soviet countries of Eastern Europe has not yet predetermined a significant role of representative institutions in reality. What matters is how well the powers of parliament fit into the system of separation of powers and allow it to influence other institutions of power.

The theory of separation of powers developed by J. Locke and S. L. Montesquieu in the context of the struggle of the bourgeoisie against feudal domination is, on the one hand, a necessary attribute of democracy and parliamentarism, and, on the other hand, a stumbling block in numerous scientific discussions

First, the number of authorities is being actively discussed. If the classical variant of the concept of separation of powers presupposes the separation of legislative, executive and judicial powers, then at present this list is proposed to be supplemented by the constituent, electoral, informational, party, presidential, controlling and even bureaucratic powers (Sedegov, 2009; Ebseev, 2014). As a follow-up to this approach, some constitutions either provide for a greater number of authorities or indirectly enshrine the principle of separation of powers, removing the question of the number of its branches. However, it seems that the new branches of power are secondary to the traditional "shamrock", since it is the new branch that lays down the basic mechanisms for preventing arbitrariness and is a means of combating the abuse of power.

Secondly, in the modern state, the power mechanisms are quite complex and imply a certain interweaving of powers with a clear deviation from the classical postulates of the theory of separation of powers. In this connection, the textbook phrase of K. Hesse that the separation of powers "is not carried out anywhere in its purest form" became a textbook one (Hesse, 1981). Therefore, a new interpretation of the principle in question through the prism of division of functions (forms of public power activity) becomes very popular in the legal literature (Maunz, 1980; Problems, 1999; Chirkin, 1990).

But it seems that this approach distorts the essence of the theory and shifts the emphasis from the main to the secondary. Implementation of the principle of separation of powers implies separation not only of functions, but also of power centers, which does not violate the unity of state power, which should be understood as the unity of strategic goals and directions of activity of all state bodies.

Third, the disputes over the designation of the main branch of government among the three branches of government continue unabated. It is well known that J. Locke, when developing the theory of separation of powers, proceeded from the leading role of the legislature (Locke,1988). The doctrine of "the supremacy (sovereignty) of parliament" is still officially recognized in Great Britain (Marchenko, 2008; Bagehot, 1976; Marshall, 1980). Many Russian scholars link the institution of parliamentarism to the rule of law or the leading role of parliament. At the same time, legal doctrine is saturated with theories about the supremacy of executive power (ministerialism, "cabinet supremacy" or even presidentialism) (Mishin, 2008; Egorov, 1987).

There are also theories of the balance of powers (Mogunova, 2001).

Nevertheless, it seems that it is groundless to speak about the supremacy or leading role of the parliament in the system of separation of powers. Such theories represent a kind of legal fiction. For example, in the same United Kingdom, an elevated attitude towards parliament is combined with a parliamentary form of government, the

downside of which is the strengthening of the bureaucratic apparatus. In this regard, the concept of "ministerialism" has a double meaning in constitutional law. On the one hand, it means an integral component of parliamentarism (in the sense of parliamentary governance), when the role of the Cabinet of Ministers actually increases with the formal legal dependence of the government on parliament.

On the other hand, ministerialism is perceived as an objective exaltation of executive power in all states in the form of ministries, departments, presidents, and so-called "bureaucracy". The primacy of executive power is conditioned by its inherent features in the form of professionalism, deep knowledge of information, coercion, management of all state resources, and efficiency.

Therefore, parliamentarism in the meaning we understand implies not the supremacy of parliament, but the presence of a real possibility of other branches of power to restrain the arbitrariness of executive power, as well as the real powers of parliament to influence other bodies of power, and, first of all, the executive power.

Fourth, the current perception of the principle under consideration is related not so much to the separation of powers as to their interaction. This interaction with the easy hand of American constitutionalists is usually called a "system of checks and balances" (Krylov, 1998). The difficulty lies in the fact that there is no universal way of distributing the powers of state bodies, symbolizing the three branches of power. Each country has to regulate the relations between the authorities in its own way, taking into account historical, cultural, geographical and other features of the state. Therefore, in the conditions of almost universal formal-legal recognition of the principle of separation of powers, some states manage to find a balance between the interaction of powers, and some - not others. Accordingly, one can say that in some states there is parliamentarianism, while in others there is not.

In our opinion, this does not depend on the legal recognition or denial of the dominance of parliament, but rather on the regulation of the powers of state bodies, taking into account the national peculiarities of the country.

3. Participation of parliament in the formation of executive, judicial and other branches of government.

The election or appointment of parliamentary officials (chairpersons, speakers, heads of committees, etc.) is the natural and inalienable prerogative of parliament. However, in order to ensure the reality of the powers of parliament in the context of the principle of separation of powers, it is necessary for a representative body to participate in the formation of other bodies of power. This participation may vary from one body to another, depending on the national context, and from one body to another, and from one body to another, depending on the way in which it is formed.

In parliamentary republics or monarchies, parliaments vote to approve the appointment of the head of government. The forms of parliamentary participation in government formation are diverse in global practice. Parliaments usually participate in the formation of the judiciary. It is also possible for parliament to participate in the formation of bodies of power that have a controversial status from the standpoint of the theory of separation of powers (prosecutors, commissioners).

Of course, the powers of parliaments to form other bodies of power cannot be idealized due to the influence of interpersonal relations and financial oligarchy on these processes, but even taking into account the "injustice" of individual appointments and the actual predetermined staffing of positions in the system of executive power by the opinion of the head of government, the participation of parliaments in the formation of other bodies of power as a sign of parliamentarianism is of great importance. It is connected with the possibility of the parliament to use political levers of pressure to defend its interests, as well as to prevent the recognition of its decisions as unconstitutional or illegal by the supreme courts due to the political bias of the executive authorities.

4. Accountability of the executive to the Parliament.

The abovementioned feature reflects the reality of the Parliament's powers of control over the executive branch of power. It does not refer solely to the forms of accountability of the executive in parliamentary republics or monarchies. Today, the methods of parliamentary control can be very diverse and do not necessarily involve a vote of no confidence in the government (resolutions of censure, appeals, oral and written questions, parliamentary investigations, ombudsmen, chambers of account, audit offices, etc.). The main thing is that parliament, through the institution of control, should have real levers to influence the executive branch.

However, even the existence of legal means of parliamentary control does not in itself predetermine its effectiveness - much depends on political and even psychological factors. In this regard, it is appropriate to quote a vivid statement by the British author A. Sampson: "Usually MPs face the simple fact that neither the government nor public officials want MPs to know what is really going on. And MPs lack the will, knowledge or time to

complete the investigation. In addition, many MPs doubt whether they should criticize civil servants. In the case of the author of the communication, the Committee considers that the State party's failure to comply with its obligations under the Covenant is a violation of article 14, paragraph 1, of the Covenant, and that the author's failure to comply with its obligations under the Covenant is a violation of article 14, paragraph 1, of the Covenant (Sampson, 1975).

The Committee on Economic, Social and Cultural Rights has also noted the importance of the right to freedom of opinion and expression and the right to freedom of opinion and expression, as well as the right to freedom of opinion and expression. A number of countries even use legal levers to increase opposition influence over the government. For example, according to the 1995 Constitution of Georgia, the majority representation in a parliamentary commission cannot exceed half of the total number of commission members (Parliamentary, 2006). In France, following the adoption of the 1958 Constitution, which limited the number of commissions of inquiry to eight in each chamber, attempts are being made to simplify the procedure for establishing commissions in order to strengthen the mechanism of parliamentary investigations (Fedorova, 2014).

Overall, however, practice shows that the control powers of parliaments are less diverse in presidential republics, although their effectiveness is enhanced by the government's lack of powers to dissolve parliament. In contrast, in parliamentary countries, the extensive oversight powers of parliament are largely neutralized by the government's right to dissolve parliament (Mishin, 1996), as well as by a factor of party affiliation, since the party that formed the government does not benefit from drawing attention to its cabinet. In mixed republics, the effectiveness of parliamentary control depends on the balance of political power and the personality of the head of state.

5. Multiparty politics, the right to political opposition, and ensuring that the population is connected to the state mechanism.

To ensure that Parliament does not become a decorative institution, it must function in an environment of political pluralism and public feedback. This feature is facilitated by the constitutionalization and institutionalization of political parties on the basis of equality and freedom of expression. The influence of political parties on the modern state is so great that it gave rise to the theory of a "party state", the central thesis of which is associated with the formation of the political will of the people through parties and its "mediation" in relations with the state power. The most determined representatives of this theory even recognize parties as organs of the state (Trautmann, 1975; Libertan, 1974). However, the main emphasis of the doctrine of "party state" is made on the need for the existence of opposing political forces, alternative political attitudes.

At the same time, the practice of political parties' activity has shown that these organizations have not only positive functions of political course development, participation in the formation and control over the activity of authorities, national integration, etc., but also have a negative manifestation in the form of defending narrow corporate interests, financial abuse, populism, etc. These negative manifestations of the activities of political parties entail disappointment of citizens in political institutions. On April 17, 2007, the Parliamentary Assembly of the Council of Europe was even forced to appeal to the parties with a call to increase their responsibility before the electorate and not to make unrealizable promises to the electorate (PACE Resolution No. 1546 (2007) of April 17, 2007). "Code of Conduct for Political Parties" // State power and local self-government. 2007. № 8).

Formation of the real multi-party system depends on political traditions, balance of social forces, economic conditions and other factors. However, there are legal mechanisms for influencing political parties.

For example, it is known that the majority electoral system contributes to the dominance of large parties and even to the formation of bipartisanship. High barrier creates obstacles to the emergence of opposition currents, while in conditions of instability of the political system, the legal recognition of the right to establish party blocs contributes to the strengthening of parties and the formation of party traditions.

The presidential form of government, rather than the parliamentary form of government, encourages deviations from party discipline in the voting process on the adoption of the law on the It is therefore clear that if a country is to develop parliamentarianism, it is necessary to create the legal conditions for multiparty politics.

The legal methods of supporting the opposition in individual countries are also noteworthy. For example, in the United Kingdom, a number of laws have established the official status of the main opposition party (Her Majesty's Opposition), which gives it the right to receive guaranteed cash payments from the state budget, and its leader - to form a "shadow" cabinet and as the head of the said cabinet to receive wages from the same source of funding. In Canada, since 1970, all parties with 12 to 30 MPs have been paid money to set up research services. In the U.S., the 1970 Reorganization Act established the right to appoint one third of the staff of the staff of the committees to members of the minority party in Congress (Osavelyuk, 2013). At the same time, the impact of the population on the state authorities and pluralism of opinions in politics is ensured not only by the activities of political

parties, but also by the functioning of public associations, business unions, pressure groups, lobbyists, and the media. Moreover, the practice has shown their direct or indirect connection with political parties. Accordingly, parliamentarianism presupposes democratic rules of legal regulation of their activities. This is particularly true of the media, which are often referred to as the "fourth branch of government" and have even begun to receive constitutional entrenchment in recent years.

It is also characteristic for parliamentarism to have direct forms of influence of the population on the authorities through the institutions of direct democracy. These forms can be varied and used in different ways in different countries. In Switzerland, for example, forms of direct democracy, including referendums, are often used in practice. In Germany, on the contrary, the legal doctrine recognizes only elections as the only expression of direct expression of the will of the people (Sajo, 2011).

However, for the formation of parliamentarianism, it is important to have legal means of expressing public initiatives and grievances. Such legal mechanisms are an important political factor in influencing parliament and other authorities and can protect them from abuse of power.

6. Special status of a deputy with a free mandate and responsibility before the law.

A sign of parliamentarianism is the free mandate of the deputy, as it creates conditions for pluralism of opinion in the parliament, makes the deputy look for channels of interaction with the electorate and prevents excessive pressure on the deputy by political parties, pressure groups and other actors. The free mandate of a deputy is characterized by the consideration of a deputy as a representative of the nation as a whole, not an electoral district, as well as the lack of legal regulation of the penalties, reporting and recall of the deputy. Signs of a mandatory mandate are completely opposite to the properties of a free mandate.

Historically, a mandatory mandate was the first to emerge. It was actively used in the Middle Ages (for example, in the General States of France in the 15th-16th centuries), was used in the period of existence of the Paris Commune in 1871, and later was accepted by the countries of the socialist camp, sometimes it is used in a truncated form at the level of municipalities and subjects of the federation in democratic countries. At first glance, its use should be more consistent with the interests of voters, because it fixes the legal dependence of the deputy on the will of citizens. However, it cannot be fully implemented due to the conflict between the interests of the constituency, the state and the opinion of the deputy himself.

The negative features of a mandatory mandate are: 1) Facilitating the implementation of "local trends" in the representative body; 2) the complexity of application in the conditions of the content of modern legislation; 3) dependence on the political activity of citizens; 4) abuse of voters' personal time.

Moreover, most importantly, the imperative mandate is not consistent with the modern principle of separation of powers. A deputy cannot legally take over the execution of Soviet-type orders related to the allocation of funds (building a school, repairing a road, etc.), because the executive and administrative functions are not within the competence of parliament. Nor can a deputy assume any other obligations, since he or she does not make any important decisions on his or her own, but is a member of a collegial body of power. In such conditions, all structures of recall of a deputy are legally damaging. The history of a deputy's free mandate begins with the victory of the New Age revolutions, when the bourgeoisie began to claim the role of a representative of the entire nation. Today, the absolute majority of democratic states recognizes this type of mandate. It is interesting to note that even the practice of the European Court of Human Rights implicitly recognizes the free mandate of a deputy. In particular, in its decision in the case of Gitanas and others v. Greece of July 1, 1997, the Court noted that states are free enough to establish the status of parliamentarians within their constitutional order, based on the need to "ensure the independence of members of parliament, as well as the free expression of the will of voters" (European Court of Human Rights. Selected decisions.M., 2002. T. 2. C. 458.).

This expansion of a free mandate is predetermined by its positive features: 1) reflection of the national interests in the policy; 2) provision of the deputies with the possibility of maneuvering and compromises in the changing political conditions; 3) reduction of the danger of direct confrontation in the society; 4) freedom to form opinions and will within the party and faction. At the same time, if this model of relations between a deputy and voters is recognized, there is a danger that deputies will defend the interests of a narrow social group under the guise of public interests.

However, it should be noted that the free mandate of a deputy is in some sense a legal fiction and does not correspond to the really developing relations.

In the modern state, the very situation of political rivalry within the framework of the election campaign makes MPs listen to the demands of citizens, be responsive to their needs (Constitutional, 2003; Grafsky, 1991), to seek

decision-making (financial aid programs, investments, government contracts, etc.), which are expected of them by voters V.I. Fundamentals (Lafitsky, 1998).

The actual independence of a member of parliament can be called into question not only and not so much by the influence of voters, but also by the influence of political parties, pressure groups (lobbyists), public authorities and local government.

In particular, the party nature of the modern state presupposes that the deputy is bound by party discipline. Of course, it is not of a legal nature, there are no legal sanctions for a deputy for its violation (this is the main difference between the free mandate of a deputy and the mandatory party mandate). However, based on political expediency, the deputy is forced to orientate himself on it (Martinoff, 2002). The degree of political interaction of deputies and parties in the states is not equal. The strongest traditions of subordination of deputies to party discipline exist in Great Britain, Germany, Norway, Sweden, Finland, and the Czech Republic.

At the same time, the positive significance of a free mandate is precisely to create legal mechanisms to counteract the full subordination of a deputy's will to party instructions. Otherwise, a free mandate may develop into a so-called mandatory party mandate, the main feature of which is that it is permissible to deprive a deputy of his or her authority in case of deviation from the party's instructions.

The practice of implementing this relatively new mandate in some countries, such as India since 1966, has shown its negative impact on the development of statehood. It consists in the fact that the introduction of this legal structure turns the parliament into a kind of bureaucratic body, subordinate to the direct instructions of the party leaders, losing the quality of representativeness of the parliament (Cherkasov, 1994). Accordingly, such a body can no longer act as a counterweight to the executive power.

Therefore, constitutional control bodies of different countries, as a rule, recognize the illegality of strict subordination of deputies to party discipline (Germany, Romania, etc.) (Jarass, 2002).

It is also important to note that the free mandate of a deputy as a sign of parliamentarianism does not exclude his responsibility to a representative body. The world experience shows the compatibility of a free mandate with the institution of deprivation of a deputy's mandate by the decision of the parliament as a sanction for non-performance of deputy's duties.

7. The independence of the judiciary and its interaction with the legislative and executive branches of government to ensure a balance of State and legal order.

The developers of the theory of the separation of powers, J. Locke, S. L. Montesquieu, and A. Hamilton, assigned a very modest place to the judiciary, considering it to be "the weakest of the three", because it does not have the capacity to actively participate in politics, does not enjoy the same public confidence in the elections as the legislature, and does not have the same coercive power as the executive branch (Locke, 1988; Montesquieu, 1955; Hamilton et al., 2009). However, the practice of implementing the principle of separation of powers has disproved this thesis. In a modern state, a strong judiciary is regarded as an inherent feature of the rule of law and parliamentarism (Chirkin, 2001).

The strengthening of judicial functions in the form of constitutional justice has led to the emergence of the theory of the "state of judges". It is noteworthy that the above concept was developed especially deeply in Germany in the depths of the continental legal family, where the role of the court has not been traditionally overestimated. The theory of the "judicial state" presupposes the perception of the court as a guarantor of the implementation of the principle of the legal statehood, as a body that is entrusted to decide what is the right and what does not act as such.

Supporters of this theory questioned the ability of the parliament to perform the functions of the guardian of the right, and saw in the formal law the potential threat to freedom and law (Bachoff, 1959). Similar sentiments were among American lawyers during the period when the Supreme Court was in power. Judge Hughes uttered his famous phrase in 1908: "The Constitution of the United States is what the Court will say about it" (Jacquet, 2002).

At the same time, both denigration and excessive elevation of judicial power do not serve the interests of the state. Judges are still people with their own passions, vices and relationships with other people. World experience shows that there are individual cases of unfair or non-legal decisions. For example, in 1857, the U.S. Supreme Court made the "most shameful" decision in its practice about the unconstitutionality of the law allowing citizenship of blacks (Friedman, 1992). It is known that in the post-war period, the judicial bodies of the United States, Canada, and Australia have a biased attitude towards the so-called "subversive elements" - persons and organizations opposing the ruling regimes (Marchenko, 2008).

History shows periods of both strengthening and weakening of the role of courts in different countries. However, from the perspective of the theory of parliamentarianism, it is important to ensure the balance and balance of power among other branches of government through constitutional and legal means. This can be done through the legal regulation of the leverage of parliament and other bodies, as well as by ensuring the high and independent standing of the judiciary.

In our opinion, the above-mentioned features characterize the effective execution of powers by the parliament, allow it to provide a stable and internally regulated mechanism of stable development of the state in cooperation with other branches of power.

Speaking of parliamentarianism in legal science, one cannot ignore the often negative attitude of ordinary people towards parliament. Citizens of many countries are outraged by the populist promises of MPs, corruption scandals related to their participation, lack of real responsibility for the adopted acts, parliamentary immunity, etc. Particularly disillusionment with parliamentary institutions is observed in countries that have recently adopted democratic values (Harutyunyan, 2013). For example, in Russia, according to official statistics provided by the All-Russian Center of Public Opinion, about 45-50 percent of the population approve of the activity of the Russian parliament in recent years. However, according to alternative data, this amount does not exceed 26 percent (Polovnev, 2015).

Professional lawyers also point to a number of criticisms of the work of parliaments, even in countries with well-established democratic traditions. These include, for example, lobbying in parliament for the interests of narrow social groups, slow parliamentary procedures, unprofessionalism of deputies, delegated lawmaking, the fact that the executive authorities have developed the bulk of draft laws, the use of parliamentary powers to build personal careers, etc.

However, despite all its drawbacks, parliament is still of great value, since it predetermines the existence of discussion in the system of power institutions and assumes the presence of legal mechanisms of influence of the opposition on the political decision-making of the power elite. Other state bodies or institutions of direct information influence on the government apparatus (public chambers, Internet interaction with the population, advisory bodies), which are invented today, are not capable of resisting usurpation of power in one hand.

Therefore, it is obvious that it is necessary to develop and improve the institution of parliamentarism, but it is necessary to take into account both positive and negative manifestations of the activity of parliaments and to avoid both humiliating and excessively elevated position of a representative body in the system of separation of powers.

As far as the Russian Federation is concerned, from the standpoint of the theory of parliamentarism, the question of imbalance in the branches of power deserves attention. In the case of formal democratization of the rules of interaction between the President, the Parliament and the executive authorities, specific legal regulation is structured in such a way as to ensure unconditional primacy in the system of separation of powers of the President of the Russian Federation with the executive authorities actually headed by him.

First, this is ensured through the formation of a pro-presidential majority in the State Duma. The electoral legislation has been changed several times in recent years, adapting to the interests of the so-called "party of power" (Kondrashev, 2012; Chaplygina, 2013). The judicial corps and the leadership of the higher courts are formed under the considerable influence of the President of the Russian Federation. The chairmen of the parliament are actually given their seats at the direction of the President in the course of formal and legal procedures of internal democracy. The new way of forming the Accounting Chamber also presupposes a significant influence of the President.

The system and structure of the executive branch of government depend entirely on the President's will. In terms of relations between the deputy and the electorate, in recent years Russia has seen the introduction of elements of a party's mandatory mandate, since the deputy of the State Duma is deprived of his or her mandate in cases where he or she has not been a member of the relevant faction or has resigned from it on his or her own application. The supervisory powers of the Federal Assembly of the Russian Federation even formally and legally do not extend to the activities of the President of the Russian Federation, and taking into account his party composition do not interest the deputy corps in any real forms of control measures. Such legal regulation allows the President of the Russian Federation and the executive power headed by him to conduct any initiative through the parliament practically without discussion, which raises the question of the effectiveness of the legislative process built in this way.

On the one hand, attempts are being made to justify the existing order by the peculiarity of the Russian statehood, the effectiveness of centralized management in difficult economic and political conditions, and the desire of citizens to live in a stable and strong state.

On the other hand, professionals are discussing the negative consequences of many reforms, including the restructuring of the education system, the liquidation of the Academy of Sciences, the "incompleteness" of anti-corruption legislation, excessive overstatement of administrative fines, abuse by the state of such non-commercial forms of legal entities as state-owned corporations, state-owned companies, institutions, etc., the depressing mismatch between the powers of local governments and their revenue base, and encroachment of government agencies.
Undoubtedly, the current situation is also affected by the impossibility of unambiguous answers to the question of how to assess the effectiveness of the legislative process. The criteria for the effectiveness of law-making in the literature are the enforceability of the act, its consistency with the norms of greater legal force, financial feasibility, compliance with the rules of legal technology, stability of legal regulation, etc. However, it is obvious that many of these criteria are narrowly professional or allow for an evaluation approach. Therefore, even among specialists, there is often no unanimity of opinions regarding the adopted laws or draft laws.
At the same time, it is generally thought that authoritarian tendencies of Russia's development are dangerous. They increase the influence of bureaucracy on the processes of public administration, make the head of state hostage to his personal position or the position of close officials, alienate the population from the state administration, entail a decrease in the legitimacy of government institutions, increase the risk of illegal manifestations of discontent with the policy pursued by society, and depress the economic development.

CONCLUSIONS

Thus, parliamentarism in the sense we understand is called upon to create mechanisms to counteract usurpation of power by the bureaucracy. Parliamentarism does not imply the supremacy of parliament, but rather the existence of a real possibility for other branches of power to restrain the arbitrariness of the executive branch, as well as the real powers of parliament to influence other bodies of power and, above all, the executive branch.
The question of the signs of parliamentarism remains debatable in legal science. In our opinion, the following qualifying features of parliamentarism should be designated: 1) rule of law; 2) separation of powers with clearly defined and real powers of parliament; 3) participation of parliament in the formation of bodies of executive, judicial and other branches of power; 7) accountability of executive power to parliament; 5) multiparty nature, the right to political opposition and ensuring connection of the population with the state mechanism; 6) special status of a deputy with a free mandate and responsibility before the law; 7) independence of the judiciary.
At the same time, the theory of separation of powers, in our opinion, should not be exaggeratedly reduced to a functional distribution of powers. And the principle of the rule of law in the modern understanding implies the existence of constitutionalism, which determines the high role of the constitution as the main law in the system of existing legislation and the possibility of protecting its prescriptions through the institution of constitutional justice.
The advantage of the concept of parliamentarianism is that it does not focus on parliament as such, but rather on the relationship of all branches of government. This avoids reckless decisions in reforming the institutions of power. For example, the proposals by some authors, who, in an effort to move away from authoritarianism in Russia, recommend strengthening the oversight powers of parliament or enshrining a parliamentary form of government in the Constitution, are obviously one-sided.
Implementing such proposals, we see that in the conditions of expanding the regulatory framework of parliamentary control powers, the actual role of the parliament in the implementation of public policy may decline. According to the experience of foreign countries, it is known that under the parliamentary form of government, parliaments do not strengthen, but, on the contrary, surrender their positions in favor of the executive authorities. In general, the concept of parliamentarism, taking into account the practical experience of Russia and foreign countries, can serve as a direction of democratization of statehood; create obstacles to political and economic stagnation and monopolization of power in one hand.

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The Role of painting in prevention of crime

El rol de la pintura en la prevención del delito

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ABSTRACT

Art has recently been considered as one of the therapeutic methods in medical science. Since one of the most important measures in dealing with criminals is therapeutic and habilitation measures, taking into account my personal interests in art particularly paintings and regarding the effect of artwork creation on human personality. A criminal by creating a work of art, in another word by releasing his personality can retell all hidden secrets or evacuate his inner emotions. Art has the effect of spiritual freshening, ethic and skill education, spare time making for criminals. Therefore, the subject of painting's role in the prevention of crimes is considered to be of high importance which should be examined separately in order to highlight the importance of art and particularly paintings.

Keywords: Art, prevention, art therapy, crime, delinquency.

RESUMEN

El arte ha sido considerado recientemente como uno de los métodos terapéuticos en la ciencia médica. Dado que una de las medidas más importantes para tratar con delincuentes son las medidas terapéuticas y de habilitación, teniendo en cuenta mis intereses personales en el arte, particularmente las pinturas y en relación con el efecto de la creación de obras de arte en la personalidad humana. Un criminal al crear una obra de arte, en otras palabras, al liberar su personalidad, puede volver a contar todos los secretos ocultos o evacuar sus emociones internas. El arte tiene el efecto de renovación espiritual, educación ética y de habilidades, tiempo libre para delincuentes. Por lo tanto, se considera que el tema del papel de la pintura en la prevención de delitos es de gran importancia, que debe examinarse por separado para resaltar la importancia del arte y, en particular, de las pinturas.

Palabras clave: Arte, prevención, terapia de arte, crimen, delincuencia.

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Introduction

Art may have a profound effect on spiritual and moral aspects as well as learning skills and leisure. Sometimes it is used to achieve peace of mind. Many believe that high number of criminal records is partly due to lack of healthy recreation and leisure. Recreation times are appropriate for renewing the spirit and development of trust in society. According to Victor Hugo art may teach young people and student something in order to avoid unpleasant things. Hirsh states that engagement of person in different activities may impede or at least decrease crimes. Painting not only deemed to be effective for normal people but has been an effective instrument for prevention of crimes. For example, in Picasso's paintings during 1935 to 1950 one can find different elements of violence, fear, pain and despair. In fact, art has helped him to be safe. Painting helps people to visualize their conflicts, anxieties, adversities, shortcomings, fears and even wishes in order to find a way to satisfy and perhaps to fight them. Emotional and mental expression of human passion may allow for relief and prevention of crimes. Color in painting is representative of human personality and one can express his/her inner reality with colors, hence painting is an effective factor in crime prevention. Art is considered one of our bovine gifts and has had a tremendous effect on ascendency and evolution of human being.

Prevention of crime by painting:

Art is the expression of ideas and affection through creation of particular aesthetic qualities in a visual two-dimensional language. Basic elements of this language include: line, shape, color, tone and texture (color is the most important element of painting language). One may create sense of volume, space, light and movement on a flat surface (canvass, board, wall, etc.). How these elements combine is essentially the quality of artistic expression. Each painting either a representation of a real or supernatural phenomena or embodiment of a narrative content or presentation of a dramatic relationship is absolutely abstract i.e. is based on a presenting or implying pattern or design.

Therefore, art in general and painting in particular offers us the ability through which we can perform miracle to ourselves. We can make contact with others by this type of reflection. We describe our unique feelings, ideas and experiences. Creation of an artwork is comforting and help the creator confront with and overcome everyday pressures and difficult situations. Creation of an artwork is a valuable and serious work which improve self-respect of people and construct their identity. Our goal is to use painting for treatment of delinquents and educate them how to create a relation between art and everyday life and to express feeling in order achieve recovery.

Art not only develops the identity of delinquents but is also effective for those who will be exposed to the commitment of crime in the future. For example, it can tremendously relieve pain, stress, tension and anxiety. Aristotle believed: we should practice the education, knowledge and art for self-culture or self-purification (catharsis).

Durkheim considers all arts such as literature, painting, architecture, sculpture, music, theater and cinema as elements of spiritual life of society and parts of culture of society. He goes too far in this path and in all discussions on artists to argue that if human is deprived form what he gained in social life he will descend as animals. It is often believed that an artist lives in art, and the intentions of an individual artist are overtly or covertly represented in a certain artwork. With concept of an artist, artwork is analogous to the product of an original mind that individualizes when artist impresses its uniqueness on this artwork.

Based on this approach, social process theorists believe that crime is the result of inappropriate sociability which eventuate to confliction in social symbols and ultimately results in deflective behavior. Theoretical branch of learning maintains that the starting point of this process is learning values, attitudes and behaviors through direct contact with others. Theoretical branch of social control points to the weak relations of young people with main preventive institutions family, schools and coevals deflection.

Consequently, based on theory of social process we are able to prevent crimes through reinforcement of current relationships among youth and main institutions responsible for their sociability. Given what we discussed, aesthetic quality of artworks may improve vitality, self-respect and self-awareness of delinquent. Second, research indicate that when individuals are deeply engaged in activities they enjoy, physiologic factors such as hear beat, blood pressure and tension decline. In addition, creation of an artwork is an opportunity for coordination of eyes and hand and correction of neural paths between hand and brain. According to Freud, artists or painters are essentially people who turn away from reality because they just cannot compromise though disregard of their instinct satisfaction.

Therefore, we are interested to conclude that not only social victims, delinquents, addicted people, etc. belong to society but they suffer considerable stress due to their conditions. But they are all humans and equal in the principle of "being human" and we may benefit from art in general and painting in particular for the recovery of self-confidence, honor and prevention of crime and even help other people to eliminate their isolation.

Therefore, visual art includes different types such as painting, designing, graphic, architecture and photography. For example, there are two basic principle in painting: image and metaphor (symbol), direct perception and ideal interpretation. Artistic attempts in 19s century was based on realism but such attempts lead to the naturalism in literature and impressionism in painting.

Reform soon was used as an effective technic for diagnosis of pathological condition. In general, based on these preliminary diagnoses, numerous systematic methods emerged which todays are called painting examinations. These examinations have a meaningful effect on psychological analysis. In 1925, Nollan Luis started began to used free painting for behavior

analysis of neurotic adults.

Goal in paining and other visual arts is to provide an opportunity for people to freely express their feeling, affections, demands and even knowledge through colors and lines. Painting like other arts serves as a link between internal world and outside realities. Image serves as an intermediate to represent conscious and unconscious past, present and future of an individual and reduce crime in the society. Because human expresses his panic, deficiencies, fears and ultimately his wishes by subjective embodiment and finds a way for their realization and sometimes for opposition, spiritual tragedies of human, if are represented, drawn or discussed in a proper way, may relieve pains and internal pressures and these fears and concerns unconsciously create an context by expression in painting or sculpture through which wishes and tendencies may be satisfied and in turn prevent the commitment of crime.

Prevention of crime, in general, is any action that can prevent commitment of crime. In other words, everything that is against the crime and can reduce its rate.

Prevention of crime is specifically defined by many criminologists. Prevention of crime is "tools or means that help civil government and society to restrain crime by eliminating or limiting crime factors or proper management of environmental (natural of social environment) factors.

In general, numerous tool can be used to prevent crime. At the same time, painting and other visual arts represent the deepest thoughts of human and therefor painting can decrease emotional problems through building a link between internal and external world and increase emotional stability and self-confidence and eliminate emotional arousal. In general, its education can have a substantial influence on an extensive prevention and inexhaustible combat with delinquency.

Art opens a new window to the human and lead human thoughts to other aspects and free human mind from other aspects. According to Tolstoy: in art grief of friendlessness is forgotten.

Regarding the importance of art, art in general meaning, the term of art therapy was introduced by Adrian Hill, British artist and teacher in 1942. He began occupational therapy with the patience were hospitalized in the same room with him. In the US, Margaret Naumburg was pioneer of art therapy who started her work in state institute of psychology under the supervision of a psychiatrist named Nolan D.C. Edith Kramer another famous figure in the US, a distinguished theorist was specialized in children art therapy. In addition Lauretta bender, Paul Schilder and in Europe Lombroso Simon and Prinzhorn were also pioneers in the preliminary artworks for psychological patience. Art therapy, however, is based on the initial theory of a psychologist named Sigmund Freud and Carl Gustav Jung.

Art therapy has emerged as a new science in recent years. Art therapy was defined as "effect of art and process of work on awareness of authorities from themselves and confrontation with symptoms of disease and stress" by art therapy association. They believe that artistic activities could increase rational and emotional capabilities in diseases. Art therapy theme is taught universities in some states of US. In the UK, British Association of Art Therapy, trains art therapy students as psychotherapists with focus on psychoanalysis.

However, because we are dealing with painting, we can say psychotherapy through painting was offered and used by Stern. He established the first painting workshop for children in Pars after Second World War which still continue to exist. Stern argues: painting as a tool for psychotherapy is suitable for ill sorted, unstable and educationally retarded children and its results are wonderful. Painting enables delinquent to know his power and ability of creativity and in turn facilitate solving of the problems because he can find a balance for social problems and is less likely to suffer from the pains.

All people do not have the same tendency toward colors. Those who are interested in particular colors are not able to paint a subject which is inconsistent with their favorite colors for example someone whose nature is accustomed to grief is less likely able to represent a delightful subject in his painting but he could manage all the subjects related to the grief. However, delinquent can know himself and find special colors which is not simple at all. For example, in Rembrandt artworks, contrast of light and darkness is seen more than any other contrast, or Poussin colors his paintings with red, white and blue.

Therefore, color in painting is representative of the identity of delinquent and he can express his internal realities using color and painting is an effective world in treatment of delinquency.

Many studies have conducted about painting therapy especially on ill sorted, aggressive children and mental patience. Research conducted in Iowa indicates that painting causes discharge of delinquents and help those were sexually abused have a better look to life. But there are few studies on prevention by art in general sense and by painting in particular sense. As emphasized in the sixth congress of UN on prevention of delinquency and correction of delinquent, more attempts for finding of new approaches and providing better technics of crime prevention is required.

Given the fact that sixth congress exclusively dealt with the crime prevention but no subject or title was raised on prevention by art and specifically by painting so far, we may definitely suggest that painting has an important role in crime prevention.

Socioeconomic council of UN, in its 1993/32 resolution, emphasized on work plan of ninth congress of crime prevention and correction of criminals such as holding a workshop on mass media. In ninth congress, however, art was not referred as a preventative factor.

Conclusion

It can be used as an important tool for criminal treatment and prevention. In this field different surveys have been carried out on psychiatric patients but unfortunately no survey has been carried out about the effect of art specially painting on the behavior of criminals, though criminals are curable by using painting we can turn away them or prevent from crimes and turn back them to a better life till they can live such as other human begins. art can be used as a new science for treatment and diagnosis of crimes as well as fill the leisure time of criminals.

One of the oldest thoughts on prevention of crime is teaching an occupation to criminals. Therefore, if we consider art as an occupation or job and expand it in prisons as a inseparable principle we would be able to treat convicts an even prevent delinquency.

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The relationship between efficiency and level of satisfaction on Continuing Professional Development among teachers

La relación entre eficiencia y nivel de satisfacción en el desarrollo profesional continuo entre docentes

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ABSTRACT

The aim of this study was to identify the level of efficiency among teachers in Bachang Zone and their satisfaction towards online Continuing Professional Development (CPD). The survey have been conducted among 181 respondent in Bachang Zone, Malacca in order to identify the relation between teachers level of knowledge on ICT and their satisfaction based on gender and ages. The study shown that teacher who have a more knowledge in ICT where have a highly satisfaction. However, the comparative analysis found that teachers' efficiency on ICT were varied by gender, not by age. Meanwhile, the level of CPD satisfaction were significant by gender and ages. Therefore, this study suggested that various educational organizations should provide teachers with the assistance in ICT and improve the training website system to be more user-friendly and the similar conducted in rural areas also mostly welcomed.

Keywords: Technology and Information Skills, Service Satisfaction Training, Online, Teachers.

RESUMEN

El objetivo de este estudio fue identificar el nivel de eficiencia entre los maestros en la zona de Bachang y su satisfacción hacia el Desarrollo Profesional Continuo (CPD) en línea. La encuesta se realizó entre 181 encuestados en la zona de Bachang, Malaca, para identificar la relación entre el nivel de conocimiento de los docentes sobre las TIC y su satisfacción en función del género y las edades. El estudio mostró que los docentes que tienen más conocimientos en TIC tienen una gran satisfacción. Sin embargo, el análisis comparativo encontró que la eficiencia de los docentes en las TIC variaba según el género, no según la edad. Mientras tanto, el nivel de satisfacción de CPD fue significativo por género y edades. Por lo tanto, este estudio sugirió que varias organizaciones educativas deberían proporcionar a los docentes asistencia en las TIC y mejorar el sistema del sitio web de capacitación para que sea más fácil de usar y lo similar realizado en las áreas rurales también es muy bienvenido.

Palabras clave: Habilidades tecnológicas y de información, capacitación en satisfacción de servicios, en línea, docentes.

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1. INTRODUCTION

Information and Communication Technology skills were the goal of education because computer skills contribute to the success of learning. Kuhlemeier and Hemker (2007). Therefore, there were was a important role to ensure the satisfaction of teacher in online training. It is also in line with the 7th shift in PPPM 2013-2025 (Ministry of Education Malaysia, 2012), which utilizes ICT to enhance the quality of learning in Malaysia. This may indicate that the ICT is a key element in 21st century learning Mohd Jasmy & Norazani, (2017) as future education is digital. According to Goh et al. (2010), raising the level of employee skills at the basic level or providing continuous retraining is crucial to achieving the goals of an organization. This is because human resources are the most valuable asset for an organization. Therefore, continues professionalism training programs are one of the important tools for expanding the human resource potential and thus enhancing the quality and quality of staff within the organization. In line with the 21st century, the use of advanced information and communication technologies has made it easier for teachers to access online in-service training regardless of time and place such as through the Open Learning Website, OER, EPSA, eP-MABLS, the site education of the state of Malacca. Malacca Department of Education,(2017) and so on. EPSA and eP-MABLS learning are considered as training and credit hours will be included in SPLKPM. This means that teachers can manage their own training online and learn new knowledge and skills on their own initiative anywhere and anytime. Teachers who have not completed the 7-day training can also take this initiative to meet the current year's requirements. Numerous studies have also shown that continuous training can improve teacher work performance and is important in transforming a lagging practice. In short, our education system has changed dramatically in terms of widespread use of ICT. Studies have found that a teacher's ICT skills level can influence the effectiveness of a program that requires the use of computers and IT Sheiladevi & Rahman, (2016). High ICT skills play an important role in influencing teachers' job satisfaction in facing IT-related challenges Mohd Jasmy & Md Yusoff (2015). Therefore, teachers need to ensure that they enhanced theirs skills on ICT in order to raise their level of work satisfaction.

2. PROBLEM STATEMENT

The CPD is an effort to improve the quality of continuing education services for a teacher. However, the Education Development Plan 2013-2025 (2012) report showed that teachers only managed to deliver 50% of their teaching effectively. This proves that the CPD is less successful and that the teachers still cannot bring about the changes they have made through the CPD even after the CPD started in 2005. This is very important because teachers are agents of change in school. If a change or practice set in the KPM level is not implemented properly, it will affect the quality of student teaching and learning process. Fullan and Stiegelbauer (1991) also concluded that one of the reasons for in-service training failure was the "one-time only" workshop and that the selected topics were not involved as program participants. This is because teachers only attend one course for a specific purpose. Therefore they unable to master 100% of the course content and this will affect the school because nothing would change after all. In other words, teachers and speakers just wasted their time in pursuing a practice. The changes on CPD thru online learning such as EPSA and eP-MABLS (JPM, 2017) are a new initiative in the world of teacher education to address existing weaknesses. It was also created to meet the needs of teachers in order to motivate them to enhance their professionalism. Due to recent changes and the lack of studies on the relationship between ICT skills and online CPD satisfaction in the context of Malaysia, I conducted this study to justify the relationship between ICT skills and online CPD satisfaction so that teachers can enhance their professionalism through CPD over online based on their needs. The training received will certainly enhance the quality of education as it will motivate teachers to continue to learn and improved their accountability as educators in schools.

3. LITERATURE REVIEW

In the world, there are teachers who are good at ICT and some who are not. Wong et al. (2002) showed that there are two extreme groups of there, the first one were those with high efficiency in productivity tools and those who are inefficient. Ahmad Hambali (2015) shown that there is no significant difference between the level of proficiency in the ICT of teachers based on gender, but there are significant differences based on the age and teaching experience of a teacher. In addition, Juan E. et al. (2016) believe that while teachers have improved their knowledge in phonemic awareness, systematic phonetic instruction, fluency, vocabulary and strategies for understanding the components after the completion of an online web-based training session, teachers' beliefs also show a positive impact by both two pre-service and in-service teachers. This is in line with the findings of Goh (2012) which found that teachers' level of knowledge about in-service training is high but satisfaction level is moderate. In addition, the findings also show that the correlation between knowledge level and teacher satisfaction level is strong positive relationship. The study also found that independent variables such as gender and teacher education did not influence the level of knowledge and the level of satisfaction of teachers with in-service training conducted in schools. Nonetheless, race and teaching experience show the difference between level of knowledge and level of satisfaction. Sugunah (2014) found that there is a moderate positive relationship between teachers' ICT skills and knowledge management in schools. He also suggested that the CPD in schools should focus on learning the basics of basic ICT skills. However, without effective implementation, the objective of the course could not be achieved. Therefore, a well-planned strategy was really needed. Areej & Abdulrahman (2011) presented the proposal VLE implementation framework in higher education institutions and one of the issue have been address was the training designs programs to increase awareness of the use of VLE. In line with the above, Sharifah & Kamarul (2011) found that teachers who were ready to implement teaching using the ICT approach have a strong relation between work and behavior.Awang et al. (2014) stated that teachers do not have the time to hold discussion sessions to share ideas to improve their teaching methods. Therefore, it can be said that the implementation of knowledge management through ICT can enhance the knowledge and skills of teachers at any time, but it involves high costs such as the purchase of ICT equipment and provision of facilities. Kler, S. (2014) states that the use of ICT in knowledge management can help a teacher reduce the information gap. This means that teachers can improve their knowledge through online in-service training. They will feel satisfied when they are able to

improve their skills to achieve an educational objective. This will only happen when teachers have the ICT skills to access this information.Zawiyah, M.Y. & Zuhri, A.Z. (2014) found that the use of Facebook Group is appropriate for the purpose of sharing knowledge rather than forging relationships between teachers and students. In addition, Aesaert, K. (2015) states that the lack of competency of teachers in the ICT will affect the achievement of students' performance in school and may not develop their own knowledge.

4. METHODOLOGY

Survey and correlation studies using quantitative approaches were used as the design of this study. The study was conducted in Bachang zone, Melaka which involved 15 schools. Based on the Krejcie sampling method, R. V and Morgan D.W (1970) in the book Azizi et al. (2007), a total of 181 teachers were randomly selected to be sampled in this study. Table I below shows the demographics of gender and age of the respondents.

Table I Respondent Demographic

Demography	Frequency (n)	Percentage (%)
Gender		
Male	32	17.7
Female	149	82.3
Total	181	100.0
Ages		
21-30 years old	35	19.3
31-40 years old	76	42.0
41-50 years old	49	27.1
51-60 years old	21	11.6
Total	181	100.0

In this a quantitative study, an instrument is a questionnaire used only to collect the data of the variables from the study sample. The questionnaire consisted of three sections - Part A, 2 items collecting demographic information, Part B, 10 items collecting teachers 'ICT skills level information and Part C, 25 items collecting teachers' online CPD satisfaction data. This instrument has been certified by a lecturer in the field at UKM. The pilot results showed that the alpha and Part C items were alpha values of 0.93 and 0.97, respectively. The survey questionnaire was distributed to 181 teachers in Bachang zone, Central Malacca, Malacca in the form of Google Form.

Data was collected from respondents using SPSS software version 20 by means of descriptive and inference analysis such as t-test, ANOVA test and correlation test.The interpretation scales for the mean data scores are as shown in Table II below.

Table II. Interpretation of Min Score

Score Min	Interpretation Score Min
1.00 – 1.89	Extremely Low
1.90 – 2.69	Low
2.70 – 3.49	Moderate
3.50 – 4.29	High
4.30 – 5.00	Extremely High

Adapted from Izani & Yahya (2014)

While the range scores for the relationship strengths of the variables in this studied can refer to Table III.

Table III. Range of relationship of Variables

Score Min	Interpretation Score Min
0.00	Not relate
< 0.19	Extremely Weak
0.20 – 0.39	Weak
0.40 – 0.69	Moderate
0.70 – 0.89	High
> 0.90	Very High

5. RESEARCH FINDINGS

Level of Teacher Efficiency on ICT in Bachang Zone, Malacca.

Part B items have been distributed and the questionnaire were analyzed descriptively. The table below shown the level of ICT among teachers in Bachang Zone. Referring to Table IV below, it shown teacher level of efficiency on ICT in the Bachang zone, Malacca was very high with mean = 4.37; s.p. = 0.547

Table IV: Level of Teacher Efficiency on ICT

Dimension	Score Min	Standard Deviation	Level
Content Knowledge Category	4.44	0.483	Very High
Assignment/ Task Category	4.31	0.659	Very High
Level of Efficiency on ICT	4.37	0.547	Very High

Analysis showed that teachers in Bachang zone schools, Malacca dominated the content knowledge Category (min = 4.44; s.p. = 0.483) compared to the assignment category (min = 4.31; s.p. = 0.659). However, both dimensions are very high and the mean differences were only 0.13.

Teachers level of Satisfaction towards Training Online Services

Part C items were evaluate on teachers satisfaction and the table below have shown that teachers level of satisfaction on which was high (mean = 3.77; s.p. = 0.490).

Table V: Teachers Level of Satisfaction Towards Training Online Services

Dimension	Score Min	Standard Deviation	Level
Satisfaction toward management of CDP online	3.75	0.611	High
Satisfaction toward operate of CPD online	3.81	0.536	High
Satisfaction on the benefits of CPD online	3.76	0.484	High
Teachers level of satisfaction on CPD online	3.77	0.490	High

The analyze shown that teachers in Bachang zone were most satisfied with the satisfaction towards management on CPD online score was (min = 3.81; sp = 0.536), followed by the satisfaction the benefits gained after attended CPD online score (min = 3.76; sp = 0.484) the lowest was the satisfaction with online CPD online management (min = 3.75; sp = 0.611). All of these dimensions scores were high and the mean difference between the highest and lowest dimensions was only 0.06.

Contribution of ICT Efficiency Towards Level of Satisfaction on CPD Online Among Teachers In Bachang Zone, Malacca

The level of ICT Efficiency and the online level of CPD satisfaction analyzed were performed in a statistical inference correlation test. A total of 181 questionnaires were studied. Based on Table VI below, it shows the correlation between the level of ICT efficiency and the level of online CPD satisfaction of teachers in Bachang zone, Malacca. The results analyzed using the Pearson correlation show that the correlation score was 0.576. It shows the correlation relationship at a simple positive stage. The results show that the value of sig. (2 tailed) displaying alpha values less than 0.05. Thus, it can be concluded that there was a significant relationship between the level of ICT efficiency and the level of CPD online satisfaction of teachers in schools. Therefore, Ho1 was rejected. This means that the level of ICT Efficiency contributes to teacher satisfaction towards online CPD. Based on the findings of this study, one of the factors contributing to the teachers' satisfaction in the online LDP implementation is due to their high level of ICT skills.

Table VI: The correlation between level of management leadership and teachers satisfaction

		Level of management leadership	Level of teachers satisfaction
Level of Efficiency CPD	Correlation Pearson	1	0.576**
	Sig. (2-tailed)		0.000
	N	181	181
Level of Satisfaction towards CPD Online	Correlation Pearson	0.576**	1
	Sig. (2-tailed)	0.000	
	N	181	181

*** T test t significant values* α *< 0.01*

Teachers efficiency on ICT based on genders and ages.

Table VII shown the T- test analyze where there was a signification on teachers efficiency on ICT based on gender (t (4.00) = 0.000; p < 0.05 (95% CI = 0.156 until 0.465. Therefore, Ho2 was rejected. It shown that level on efficiency were different between men and women whereby the men teachers were more skills than women.

Table VII: T – test on teacher level of efficiency based on gender

Variables	**N**	**Min**	**Standard Deviation**	**T**	**Significant Value**
Men	32	4.63	0.352	4.00	0.000**
Women	149	4.32	0.566		

*** T – test significant values < 0.01*

Table VIII below indicated the one way ANOVA analysis that show there were no significant value between ages and teachers efficiency , F(3,177) = 0.543; p > 0.05. Therefore, Ho3 was accepted.

Table VIII: One Way ANOVA between Teacher efficiency and ages

ANOVA					
Teachers Efficiency on ICT					
	Total Chi square	df	Min Chi Square	F Value	Sig.
In Group	0.646	3	0.215	0.717	0.543
Between Group	53.176	177	0.300		
Total	53.822	180			

Level of Satisfaction on CPD based on Gender

Based on Table IX, t – test shown that there was no relation between level on satisfaction and t (1.78) = 0.087; p > 0.05 (95% CI = -0.033 hingga 0.459). Therefore, Ho4 was rejected because the level of statisfaction between men and women were same.

Table IX: T- test based between level of satisfaction and gender

Variable	**N**	**Min**	**Standard Deviation**	**T**	**Significant Values**
Men	32	3.95	0.655	1.78	0.087
Women	149	3.74	0.441		

Table X shown the result of One Way ANOVA whereby there were no significant between level of satisfaction and F (3,177) = 0.691; p>0.05. Therefore, Ho5 was rejected.

Table X: One way ANOVA test based on gender

ANOVA Level of Satisfaction					
	Total Chi Square	df	Min Chi Square	F Values	Sig.
In group	0.355	3	0.118	0.488	0.691
Between group	42.942	177	0.243		
Total	43.297	180			

6. DISCUSSION

Teacher in Bachang Zone, Malacca were high level of efficiency in ICT.

The findings of this study contradict the results of the study of Wong et al. (2002), Ahmad Hambali (2015) and Kleiman (2000) that teachers' ICT efficiency was at a high and medium level and teachers were less competent in using technology especially computers. Based on study conducted by Luo, Y., & Bu, J. (2015), the high level of efficiency in ICT help to increase the productivity of emerging economies. As such, the use of ICT has been incorporated into the education system in our country. Many applications and administrative work have used ICTs where by the teachers need to be skilled in using them to cope with their work routine as a teacher. The findings of this study also indicate that teachers were more proficient in content categories. Teachers were less skilled in preparing document using computer because it involved more formulas and not frequently used. Therefore, MOE or JPN tend to prepared the form or templates and teachers just key in the data. Teachers also less skilled in drawing. This is because teachers do not use these techniques and skills frequently plus most of graphics can be easily downloaded directly from the internet. However, more teachers prefer to use power point slides where graphics can be edited directly within the application.

Teachers level of Satisfaction towards CPD Online

The results show that the level of online LDP satisfaction of teachers was high. The findings of this study show an increasing compared to the results of Goh's (2012) study which found that teacher satisfaction was moderate. This was supported by the study of Kokoc et al. (2011) that the time and place constraints can be overcome through online CPD because it can provide quality training .The finding regarding dimension found that based on management of CPD online the result was most satisfied which was in line with Goh's (2012) study. Teachers were very satisfied with the content of training in online services because it is relevant to them. This finding was line with the results of Sharifah and Kamarul (2011) which stated that material suitability was at a high level of 77.5%. All of these courses offer the work of a teacher and they can choose whatever they like or need.Furthermore, satisfaction with the benefits gained after following the CPD online also shows a high degree. However, it was found that teachers do not have the knowledge to identify students' problems specifically after training in online services. This was because it requires training in the form of workshops where teachers need to be guided hands-on to learn these skills. Online training provides information whereby the facilitator does not provide direct guidance to teachers when taking online courses.This was line with the study of Kokoc et al. (2011) state that issues of accommodation and transportation can also be solved through online training. However, the most dissatisfying item is the duration of training in online services. Teachers do not know how much time should be spent preparing a course offered.

The relationship between teachers ICT efficiency and their satisfaction on CPD Online

Studies show that there was a positive relationship between the level of ICT efficiency and the level of satisfaction on CPD online .The results of this study was in line with the findings of Sugunah (2014) who obtained similar findings. This indicates that the level of ICT skills will influence the level of CPD online satisfaction of teachers.Sharing knowledge among teachers not only enhances the professionalism of a teacher, but also develops the professionalism of all teachers in a school. Sukor et al.(2014). In addition, online training can enhance the knowledge and skills of teachers at any time. This is because teachers do not have the time to hold discussion sessions to share ideas to improve their teaching methods Awang et al. (2014). Therefore, the highly skills in ICT definitely give the teacher satisfaction as they can overcome the problems. In addition, Kler, S. (2014) also stated that the use of ICT in knowledge management such as CPD can help a teacher reduce the information gap. This is in line with Aesaert's (2015) opinion that the lack of competency of teachers in the ICT will affect the development of their own knowledge.Therefore, teachers' ICT knowledge was a contributing factor to teachers satisfaction on online CPD. Schools and ministries should organize various ICT skills courses to ensure the online CPD can succeed and achieve their desired goals which was in line with Areej and Abdulrahman's (2011) study.

The Differences in the ICT Efficiency between gender

This finding was contrast with the findings of Ahmad Hambali (2015) who found that there were no significant differences. In this study, male teachers had higher ICT skills compare to female teachers. This was in line with the findings of the study Nor Azan et al. (2000) which stated that men had higher ICT literacy than women. This is because the experience of using computers and computer purchases among men is higher than that of women. Moreover, most male teachers were pointed being ICT teachers and Frog VLE teachers in school. These opportunity enhance their

computer experience because they need to constantly solve other teachers' computer problems in schools and indirectly increase their ICT skill among male teachers compared to female teachers. Therefore, female teachers should improve their computer experience in order to improve the level of proficiency on ICT.

There was No Significant Differences in the Levels of the Teacher's ICT Skills by Age

Teachers of different ages have the same level of ICT skills. This contradicts Zainudin's (2008) study which stated that young teachers have better ICT skills, Sheiladevi and Rahman (2016) who stated that 'junior' lecturers are better in various ICT dimensions and Ahmad Hambali (2015) found that there are differences which is significant based on the age and experience of teaching a teacher. This is because today's educational administration is more concerned with the use of computers. Principals and senior assistant teachers need to use computers to complete routine administrative tasks. Not only that, all teachers without age should apply 21st century learning in the classroom. Many courses were also offered and conducted by all teachers. This indirectly enhances teachers' ICT skills to meet current needs.

There was No Significant Difference in CDP Online Satisfaction Level among Teachers

Male and female teachers have the same level of CDP online satisfaction. This is in line with Goh's (2012) study which stated that gender does not influence the level of teacher satisfaction of the LDP. However, it contradicts John et al. (2005) state that job satisfaction varies by gender. This discrepancy arises due to the different working conditions in the United States and the older literature. Therefore, it can be said that all people regardless of gender will experience different training depending on their circumstances and environment. Gender is not a factor contributing to a teacher's training satisfaction. The satisfaction of the training experienced by the teachers depends largely on the training itself. Herzberg's two-factor theory (in Sondang, 2002) also explains that satisfaction comes from the Motivators factor, which is the responsibility and progress of the teacher himself. Therefore, the training conducted should focus on its own quality and be tailored to all male and female teachers.

There was No Significant Difference in CPD Online Satisfaction Level among Teacher

Different age groups like novice teachers and experienced teachers have the same level of CPD online satisfaction. This contradicts Goh's (2012) study which found that teaching experience shows differences between teachers' satisfaction levels. This discrepancy may be due to the current situation. The KPM is now strongly emphasizing 21st century learning and Online based learning. It was a huge change and involves all ages of teachers as it differs from the past. Teachers of different ages need the same training. Their level of satisfaction is the same if the training provided a quality and helpful to all teachers. Therefore, the training should be focused on what to do and not worry about teachers of different ages. It is supported by the study of Maria and Theodosia (2016) who stated that the training provided can change perceptions and improve teachers' knowledge and skills effectively.

7. **CONCLUSION**

Overall research has been able to identify the relationship between the level of ICT skills and the level of online LDP satisfaction of teachers at Bachang zone school, Malacca. Teacher GPA proficiency levels are at a high level, while LDP online teacher satisfaction levels are high. Gender factors of teachers have an influence on the level of ICT skills, but do not have an effect on LDP online teacher satisfaction. In addition, age factors had no effect on both levels of ICT skills and online LDP satisfaction. Because the ICT skills contribute to the online LDP satisfaction of teachers, they need to provide regular support and stimulate the internal motivation of teachers to ensure LDP online teacher satisfaction. However, this study involved only urban teachers from Bachang Zone, Malacca. Therefore, it is proposed that further studies be conducted in rural schools. This study can serve as a reference to the MOE, JPN, BTPN, PKG and schools on aspects that need to be improved in terms of TMK skills and online LDP satisfaction to ensure continued use of e-learning websites. Ongoing training in online services can enhance teacher performance and achievement and further develop our nation's education system as the technological age continues.

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Noisy behavior of residents of an apartment building as a matter of neighborly law (the case of relationship between dog owners and neighbors)

Comportamiento ruidoso de los residentes de un edificio de apartamentos como una cuestión de ley de vecindad (el caso de la relación entre dueños de perros y vecinos)

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ABSTRACT

The aim of this study is to examine in detail such a segment of neighborhood law as the silence related relations of neighbors in an apartment building. Neighborhood law, despite its long existence in the legal systems of foreign countries, remains unspecific in the regulation of relations between apartment owners, while in Russia neighborhood law has not received due attention from the federal legislator. We believe that competition between public and private law on this issue should be resolved in favor of private law. Civil law in the current state contains a great potential for the regulation of neighborhood relations and protection of neighborhood rights. The possibilities of civil law in this area should be expanded in the course of the forthcoming reform of property legislation. It is necessary to continue the development of neighborhood law in Russia.

Keywords: Property right, neighborhood law, ensuring silence, peace of citizens, property right reform in Russia

RESUMEN

El objetivo de este estudio es examinar en detalle un segmento de la ley del vecindario como las relaciones de vecinos relacionadas con el silencio en un edificio de apartamentos. La ley de vecindad, a pesar de su larga existencia en los sistemas legales de países extranjeros, sigue siendo inespecífica en la regulación de las relaciones entre los propietarios de apartamentos, mientras que en Rusia la ley de vecindad no ha recibido la debida atención del legislador federal. Creemos que la competencia entre el derecho público y privado en este tema debe resolverse a favor del derecho privado. La ley civil en el estado actual tiene un gran potencial para la regulación de las relaciones vecinales y la protección de los derechos vecinales. Las posibilidades del derecho civil en esta área deberían ampliarse en el curso de la próxima reforma de la legislación de propiedad. Es necesario continuar el desarrollo de la ley de vecindad en Rusia.

Palabras clave: derecho de propiedad, ley de vecindad, garantizar el silencio, paz de los ciudadanos, reforma del derecho de propiedad en Rusia

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INTRODUCTION

This article would not have been written and even its intention would not have taken place if some of the authors had not had to experience all the imperfections in the regulation of neighborhood relations. It is better to say that we have become victims of the lack of such regulation: there is no appropriate terminology in Russian law; there is no system of norms specifically designed for neighborhood relations; the principles of regulation of neighborhood relations are not formulated in the legislation and practice of its application.

The year 2017 began with the unpleasant news that neighbors living on the floor below complained to the police about the barking of our dog, accusing us of violating the city's rules for keeping pets. We were accused of not providing silence to the apartment building. The police handed over the documents to the administrative commission under the district administration of Barnaul. Because of a short investigation, the commission imposed a fine of 500 rubles based on Article 71 of the Law of Altai Krai "On Administrative Liability in the Altai Krai" (2002), i.e. for violation of municipal rules on keeping pets.

This is how we began our acquaintance with Russian neighborhood law in its public-law interpretation. Of course, we were outraged by such a verdict, appealed to the court the decision of the administrative commission, and achieved its cancellation (Decision, 2017a). However, the question remained what to do next? It was clear that the administrative commission intends to fine the owner of the dog for any noisy behavior, if one of the neighbors makes such a demand. This is how the administrative commission understood the city's rules for keeping pets: if neighbors hear your dog, you are guilty of violating the silence and should be subjected to administrative punishment. Neither the time nor the circumstances and reasons for the noisy behavior of the animal were taken into account at that time.

Possession of a dog from the point of view of the law - faultless behavior; to contain a dog in apartment - is lawful; ability and requirement of a dog to bark - the well-known fact; weak sound insulation in usual panel high-rise apartment - too the fact. However, a dog owner can be punished as many times as a neighbor can be lazy to report it. Our wallet was in the hands of our neighbors: keeping a dog threatened to become an article of endless expenses on administrative fines, for these neighbors were enough to report to the police that they hear our dog barking. It seemed to us that this state of affairs was extremely unfair: we often hear neighbors making repairs, their children playing, family scandals are also heard without much effort; why is our kind of noise so intolerable to those around us?

The unfairness of this practice was soon confirmed in the course of the analysis of the decisions of the Supreme Court of the Russian Federation. It turned out that during the last decade the Supreme Court of the Russian Federation repeatedly declared ineffective regional laws establishing administrative responsibility for any actions related to animal husbandry (Decision, 2008, 2011a, 2011b, 2012a, 2012b, 2015a, 2015b, 2017b). The position of the RF Supreme Court is that domestic animal husbandry is regulated by federal legislation and only the Russian Federation can establish responsibility for violation of these rules. For us, this approach has been life saving.

The fact is that the federal authorities have adopted numerous sanitary norms, in particular, established maximum permissible noise levels in an apartment building. These levels should be exceeded with special equipment before the owner of a dog can be punished for his noisy behavior. It is also important that the noise generated by the dog may be within acceptable limits, and therefore a simple reference to what the dog is being heard by the neighbors is not sufficient to hold the owner of the dog administratively liable.

Understanding our rightness and knowing the practice of the Supreme Court of the Russian Federation, we challenged in the Altai Krai Court of Art. 71 of the Law of Altai Krai "On Administrative Liability in the Altai Krai". The court satisfied the administrative claim, Art. 71 was found inoperative in the part that concerned us (Decision, 2017c). As expected, the Supreme Court of the Russian Federation upheld this decision (Decision, 2017d). The regional parliament was forced to obey the court decision, the legislation was amended. Now the Altai Krai Law "On Administrative Liability in the Altai Krai" has Article 61, which provides for liability for violation of silence, but with an important clarification that its effect does not apply to cases provided for by the federal legislation on administrative liability.

That is, if we take into account the reasoning part of the court decision, the owner of the dog cannot be held under this regional law to administrative responsibility for noise issued by the dog, because such relations are governed by federal legislation. In fact, it meant a stricter and fairer approach to the detection of violations and consideration of disputes; the administrative commission at the district administrations of the city are not subordinate to such cases.

It would have been easier to breathe, but it soon became clear that the practice of administrative commissions had not changed even with the new legislation, which they preferred to interpret in the old way. In 2019, we again came before the administrative commission, again challenged its resolution and received a district court decision in our favor. This time, the court did not even see the events of the offense, noting in its decision that the Law of Altai Krai "On Ensuring Silence and Quietness of Citizens in the Altai Krai" (2017) there is no administrative liability for noise produced by pets (Decision, 2019).

It cannot be said that all judges share this view of the problem. Therefore, our victory was in some sense a success; perhaps, the experience accumulated in the previous judicial battles affected us. Such a solution is not guaranteed to any dog owner.

Defending ourselves from illegal administrative prosecution all this time, we tried to present and formulate the rules of interaction of neighbors, which could be called fair. We thought about the terms of the dog owner's liability that

we could agree to. Sincerely wondering why administrative law deals with this problem, we turned our mind to civil law in search of an answer to the question: on what legal basis should be built the relationship of the owner of the dog with his neighbors.

We did not ask civil law by chance, because it is known from the world history of law, from the history of Russian law, from the modern legislation of other countries that civil law traditionally contains a set of norms specifically designed for the relations of neighbors on various unpleasant episodes of neighborhood life. Such a set of norms is called "neighborhood law". However, in modern Russian civil law there are no such complex of norms. Its general provisions are quite applicable, but are often overshadowed and do not enjoy great popularity among neighbors, yielding competition to specific requirements of administrative legislation. The draft of large-scale changes in the legislation on property inspires hope that there will be adequate regulation of neighborhood relations in civil law, but it is only a draft, and it is not perfect (On Amendments, 2019).

Realizing that our property legislation is at an important stage of major changes, seeing and critically assessing the upcoming developments in neighborhood law, having our own experience and convictions in the courts, we have undertaken this study as a contribution to the development of the scientific basis of modern Russian neighborhood law.

Aims and objectives

The authors pursue three main goals by offering this material:

1) to show the imperfection of the neighborhood relations regulation by the norms of administrative law. Norms on administrative responsibility should not be the main regulator of relations between neighbors, their application should take place in a specific sphere for them and is conditioned by committing acts of high public danger;

2) to draw attention of participants of conflict situations to the fact that there are already adequate and even more effective means of responding to intolerable behavior of neighbors in civil law today;

3) to propose additional rules clarifying and developing the existing draft law on the reform of the Civil Code of the Russian Federation in terms of property norms and neighborhood rights.

The authors did not set themselves the task to study the problem of neighborhood law in its entirety. Based on the experience of the studied regulation of neighborhood relations, the main focus was on the problem of noisy behavior of residents in an apartment building. Such concentration of attention was also facilitated by the fact that in the abovementioned draft law the attention to neighborhood relations in an apartment building is not paid at all, we believe that this is a gap and a drawback of the project.

The noise produced by pets is obviously specific, as it comes from living creatures. Dogs are very common and yet the noisiest type of pets. This source of noise objectively cannot be under the complete control of the owner of the dog. On the other hand, noisy behavior of animals is not just an inevitable circumstance, but also even a necessary condition for their existence, including among people. The Federal Law "On Responsible Treatment of Animals and on Amendments to Certain Legislative Acts of the Russian Federation" (On Responsible, 2018) the attitude towards animals as beings capable of experiencing emotions and physical suffering is formulated as a principle (Art. 4).

Of course, emotions and sufferings can manifest themselves with noise that is not correct for the owner, especially for the animal itself. Among other principles in this Federal law the responsibility of the person for destiny of an animal, education at the population of the moral and humane attitude to animals, scientifically proved combination of moral, economic and social interests of the person, a society and the state are named. Thus, animals are a special source of noise both in their nature and in the ways of legislative regulation of relevant social relations. That is why we considered it possible in our research to identify animals among the sources of noise, and among them, we gave preference to dogs.

Methods

The theoretical basis of the research is formed by scientific publications of modern Russian and foreign authors. Largely, the research is legal in nature.

Neighborly law is restored in Russian civil law after many decades of neglect, so part of the sources - literary monuments of the Russian pre-Soviet legal thought, such as the draft Civil Code and accompanying explanations, originally published in 1910 (Civil Code, 2008).

The normative-legal basis of the research was formed by normative acts, which can be divided into three main groups: 1) federal, 2) regional, 3) foreign.

A special category of materials under study is formed by state standards, sanitary rules and regulations. In particular, they contain specific requirements to the noise level allowed in residential premises. These documents cannot be recognized as part of the civil law, they are from the field of public law, but by their content, they can become a criterion for assessing the legality of adverse impacts in neighborhood relations. As an example, the Sanitary Regulations CH 2.2.4/2.1.8.562-96 "Noise at the Workplaces, Residential Buildings, Public Buildings and

Residential Areas" of 31 October 1996 can be cited (About the statement, 1996); SanPin 2.1.2.2645-10 "Sanitary and epidemiological requirements for living conditions in residential buildings and premises" (2010). Especially interesting and useful for this study is GOST R 56391-2015 "National Standard of the Russian Federation. Services for non-productive animals. Housing of non-productive animals in urban conditions. General requirements" of 20 April 2015 (Gost, 2015).

This document does not simply specify the maximum permissible noise levels, but specifically for those cases where the noise source is animals, in particular dogs.

Interest in the legislation of the constituent entities of the Russian Federation (regional acts) is conditioned by the fact that regional parliaments traditionally participate actively in the regulation of neighborhood relations. Since the Constitution of the Russian Federation (1993) does not allow the constituent entities of the Russian Federation to adopt acts containing the norms of civil law, the regional legislation on ensuring silence and peace of citizens is solely of an administrative nature.

The laws of the constituent entities of the Russian Federation on the topic of our research are very similar to each other, and very often have the same names, for example, on administrative responsibility, on ensuring silence, about keeping pets. The main objects of research from this group of sources will be the Laws of Altai Krai "On administrative responsibility for committing offenses in the territory of Altai Krai" (2002), "On ensuring the peace and quiet of citizens in the Altai Territory" (2017), "On the maintenance and protection of animals in the Altai Territory" (Animal housing, 2017).

Much attention is paid to the draft federal law № 47538-6 "On Amendments to the first, second, third and fourth parts of the Civil Code of the Russian Federation, as well as in some legislative acts of the Russian Federation" (2015). This draft law has already become a law in a significant part, but as far as property law reform is concerned, the document has no legal effect. It is in this part of the project that the norms outlining the contours of future neighborhood law in Russia are contained.

The desire to make the research practical has forced us to collect and study the practice of dispute resolution related to the noisy behavior of neighbors. The whole array of the studied jurisdictional acts can be divided into two groups: 1) decisions of administrative commissions of municipal entities; 2) decisions of courts of different levels of the judicial system.

The search for judicial practice was carried out with the help of the Garant legal reference system. At the same time, in the archive of the Leninsky District Court of Barnaul (Altai Territory), we studied the materials of the cases examined by the judges of this court for 2018 and the first half of 2019. In contrast to the materials found through the Garant legal reference system, the court's archive had the opportunity to examine the entire range of documents in each case, including complaints, petitions, and protocols, which allowed for a better understanding of the circumstances and motives of court decisions. The period since 2018 has been chosen because, since January 2018, new laws regulating the keeping of pets and establishing liability for violation of the silence and peace of citizens came into force in Altai Krai.

An important part of the materials is formed by the decisions of the administrative commission and courts in those cases in which we directly participated: the decisions of the Leninsky District Court of Barnaul dated March 30, 2017 in the case № 12-100/17; the case № 12-240/19; the decision of the Altai Territory Court № 3a-537/2017; the appeal decision of the Judicial Collegium on Administrative Cases of the Supreme Court of the Russian Federation № 51-APG17-16.

Thanks to direct participation in court proceedings, it was possible not only to create precedents that correspond to our theoretical views on the problem, but also to influence the development of regional legislation in a particular constituent entity of the Russian Federation. It can be said that the materials of these cases were not only the object of the research when writing the article, but also the result of the research in a broader sense, beyond the scope of this publication. This is a kind of a business card of our research project (Altai, 2017).

Results

In many countries, neighborhood law has traditionally been represented in the civil law system. I.A. Emelkina (2016) writes: "At present, special provisions in the civil codes of continental Europe are devoted to neighborhood law. As a rule, foreign legal orders do not contain a definition of the concept of neighborhood law.

Nevertheless, the analysis of legislation allows us to conclude that the category "neighborhood law" is considered as a set of civil law norms that establish the forms of permitted impact of the land plot owner on the neighboring land plot, its limits, the obligations of a neighbor to tolerate such impact, as well as regulate the relationship of neighbors in the event of the owner's departure from these limits, including the order and methods of protection".

This observation of the civil law nature of neighborhood law is very important from a practical point of view, as it allows the use of all civil law tools to resolve conflicts between neighbors or to establish peaceful and mutually beneficial relations between them. For example, monetary compensation can be stopped by agreement between neighbors when a neighbor allows significant influence on his or her area, as provided for in § 906 of the German Civil Code (2008).

In Western foreign literature, there are two key concepts of "nuisance" and "neighbor law". Nuisance in Black's dictionary is a condition, activity or situation (e.g. loud noise or unpleasant smell) that interferes with the use of property (Black's Law, 2009). The Max Planck nuisance Encyclopedia also uses it as a tool for environmental protection (The Max Planck, 2017). The study of nuisance and the Human Rights Act of 1998 (Human, 2019), as well as private nuisance, belong to Donal Nolan (2011a, 2011b, 2015). Nuisance can be considered in both international (Hulsroj, 2006) and criminal law (Squires, 2008).

Nuisance is usually understood as a deliberate, unjustified, non-disturbing intrusion into the quiet use of property (Hylton, 2015). A nuisance is typically defined as an intentional, unreasonable, nontrespassory invasion of the quiet use and enjoyment of property:

The author proposes to understand by "unfounded" situations when:

(a) Existence of a high degree of interference with the quiet use and enjoyment of land of others

(b) Inability to eliminate the interference by the exercise of reasonable care

(c) Extent to which the activity is not a matter of common usage

(d) Inappropriateness of the activity to the place where it is carried on

(e) Extent to which its value to the community is outweighed by its obnoxious attributes

Professor Van der Merve described the (d) in detail (van Merve, 1998): With regard to locality, it is clear that city residents cannot expect the peace and quiet of the countryside and those dwelling in an industrial or commercial area cannot count on the tranquility of a choice residential area. In this case, the church and guesthouse are both situated in the center of town, surrounded by residences and businesses. It would thus appear that whilst the guesthouse is not entitled to the tranquility of the countryside during business hours, it could probably insist that the sleep of its clients is not to be disturbed by the unnecessary chiming of church bells throughout the night

Van der Merve interpreted the (e) as: Following locality, the benefit and utility of the activity to the landowner must be weighed against the harm suffered by the plaintiff. An interference with a neighbor's comfort will not be considered unreasonable if caused by some activity from which the landowner derives great benefit. Thus, in Glen v Glen proportionality is sought between the benefit derived and the harm suffered – if the interest the landowner wishes to advance is disproportionately small in comparison with the harm suffered by his neighbor, the activity will be regarded as unreasonable

A trespasser invasion is one that displaces the plaintiff from all or some portion of his property. For example, a large rock that is thrown over to the plaintiff's property displaces the plaintiff from the space in which it travels and ultimately lands. This can be contrasted with a nontrespassory invasion, such as smoke or noise, which does not displace or oust the plaintiff from any space on his property (Hylton, 2015).

Van der Merve pays special attention to the victim, the plaintiff, using an interesting example (1998): A classic application of this test is to be found in the American case of Rogers v Elliot. In this case, a person situated directly opposite a church was peculiarly susceptible to the noise caused by the ringing of a church bell to the extent that such ringing was triggering off epileptic attacks. The plaintiff failed in an action for damages against the church on the grounds that the bell was not "objectionable to persons of ordinary health and strength".

"Neighbourlaw" is translated as a neighborhood right. When talking about nuisance, we can conclude that neighbourlaw is a general concept in relation to nuisance. This can be found in the Czech Civil Code, namely in paragraph 1013. The Czech Civil Code contains the norms of neighboring law in paragraphs 1013 to 1036 (2005). It is possible to divide them according to the same system as the Code itself. In the beginning, the legislator fixes limitation of the right of ownership, then regulates elements constituting a boundary, and finishes expropriation and limitation of the right of ownership.

Paragraph 1013 interestingly defines the concept of pollution, meaning waste, water, smoke, dust, gas, smell, light, shade, noise, vibration and other similar effects. The owner should refrain from pollution if it is disproportionate to local relations and significantly limits the normal use of the land plot (Civil Code, 2005).

It is worth noting that some authors are very concerned about the excessive influence of neighborhood law on the classic right of ownership. For example, Susan Scott writes: "The treatment of encroachments in the above cases, however, is unsatisfactory in many ways, as I have indicated. Regarding their effect on ownership, they seem to indicate to an owner of land that he/she may encroach on his/her neighbor's land, provided he/she is prepared to pay compensation (including a solatium- satisfaction), almost as if it is an owner's right to do so.

Consequently, they suggest that owners are expected to endure encroachments on their land. Therefore, owners must act reasonably and accept compensation instead of relying on removal of the encroachments as of right. As a result, these judgments permit a broadening of ownership entitlements in the sense that they create the impression that the law does not really deplore encroachments (infringements) on neighboring land, and, consequently, they place a severe limitation on ownership in the sense that they create the impression that the law expects

owners to endure encroachments by a neighboring owner. Can one really argue that this situation, which radically differs from Roman, Roman-Dutch law, and also from established South African case law, relying on English-law principles, is a wholesome development that is in line with societal needs and modern notions of ownership?" (Scott, 2017).

Usually the norms of neighborhood law in the sources we studied are addressed to the owners of land plots. At first glance, neighborhood law looks like the right of neighboring landowners. At the same time, as a rule, we are talking about problems related to water use, construction, and construction of boundary and fences. Such an emphasis on land plots is not accidental, but has a historical foundation. It is clear that the problems in the neighborhood relations are known much longer on the example of relations between landowners and not residents of a multi-store building in a metropolis.

This fact makes it difficult to use foreign legislation in our study, as we are interested in landless neighbors. Noisy neighborhood behavior is seldom mentioned in the literature we studied, even less often in the context of using residential premises in an apartment building. For example, I.A. Emelkina, referring to the work of the Austrian author Iro G., writes: "In foreign law, the limits set by local customs are also used as a criterion of exit from the permissible impact. In this case, as a rule, disputes arise in relation to the noise from cars, tennis, lawnmower operation, etc. coming from the neighboring area.

In such situations, the criterion is considered to be the relevant local rules of public order or custom (e.g., the prohibition of mowing on Sundays or evenings, rules on the possibility of playing the piano in an apartment for one or two hours a day) (Emelkina, 2016). As can be seen, noise and apartment have fallen into the sphere of neighborhood law according to local custom and are not a priority phenomenon for the basic civil legislation. This observation was quite consistent with the conclusions of I.B. Novitsky: "the colorful color of neighborhood relations, the influence on them the peculiarities of everyday life, explains the fact that in this area a rather prominent role is played not only by the local legislation (e.g., cantonal norms in Switzerland, local legislation in Germany), but also by local customs" (Novitsky, 1924).

In the history of Russian civil law, neighborhood law was presented in the form of norms regulating the participation of outsiders in the use of someone else's thing, in short - the "right to participate". Such a name of this group of norms caused censure among contemporaries. Thus, for example, G.F. Shershenevich noted that the interests of one neighbor limit the property right of another neighbor, but do not give the first an opportunity to use the property of the other, that is, the right to participate in the full sense of the word is absent: "The prohibition to attach the kitchen to the wall of another's house, to sweep away the rubbish on someone else's yard, etc.

The law calls the right to participate, while in these cases, it is undoubtedly only the constraint of the owner, but there is no participation in the use of the thing by others. (Shershenevich, 2001). That is, neighborhood rights and, for example, servitude were unreasonably merged by the legislator into one category of "participation rights".

There is a general negative assessment of the state of neighborhood law in Russia in the early twentieth century. I.B. Novitsky (1924) noted with regret that "the right of neighborhood" has the saddest fate; its study and regulation are put in the root abnormally.

Reflecting on the prospects of the development of neighborhood law in Soviet Russia, I.B. Novitsky recognized theoretical works and Western European legislation of that time as a model and reference point. That is, he saw nothing interesting in the pre-revolutionary Russian legislation on the issue of neighborhood relations. Today I.A. Emelkina comes to the same conclusion: "In the Russian legal literature of the XIX century there were no serious studies of neighborhood law. Scientific works published at that time dealt only with individual problems of legal regulation of relations between neighbors. Partly such a situation can be argued by the fact that the understanding of the institution of neighborhood law may well have occurred later, but with the well-known political events of the beginning of the last century, this topic was unclaimed" (Emelkina, 2016).

Possible comprehension of the institution of neighborhood law is associated with the long-term development of the draft Civil Code in pre-revolutionary Russia, where the norms of neighborhood law were kept in a systematic form in large numbers and were created taking into account the examples of European jurisprudence of that time. It was not possible to rise to a higher level of neighborhood law because of the revolutionary events of 1917, which stopped working on the project.

In Soviet times, neighborhood law was not developed. I.A. Emelkina and Y.D. Subaeva write in this regard: "With the liquidation of private land ownership in the last century in the Soviet state, the norms of neighborhood law were transferred to the category of public-law regulation (legislation on urban and rural development, environmental protection, etc.).

Civil legislation established only general provisions on the exercise of property rights, its limits and boundaries" (Emelkina, Syubaeva, 2017). Similarly, the issue of regulating neighborhood relations in the housing sector, in particular, relations between residents in an apartment building, was resolved. Private ownership of residential premises was not liquidated, but urban development was dominated by public housing. Special attention should be paid to this. This may explain the widespread procedure of bringing to administrative responsibility dog owners who violate regional legislation on silence, which again has an administrative and legal nature.

In modern Russian civil law, the norms of neighborhood law are not codified in any noticeable way.

Therefore, the legal basis for the regulation of neighborhood relations and conflict resolution between neighbors can be only the most general provisions of civil law: on the limits of civil rights, on integrity, on property, on methods of protection of civil rights, in particular on a negative claim, on compensation for moral damage. There is a theoretical understanding of the problems of neighborhood law.

The articles and monographs of modern authors cover the experience of other countries, pay attention to the pre-revolutionary experience of regulation and study of neighborhood relations, and give a critical analysis of the project of upcoming changes in property legislation. Unfortunately, the problem of noisy behavior of neighbors in an apartment building, which is of interest to us and is connected with such a specific source of noise as a dog, is almost ignored, except for rare articles specifically devoted to this problem (Tlesarev, 2016).

Neighboring law is often considered in the context of restricting property rights. This is correct, but of greater interest is another term, which is unusual for Russian jurisprudence - "patience". It is also found among domestic and foreign authors, in the current acts of foreign legislation and in the draft federal law № 47538-6 "On Amendments to the first, second, third and fourth parts of the Civil Code of the Russian Federation, as well as in some legislative acts of the Russian Federation. Here are some examples (the word "tolerate" is highlighted everywhere by us).

G.F. Shershenevich (2001) wrote about the reasons for the legislator to restrict the right of ownership: "Such restrictions consist of either a) the obligation of the owner not to do anything from what he could do in terms of the content of the right of ownership, or b) the obligation to tolerate something from others, which he could not allow in terms of the content of the right of ownership".

Article 787 of the draft Civil Code of the Russian Empire proposed a rule that the owner of the downstream estate should tolerate natural water runoff from the upstream estate and has no right to construct any structures that would prevent this runoff or change its natural direction to the detriment of neighboring changes (Civil Code, 2008).

I.B. Novitsky (1924b) characterized one of the directions of regulation of neighborhood relations as follows: "it is established to what extent one neighbor has the right to invade positively the sphere of another neighbor so that the latter is obliged to tolerate this positive impact". I.A. Emelkina (2016) quotes the following words of German lawyer O. Girke: "Neighborhood law establishes restrictions by virtue of which the owner is obliged either to refrain from certain use of his land plot or must tolerate the actions of another person - a neighbor in respect of the land plot that is in his ownership".

I.A. Emelkina writes: "In the case of a neighbor's exit from the permissible impact of the norms of neighborhood law are aimed at achieving two objectives: to settle the conflict through a private law agreement, including the condition of monetary compensation for damages and the obligation to endure the impact without applying for judicial protection, in the case of failure to reach an agreement - to provide protection of the rights of a neighbor in an administrative or judicial order".

When we say that the norms of neighborhood law are not codified in any visible way in Russia, we mean the civil legislation. Nevertheless, as has already been noted, the regulation of neighborhood relations is actively engaged in public law. Of course, neighborhood relations for public law are not always the main object of regulation. It looks at them through the prism of public interests.

Nevertheless, it is in public law that we find norms that are most specialized in cases of violation of silence in an apartment building by owners of pets, in particular dogs. Federal legislation generally contains general rules on adverse effects on the neighbor, often these rules are so general that they are applicable to any situation of adverse effects, not necessarily related to neighborhood relations. For example, there is an obligation to comply with noise limits in residential areas, these limits are set for daytime and nighttime and administrative liability for violations of these rules is established.

While modern Russian housing legislation only defines in the most general way the duty of homeowners to take care of the interests of their neighbors, in Soviet-era regulations, which are still in force, it is possible to find the most specific rules of conduct for dog owners: to take measures to ensure silence in the living quarters; when dogs are outdoors at other times, their owners should take measures to ensure silence. However, unlike the general requirements to comply with noise limits, this silence requirement is not specifically sanctioned.

Seeing the lack of attention on the part of the federal legislator to the problem of keeping pets in cities, the authorities of constituent entities of the Russian Federation and municipal formations began to get involved in the regulation of such relations. They believe that there is a gap in the federal legislation, and since the keeping of pets is the sphere of administrative law, the subjects of the Russian Federation and municipal entities are able to fill the gap with their acts.

This is the most vulnerable place in the system of legislation regulating the keeping of pets in residential premises. Is there really a gap in the federal legislation? Can the legislative bodies of the constituent entities of the Russian Federation establish rules for keeping pets and administrative responsibility for their violation?

The regional authorities answer both questions in the affirmative, which has resulted in the adoption of laws on domestic animal husbandry, silence and peace of mind by regional parliaments. However, there is another point of view: the existing sanitary and veterinary legislation of the Russian Federation makes regional regulations on this issue superfluous and does not allow establishing administrative responsibility of the owner of a dog for its barking or other noisy behavior at the level of a subject of the Russian Federation.

Regional legislator, establishing administrative responsibility for violation of the rules of keeping pets, invades the competence of the Russian Federation in the field of legislation on administrative violations, because the qualification of this offense is not excluded under Article 6.3 of the Code of Administrative Offences of the Russian Federation (Code, 2018) (violation of legislation in the field of sanitary and epidemiological well-being) or Article 6.4 of the same Code (violation of sanitary and epidemiological requirements for the operation of residential premises Violation of the rules of keeping pets is a special case of violation of the legislation on veterinary medicine, on sanitary-epidemiological well-being of the population, that is, not some new kind of illegal activity, but a special case of violation of existing federal legislation, which is very extensive.

As noted in the definition of the Supreme Court of the Russian Federation № 81-APG12-1 (Decision, 2012a), the welfare of the population - it is not only the health of the population, but also the welfare of the human environment, in which there is no harmful impact of environmental factors on the person and provided favorable conditions for his life (Art. 1 of the Federal Law "On Sanitary and Epidemiological Welfare of the Population" (1999).

Therefore, the legislation on sanitary-epidemiological well-being of the population is the basis for the approval of sanitary standards CH 2.2.4/2.1.8.562-96 "Noise at the workplace, in the premises of residential, public buildings and on the territory of residential development" (approved by the resolution of the State Committee for Sanitary and Epidemiological Surveillance of the Russian Federation No. 36 and sanitary-epidemiological rules and standards of SanPiN 2.1.2.2645-10 "Sanitary-epidemiological requirements for living conditions in residential buildings and premises" (approved by the Resolution of the Chief State Sanitary Inspector of the Russian Federation No. 64).

These normative legal acts establish the permissible noise level in residential premises for day and night time. GOST R 56391-2015 "National Standard of the Russian Federation evidences the fact that the noise level requirements established by the federal government body are directly related to the maintenance of pets. Services for non-productive animals. Housing of non-productive animals in urban areas. General requirements" (approved by Rosstandart Order No. 268).

Paragraph 10.3 of the National Standard specifies the permissible noise level for day and night among the physical parameters to be monitored in order to determine the impact of the animal on the environment, specifying that it may be screams, barks, howls, blows, etc. The physical noise values provided for in the National Standard comply with CH 2.2.4/2.1.8.562-96 and SanPiN 2.1.2.2645-10.

According to Article 56 of the Federal Law "On Environmental Protection" (2002) all entities, when carrying out economic and other activities, are obliged to take necessary measures to prevent and eliminate the negative impact of noise, vibration and other physical impact on the environment in urban and rural settlements.

This norm is another proof of the statement that the problem of negative impact of noise on people, regardless of the source of noise, including the noisy behavior of pets, is the subject of concern of the federal legislator. He also establishes responsibility for violation of the noise limit as a violation of legislation in the field of sanitary-epidemiological well-being (Art. 6.3 of the Code of Administrative Offences) or sanitary-epidemiological requirements for the operation of residential and public premises, buildings, structures and transport (Art. 6.4 of the Code of Administrative Offences). The legislation of the subject of the Russian Federation concerning in any degree these questions, will at the best duplicate the federal legislation, in the worst case - to contradict to it.

However, not all regional laws have been judicially checked for compliance with the Constitution of the Russian Federation and federal legislation. Courts of lower levels of the judicial system are forced to work in conditions when regional normative acts contradicting the federal legislation, but not recognized as inoperative, may be in force on the territory of a constituent entity of the Russian Federation.

We faced such a state of affairs in 2017, appealing for the first time an illegal decision of the administrative commission to impose a fine for barking a dog. We tried to prove at the meeting of the commission, in court that the law of Altai Krai applied in our case is contrary to federal law, and should not be applied. The administrative fine established by him should not be levied on us. We demanded that our conduct be assessed in terms of federal law. It was clear to all of us that as long as the rule of Altai Krai law applied in our case was not declared inoperative; there would still be a threat of its application in such cases.

This prompted us to apply to the court with a demand to invalidate the rule of the regional law, which establishes, in particular, responsibility for barking dogs. Our demand has been satisfied, the norm has lost its force, it has been cancelled, now in Altai Krai there is other legislation in force.

The court practice in cases of noisy behavior of dogs is contradictory not only because the courts in the constituent entities of the Russian Federation apply different regional legislation in terms of quality. Even if the law on liability

for noisy dog behavior is applied, its effect can be significantly adjusted through the application of sanitary norms established by federal authorities. In particular, it is possible to take into account the maximum permissible level of noise, which is fixed in the sanitary norms.

Nevertheless, in practice there are different approaches to the use of these standards: someone is ready to use special devices to measure the level of noise emitted by the dog to bring a neighbor to justice; others believe that these standards are addressed to enterprises and organizations that can adversely affect the situation in the residential area. Such different opinions are held not only by ordinary citizens, but also by judges and administrative officials. When the maximum permissible level of noise is not taken into account, the risk of being prosecuted increases significantly, it becomes almost inevitable: it is enough for the neighbor to hear the dog and have a desire to complain to the police.

However, the most interesting aspect of court practice is competition between civil and administrative law. While the administrative law assumes the function of a regulator of the behavior of dog owners in an apartment building, the civil law can compete with it through its general provisions. Neighborhood relations are not excluded from their scope, and protection of neighbors' rights can be considered as a special case of civil rights protection. In practice, there are many civil disputes between neighbors about the noisy behavior of a dog. Sometimes a civil suit is brought after unsuccessful attempts to change the neighbor's behavior at the expense of administrative procedures. A civil lawsuit can be brought immediately if the plaintiff sees no point in administrative punishment of a neighbor.

Below are some of the most interesting examples from the court practice, which will show a rich palette of life situations associated with noisy behavior of dogs in an apartment building.

To begin with, let us consider examples of attraction of the citizens owning dogs, to administrative responsibility for infringement of silence and rest of neighbors in an apartment house. The main part of the examples will be made up of the cases we studied in the archive of the Leninsky district court of Barnaul. In all cases, the owners of dogs appealed in court against the decision of the administrative commission to impose a fine on them. Cases were considered by different judges, making different decisions and arguing them differently.

Example 1: Case of P.Y. and P.I. (These people live together and keep a common Yorkshire terrier, were brought to responsibility separately on the complaint of the same neighbor).

Decision of the Leninsky District Court of Barnaul of 1 April 2019 in case #12-123/2019 (Decision, 2019a).

P.Y., as the owner of a dog violating the silence and peace of citizens, was subjected to administrative punishment in the form of a fine of 600 rubles. P.Y. did not agree with the decision of the administrative commission and filed a complaint with the court with the request to cancel the decision and terminate the proceedings. In P.Y.'s opinion, the barking of the dog does not depend on the will of the person, which means that there is no event of violation in the case. In addition, P.Y. was not in the apartment during the barking of the dog, so she could not take any measures. P.Y.Y. also refers to the norms of law establishing permissible noise levels in residential premises. In the case of their excess was not proved. The court satisfied P.Y.'s complaint and agreed that in this situation there was no event of an administrative offence: since P.Y. was absent from the apartment during the period of the dog's noisy behavior, he could not be a violator of citizens' silence and peace. She was not charged with any other offence (violation of the rules of keeping pets). P.Y. was released from responsibility.

Decision of the Leninsky District Court of Barnaul dated 3 April 2019 in case No. 12-122/2019 (Decision, 2019b).

P.I. was also punished by a decision of the administrative commission in the form of a fine of 500 RUR for violations of silence and peace of citizens. P.I. did not agree with the decision and appealed to the court, used the same arguments as in the case of P.I. According to the court decision, the administrative commission had initially mischaracterized the actions of P.I. In this case, there was a violation of not the legislation of the Altai Territory on silence, but of the rules of keeping pets, according to which the owner of the animal must provide silence and peace for others. This offence was not charged by P.I. During the period of noisy behavior of the dog on the night of December 14-15, 2018. P.I. was not at home and could not disturb the silence and peace of his neighbors. In his actions, there was no composition of such administrative offence as violation of silence and rest of citizens. The court satisfied P.I.'s complaint.

Decision of the Leninsky District Court of Barnaul of 7 May 2019 in case #12-121/2019 (Decision, 2019c).

P.I. is subjected to administrative punishment for the second time as the owner of a dog violating the silence and peace of citizens. He is sentenced to 600 RUR. P.I. did not agree with the decision of the administrative commission and filed a complaint with the court with the request to cancel the decision and terminate the proceedings. P.I. used the same arguments as in his previous complaints and drew attention to the fact that the norms of the Altai Krai legislation, which he allegedly violated, duplicated the federal legislation. In other words, the Altai Krai legislation on administrative responsibility for violation of the silence and peace of its citizens creates competition with the federal legislation and exceeds its powers. The court did not release P.I. from responsibility and upheld the decision of the administrative commission, but reduced the amount of the fine to 500 rubles. In the court's opinion, the noise level was of no legal significance, and the testimony of the victim and witnesses was sufficient evidence of P.I.'s guilt: he allowed the barking of a dog between 13.15 and 13.45, i.e. he did not take measures to

ensure the silence of the pet in the living quarters.

Decision of the Leninsky District Court of Barnaul dated 28 June 2019 in Case 2-218/2019 (Decision, 2019d).

P.I. again found himself in the situation described above. The administrative commission imposed a fine of 1300 rubles. P.I. did not agree with the decision and appealed to the court with a complaint and request to cancel the decision. The same arguments were used as in the previous complaints. The court's decision in this case turned out to be similar to the decision in case No. 12-121/2019. The court changed the decision, imposing a fine of Br500, and the complaint was not satisfied.

Example 2: Case of P.G. (We were directly involved in this case. It is a part of a set of legal materials, which in section 3 "Materials and methods" we called the hallmark of our project)

Decision of the Leninsky District Court of Barnaul of 20 June 2019 in case # 12-240/2019 (Decision, 2019a).

P.G. was brought to administrative responsibility for allowing a barking dog to bark during the daytime from 13.00 to 15.00 (at this time, as well as at night, a particularly strict observance of silence is required in the Altai Territory), thus disturbing the silence and peace of the neighbors living on the lower floor. P.G. was prosecuted under Altai Krai law, as were other citizens in the cases described above. P.G. filed a complaint with the court against the administrative commission's decision and asked for its cancellation. The main argument of the complaint was that the law of Altai Krai on silence and peace of citizens does not apply to the case of violation of the silence of barking dogs. In general, the legislation of Altai Krai does not apply to neighboring relations related to animals. In the case, federal administrative legislation should be applied, in particular the Code of Administrative Offences of the Russian Federation, but there is no evidence of violation of federal legislation, such an offence was not imputed to P.G. Application of federal legislation means, in particular, the need to measure and take into account the level of noise emitted by the dog.

That is, not any noise is sufficient to bring the owner of the dog to administrative responsibility. In substantiation of her complaint, P.G. referred to the decisions of the Altai Territory Court and the Supreme Court of the Russian Federation, made in her case in connection with the challenge of the Law of Altai Territory "On Administrative Liability for offenses in the territory of the Altai Territory", which recognized that the relationship on the maintenance of pets is regulated by federal legislation and the Altai Territory has no right to establish administrative liability for violations of the rules of keeping pets.

The court satisfied the complaint of P.G. and released it from administrative responsibility, because in its actions there is no event of administrative offense: the Law of Altai Krai from December 6, 2017 № 95-ЗС "On ensuring the silence and peace of citizens in the territory of the Altai Krai" in the case of P.G. cannot be applied, it does not concern the cases of violation of the silence of pets, and other misdemeanors she was not imputed.

Example 3. Case of G.P. (About seven Amertoys. The decision is taken from the reference legal system Garant, its date is not known to us).

The decision of the Tchaikovsky City Court of the Perm Territory in case No. 12-342/12 (Decision, 2019e).

The resolution of the magistrate's judge G.P. was found guilty of committing an administrative offense under part 1 of article 2.8 of the Law of the Perm Krai "On Administrative Offences" and he was sentenced in the form of an administrative fine for the fact that he, being the owner of seven Amertoy dogs, did not provide their proper maintenance in the apartment: on the night of the dog barking, thereby violating the silence and peace of the neighbors.

G.P. filed a complaint to the court requesting the magistrate's court to cancel the decision, in the absence of an administrative offence, referring to the fact that the legislation establishes maximum permissible levels of noise during the day and night in residential premises and measures them in accordance with the Sanitary Norms of permissible noise in residential and public buildings and residential areas.

In order to accuse someone of having committed an administrative offence of exceeding the maximum permissible noise level, the noise emitted had to be measured, and a corresponding act had to be drawn up from which it had to be seen what level of noise came from pets. There is no such evidence in the administrative case.

The court did not satisfy the complaint, and in the opinion of the court, the complaint's argument that there was no act of noise measurement in the case could not serve as a basis for G.P.'s exemption from liability.

Now let us consider civil-law disputes of neighbors caused by noisy behavior of dogs.

Example 1. The case of dog flocks in an apartment (ban the maintenance) (Decision, 2016).

In the Sverdlovsk region, the case of mass keeping of dogs in an apartment was considered. The plaintiffs applied to the court with a request to ban the defendant from keeping dogs. In support of their claims, they explained that the defendant kept a large number of dogs in his apartment. They suffocate from an unpleasant smell. There

is a dog howl in her apartment that prevents them from resting. There are puppies now. At the same time, the defendant was repeatedly brought to administrative responsibility under Article 37 of the Law of the Sverdlovsk Region "On Administrative Offences in the Territory of the Sverdlovsk Region". The police officers repeatedly held preventive talks with him about the inadmissibility of keeping a large number of dogs in the apartment.

The court satisfied the plaintiff's demands and ordered him to release the apartment from animals with a ban on further keeping of dogs in the apartment. In the opinion of the court, the defendant's failure to comply with the court's earlier decision, the continuation of illegal actions, which are reflected in the violation of the plaintiffs' housing rights for a long time, antisocial behavior, consisting in ignoring the rights of neighbors, is regarded by the court as an abuse of rights.

The maintenance of a large number of dogs in the apartment itself entails the impossibility of full control over the processes of animal life, affects the interests of other persons. At the same time, unsanitary conditions are created; the level of noise is increased, which violates the right of neighbors to a favorable environment.

Example 2: The case of dog flocks in an apartment (reduce the number of dogs) (Decision, 2014).

The Nagatinsky District Court of Moscow considered the case. In this case, the plaintiffs also demanded a ban on keeping pets. In support of their claims, they explained that the defendant kept a large number of large breeds of dogs in his apartment. He walks the dogs without muzzles. Dogs constantly barking, whining, scratching floors, walls, and doors in the common corridor, do not give rest to tenants day and night.

The defendant does not watch his animals, does not clean them up, the smell of stink comes out of the apartment, cockroaches spread, and the entrance to the house is dirty. From the plaintiff's explanations it follows that the defendant Moiseeva's keeping the dogs is exceeding the permissible level of noise in the house at night, which violates the rules of living together and the rights of the residents of the house, and the violation of hygienic rules poses a threat to the physical health of persons living in the entrance.

In support of this, the plaintiffs presented the result of acoustic measurements made by the testing laboratory: the noise level in the period when the barking of dogs is heard does not meet sanitary standards. During the consideration of the case, a forensic sanitary-epidemiological examination of the noise level measurement was appointed and conducted. The experts concluded that the noise produced by pets at night exceeded the maximum permissible level defined by the normative and technical documents.

The court decided that animal husbandry should be limited to two dogs.

Example 3. The case of an elderly poodle (Decision, 2015c).

The plaintiff appealed to the Sverdlovsk District Court of the city of Perm with a request to impose a ban on the defendant's dog maintenance. The claimant offered to transfer the dog to the local public organization of animal protectors. He demanded compensation for the moral damage caused to him. According to the plaintiff, the defendant contains an elderly dog, which he never walks, keeps only in a closed room; the staircase is spread on the smell of rotten smell, thus creating unbearable conditions for living. In addition, their peace for six months violates the barking and howling of the animal, which comes from the neighbor's apartment almost all day long. In some hours, the dog howls most actively. The plaintiff repeatedly appealed to law enforcement agencies and local authorities, but no violations by the defendant were found. Some witnesses heard the dog's noisy behavior and confirmed it.

The court refused to satisfy the claim, as the plaintiff did not prove and the court did not find any violation of sanitary, epidemiological, and veterinary-sanitary rules. Nevertheless, the court satisfied the claims for compensation of moral damage.

Example 4. The case of a noisy badger-dog (Decision, 2017e).

The Kalininsky District Court of Ufa also considered the case, where the subject of the dispute was noise from one of the neighbors' pets. The plaintiffs explained that the defendant was holding a badger-dog. The dog barks during the whole day when one of them stays in the apartment, and other neighbors confirm the continuous barking. Dog barking does not give the plaintiffs the opportunity to stay calm in their own apartment, which violates their rights as owners of residential premises. The fact of violation of rights is confirmed, in respect of the defendant is drawn up an administrative protocol. In this regard, the plaintiffs ask to oblige the defendant to eliminate the above violation, to recover from the defendant monetary compensation for moral damage.

The court refused to satisfy the claim, as the plaintiffs did not submit any evidence to the court to confirm their arguments. The court explained that the barking of the dog must exceed a certain level of noise. It is impossible for the court to determine how loudly and for how long the dog barks. It is only possible to determine the noise level by carrying out an expertise in an apartment. However, the parties did not declare it in court.

Example 5. The Rhodesian Ridgeback case (Decision, 2017f).

The Mozhaisk City Court prohibited local residents from keeping their own dog in the apartment. According to

the plaintiffs, the neighbor's Rhodesian Ridgeback constantly howls when the owners are not at home. According to the residents, their quiet life ended in 2014, when neighbors started holding Ridgeback. As soon as the owners left the house, the dog began to howl desperately. Discomfort, according to the plaintiffs, is not the power of sound, but the way the neighbors' pets howl.

The plaintiffs and other neighbors repeatedly appealed to the police, administrative and technical supervision and municipal authorities. These bodies carried out checks, during which the howling of the defendants' dogs at night was confirmed, but the defendants were not brought to administrative responsibility, as the local legislation does not have a norm of law allowing to bring to administrative responsibility for violation of silence.

The court concluded that the defendants, through their actions related to the inadequate maintenance of their dog, violated the rights of the plaintiff as the owner of the dwelling and satisfied the claim.

Discussion

It is important to recognize neighborhood law as an element of the civil law system. Administrative-legal bias in the regulation of neighborhood relations in modern Russia has reasons that are noticeable in historical retrospect. These reasons - the abolition of private ownership of land - and in Soviet times, not all experts were recognized as sufficient to reject the neighbor's civil law, and in the modern conditions and have no action at all. There are all grounds to revise the current situation in favor of civil law regulation of neighborhood relations. In any case, civil law should become the main regulator of this sphere of public life. It is impossible to recognize the correct situation when civil law and administrative law compete on the issue of responsibility for noisy behavior of pets.

Administrative law is not effective in this case for a number of reasons. Barking, howling, and squealing of a dog in a dwelling cannot be called a socially dangerous behavior of a dog owner. It does not have the degree of danger when it would be necessary to use the arsenal of administrative law.

Y.M. Kozlov (1999) writes: "...public danger is also a sign of administrative offense, an expression of its illegality. Otherwise, it is difficult to explain why the state uses its power to combat such acts and widely applies legal means of coercion, if these acts do not pose any danger to the interests of society. Sometimes administrative offences are called anti-social, which is also in line with their public danger.... Of course, they are also harmful".

Y.A. Tikhomirov (2001). uses another definition: "An administrative offence (misdemeanor) is an infringing on the state or public order, property, rights and freedoms of citizens, on the established order of management illegal, guilty (intentional or careless) action or omission, for which the legislation provides administrative responsibility".

Can we assert that violation of silence by a resident of an apartment building is a dangerous act for the society? Rather, such behavior can be considered dangerous or, rather, uncomfortable for individuals. In connection with the above, it seems obvious to us that such relations should not be regulated by the norms of administrative law and this is confirmed, among other things, by the theoretical basis of administrative law.

We can allow the idea of administrative responsibility for the dog's walking in an undisclosed place, without a leash or muzzle. It is connected with danger for the uncertain circle of the person. On the contrary, the noisy behavior of a dog, as practice shows, is localized. Events take place in a separate apartment, belonging to the owner of the apartment, and affect the interests of the nearest neighbors. Often in the materials of court cases, there is information that complaints about noisy behavior of the dog come to the law enforcement bodies against the background of unpleasant relations between neighbors, which can be caused by quite different reasons.

Y.M. Kozlov writes about administrative law in the following way: "Administrative law is a set of legal norms with the help of which the state regulates public relations arising in connection with and concerning practical realization of executive power... we mean only those relations in which this or that executive body, i.e. the corresponding subject of executive power, necessarily participates. Without their participation, public relations go beyond the framework of administrative-legal regulation.

These are, for example, relations between citizens, between public associations and within them, relations between industrial enterprises, commercial structures based on economic and contractual principles, etc." (Kozlov, 1999). Similar reasoning can be found in the work of Yu.A. Tikhomirov (2001): "Thus, public interests, secured by administrative law, acquire the meaning of normative guidelines of activity and criteria for the adoption of legal acts and other documents.

They contribute to the formation of socially significant legal consciousness of citizens and motivation of their behavior, prevent deviations from the general rules and hypertrophy of private, personal interests. Namely, this trend of Russian reality is very painfully reflected in different spheres of state and public life". That is, researchers specifically emphasize that private interests of citizens and their relations with each other should not fall into the sphere of regulation of administrative law. We find in this confirmation of our point of view.

In a year and a half, eight cases were considered in the Leninsky District Court of Barnaul to appeal against the decisions of the administrative commission to bring to justice the violators of silence. Six of them were about the noise of pets. It is not that the violators of silence agree with the decisions of the administrative commission and

do not seek to challenge them in court. There are few cases in the administrative commissions themselves.

Most of the cases we studied in the Leninsky District Court of Barnaul are complaints of the same persons. The small number of cases and the repetition of participants in them speaks more about the importance of silence and its observance for individuals, rather than about the public importance of such cases. This also confirms the disinterest of neighboring witnesses in participating in the hearing (in one case, the witness had to be forcibly brought before the court to testify against the violator of silence). The cases of violation of silence are connected with extreme subjectivism. On the one hand, people may perceive noise differently and react to it, but on the other hand, neighbors may use the "flexibility" of silence legislation to settle personal scores with each other.

Penalties for administrative law have little effect on the behavior of the dog owner, who already tends to take measures to reduce the noise emitted by the animal. However, the animal is susceptible to a fine. Administrative punishment does not solve the main problem - it does not eliminate the source of trouble for neighbors.

Thus, it can be concluded that the existing way of solving such disputes by means of public law is unproductive. Meanwhile, effective means of resolving disputes between neighbors can be found in civil law. A nigger lawsuit, if granted, can solve the main problem - to eliminate the source of noise and discomfort or to significantly reduce the adverse impact on neighbors. Practice shows that the traditional civil remedy is universal and flexible enough to become a means of regulating neighborhood relations.

The satisfaction of a negative claim should not necessarily have the effect of prohibiting the keeping of a pet. In some cases, it is sufficient to reduce the number of dogs or to impose additional obligations on the owner of the dog, which will reduce the noise level. For example, a court may order the owner to strengthen the soundproofing of the room. It is possible that, given the circumstances of the case and the position of the defendant, such a duty of soundproofing will be imposed on both sides of the process in equal or different proportions.

Another specific way of resolving a dispute may be to impose on the owner of the animal the duty of enhanced supervision of the animal. It may be like inviting a care to a person when the owner is absent for a long time or the animal is ill, has special character traits and requires constant contact with people. In the cases we studied, there were suggestions of neighbors to take part in watching a noisy dog, which wails and barks particularly hard when it is left alone.

This kind of cooperation between neighbors to ensure peace and quiet in the house can also be one of the options for resolving the dispute, if the circumstances of the case and the position of the parties are conducive to it. Other examples of solving the problem without removing the dog from the premises (medical intervention, use of special technical means) could also be given.

Currently, we do not see anything like this in the general property provisions, in the negatory lawsuit. The application of these rules is possible already now and happens in practice, but the development of neighborhood law should follow the path of specialization of general property provisions indicating the specific ways of dispute resolution.

The newest norms of mandatory law, in particular, the amendments adopted in 2015 on the so-called astronauts, can provide significant assistance in ensuring the enforcement of judicial decisions in neighborhood disputes. According to Article 308.3 of the Civil Code of the Russian Federation (2005), in the event of default by the debtor of the obligation, the creditor has the right to demand the execution of the obligation in kind by court, unless otherwise provided by this Civil Code of the Russian Federation, other laws or the contract, or does not arise from the essence of the obligation.

The court, at the creditor's request, has the right to award in its favor a sum of money in the event of non-fulfillment of the said judicial act in the amount determined by the court based on the principles of fairness, proportionality and inadmissibility of deriving benefits from illegal or unfair conduct. Thus, civil law has its own monetary mechanism for influencing the silent violator, who ignores the interests of neighbors and does not rush to comply with the court's decision, which, as we have found out, can be most accurately selected for any specific situation.

This monetary mechanism has three advantages over an administrative fine: 1) the amount is determined by the court in the light of the circumstances of the case and may be much more sensitive to the silent offender, 2) it may be recovered repeatedly before the execution of the court decision without careful preliminary judicial proceedings, 3) it is recovered in favor of the neighbors and not the state, thus compensating them for the continuing troubles.

We regret that the long-prepared amendments to the Civil Code of the Russian Federation, the adoption of which should restore full neighborhood law in Russia, are almost entirely devoted to the neighborhood relations of landowners. It seems that the developers of the amendments do not know that in the cities people are also in neighborhood relations, even closer than the landowners are. This is an obvious drawback of the bill.

The development of civil law regulation of neighborhood relations should not exclude cooperation between civil law and public law. We believe that the issue of applying sanitary norms to the neighborhood relations, which has been repeatedly raised in practice, should be resolved positively. That is, the maximum permissible noise level defined in sanitary rules should be taken into account when settling civil law disputes. This should not lead to

formalism, and other ways of determining the degree of adverse impact of one neighbor on another are not excluded.

However, the professional measurement of noise level should be taken into account first. Otherwise, neighbors are in a worse position than other violators are of silence, such as industry, entertainment and similar organizations. They have the right to create any trouble for the residents of apartment buildings within the limits of the norms established by the state. It goes without saying that the legislation on enforcement proceedings, as well as the method of work of bailiffs should be improved taking into account the development of the neighbor's law.

CONCLUSIONS

Neighborhood relations are by their very nature subject to civil law norms. Civil law should become the main regulator of this sphere of public life. This conclusion concerns neighborhood relations not only in the sphere of land use, but also in apartment buildings. The formation of neighborhood law is in demand by the practice of public life.

Subjects of the Russian Federation should not take an active part in the regulation of neighborhood relations, since the civil legislation is the subject of exclusive jurisdiction of the Russian Federation. At present, neighborhood relations, in particular related to ensuring silence and peace of citizens, responsibility for violations in this area, are fully regulated by federal administrative legislation, which again excludes the subjects of the Russian Federation and municipalities from the number of law-making instances.

We have considered expediency of solving neighborhood conflicts on the issue of violation of silence with the help of methods of administrative law. The practice as a whole and our own analysis of court cases testify to the inefficiency of these methods. Civil law even in the modern state contains a great potential for regulation of neighborhood relations and protection of neighborhood rights. The possibilities of civil law can be expanded in the course of the forthcoming reform of property legislation.

Critically estimating the project of the federal law No. 47538-6 "About modification of a part of the first, second, third and fourth Civil code of the Russian Federation, and also in separate acts of the Russian Federation", we suggest to the legislator at formation of the neighboring right not to be limited by relations between owners of the ground areas and to pay attention to relations in apartment houses.

The peculiarity of neighborhood relations in apartment buildings and specificity of conflict situations are conditioned by specific sources of trouble for neighbors, in particular, by noisy behavior of residents. Conflicts related to the keeping of pets, such as dogs, in apartments have become widespread. Animals often become a source of unpleasant smells and sounds, and for other reasons can cause unpleasant attitude to the owners from neighbors.

In regulating this relationship and in resolving disputes, it is necessary to take into account the peculiarities of animals as sources of unpleasant impact on neighbors: they are not fully under human control, such as musical instruments, equipment, etc. They are capable of emotions, fear and pain. For this reason, animal noise cannot be as judgmental as shouting, listening to music at high volume, playing instruments and singing.

Today, there is a widespread misconception in society of silence as a good thing. Many people tend to view silence and the right to silence as an unconditional benefit, without paying attention to the fact that for other people living in the neighborhood, the greatest benefit is a normal human life, one of the manifestations of which can be noise, for example, from a beloved family friend with four legs.

Unfortunately, the regional legislation reinforces this misunderstanding by ordering the residents of apartment buildings to remain silent at a certain time, giving the citizens hope that it is possible to compel the neighbors to behave in such a way that they are not heard at all. However, silence as a complete absence of sounds is an unattainable luxury in modern urban life, especially in apartment buildings with poor sound insulation.

Neighborhood law is designed to offer people the idea of compromise and some specific options. For this reason, one can only welcome the appearance of the term "patience" in Article 293 of the draft Federal Law No. 47538-6 "On Amendments to Parts One, Two, Three and Four of the Civil Code of the Russian Federation, as well as to Certain Legislative Acts of the Russian Federation", which describes one of the obligations of the owner: "The owner of the land plot must undergo the impact of gases, vapors, smells, smoke, soot, heat, noise, vibrations and other similar impacts, if the This rule should be made as general as possible and should not be limited to landowners only.

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Using social media in writing among Primary School pupils

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ABSTRACT

The advancement of technology has brought transformation in education. Utilisation of social media to promote learning are increasing exponentially at secondary and tertiary education levels. However, the researcher was still doubting using social media on current primary school pupils. Thus, this study aimed to explore the use of social media among primary school pupils and how they perceive towards the use of English in writing on social media. Questionnaires were distributed among 37 primary 4 pupils in a Chinese vernacular school in a Southern state in Malaysia. The findings showed that YouTube is the most prominent tool used among the pupils and they have good competency in using the social media which they always use. Pupils use social media for academically and non-academically purposes. However, slightly more than half of the pupils do not have positive perceptions towards using English in writing on social media. Social media could be exploited in learning writing activities to increase the awareness of pupils towards a better writing performance.

Keywords: social media, English language, primary pupils, ICT, education.

RESUMEN

El avance de la tecnología ha traído transformación en la educación. La utilización de las redes sociales para promover el aprendizaje está aumentando exponencialmente en los niveles de educación secundaria y terciaria. Sin embargo, el investigador todavía dudaba de usar las redes sociales en los alumnos actuales de primaria. Por lo tanto, este estudio tuvo como objetivo explorar el uso de las redes sociales entre los alumnos de primaria y cómo perciben el uso del inglés en la escritura en las redes sociales. Los cuestionarios se distribuyeron entre 37 alumnos de primaria 4 en una escuela vernácula china en un estado del sur de Malasia. Los resultados mostraron que YouTube es la herramienta más destacada utilizada entre los alumnos y que tienen una buena competencia en el uso de las redes sociales que siempre usan. Los alumnos usan las redes sociales con fines académicos y no académicos. Sin embargo, un poco más de la mitad de los alumnos no tienen percepciones positivas sobre el uso del inglés por escrito en las redes sociales. Las redes sociales podrían explotarse en el aprendizaje de actividades de escritura para aumentar la conciencia de los alumnos hacia un mejor rendimiento de escritura.

Palabras clave: redes sociales, idioma inglés, alumnos de primaria, TIC, educación.

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1. INTRODUCTION

Social media (SM) is growing exponentially and becomes ubiquitous nowa-days. Social media are Web 2.0 Internet-based applications which promote the development of social networks online by connecting a profile with other individuals and groups (Obar & Wildman, 2015). It is also known as social networking sites (Facebook and Twitter), blogging sites (WordPress) and other sites (YouTube) that provide the chance for collaboration, socialization and production of works. Social media stresses the social aspects in the form of communication, collaborative learning and inventive expression (Won, Burton, Evans, Baum-Walker, & Grafsky, 2015). Due to the social aspects featured in the social media, many educators viewed social media as an educational site in which teachers can truly access the learning potential of their students through proper designation of learning activities.

The fact that social media is an attraction to students as they are a mean for students to self-express and interact with each other. It is also the platform that gives a motivating vibe in learning (Abdullah, Hashim, & Mahmud, 2018). This is because social media offers the features of streaming, posting, photo sharing and video sharing. However, the author of the current study was still hesitating to choose a social media in teaching and practicing writing skills. Writing skill is one of the four major language skills need to be learnt by language learners at any level. In the current school context, it is hard to engage pupils in writing due to insufficient motivation, anxieties, afraid of committing errors or lack of idea to produce a good writing (Alfian, 2017). This goes in line with (Harmer, 2004) that their struggling in writing may derive from their anxieties in their handwriting, their spelling or their potential to make sentences and paragraphs. A way of provoking student engagement with writing is to encourage them to write to each other (Harmer 2007) and this could be done by employing social media as writing platform.

As the context of this study is at primary school, it is important for the re-searcher to begin with knowing pupils' preferences of social media in learning and their learning pattern before choosing the right tool. Students are ought to be given meticulous scrutiny to investigate their utilisation of the tools they are comfortable and familiar with and which they feel feasible in completing writing tasks (Tay & Allen, 2011).

Therefore, this present preliminary study was conducted to achieve the following objectives:

- To investigate the access of ICT tools among the respondents.
- To identify how often the respondents use SM.
- To identify respondents' competency in SM and its relationship with the frequency use of SM
- To investigate factors affecting the Use of SM and factors contributing to the use of SM across Gender
- To investigate the use of English in writing on SM among the respond-ents.

2. LITERATURE REVIEW

Influence of social media

With the support given by Information, Communication and Technologies (ICT) and hardware in the current available handheld devices, social media can be accessed conveniently, enabling its users to be connected without the restriction of place and time (Yunus et al., 2010; Nordin, et al. 2010). The Utilization of ICT in the Teaching and Learning of English: 'Tell Me More'. Procedia. Social and Behavioural Sciences, 9, 685–691. https://doi.org/10.1016/j.sbspro.2010.12.218. The young generations are easily influenced by technologies. According to the report from a digital strategist, social media like Facebook, YouTube, WhatsApp and Instagram are predominantly favourable platform among the young generations, most of whom are students and adolescents (Chaffey, 2019). Currently, Facebook is the largest social networking which boast over 2.2 billion users worldwide (Abdurahman, Hassan, Sayuti, & Abdullah, 2019; Chaffey, 2019) while YouTube is regarded as the most frequently used social media among students (Jumaat et al., 2019; Muyingo, 2017).

Students nowadays are growing up at the era when technology has advanced to an extent that the utilisation of the Internet is a daily life affair. They are bounded through social media apps to interact with each other or disseminate information, knowledge and interest which can increase efficiency in individual and group assignment (Abdurahman et al., 2019). In education, social media has gradually been used to promote teaching and learning activities. With the advancement of technology, students can now relish the joy of learning beyond the four walls. It is believed that enjoyment is a contributor to educational outcomes. Past studies (Nov, Naaman, & Ye, 2010; Zolkepli & Kamarulzaman, 2015) found that enjoyment stimulates their intrinsic motivation to share photos and engage in virtual discussion. They are inadvertently learning and creating language through their conversation in social media.

The popularity of social media sites has motivated social communication and engagement at an unprecedented scale. These encompass improving relationship, enhancing motivation in learning, offering personalized course material, and reinforcing collaboration (Shiva, Fahimeh, & Ghani, 2016). This means that social networking activities have the possibility of transforming passive individuals into active learners as they participate in virtual group learning, with less apprehension to raise questions at school (Nov et al., 2010).

Also, social media is found to enhance Learning Management System (LMS). LMS such as Edmodo, Moodle and Open Learning integrate integrates features of social media, including instant chat functions, videos, forums to share information and other lesson resources to help students and teachers. The integration of LMS based on social media and network platform helps to create different kind of communication and channel motivation, interest and 'real life' to formal study (Anderson & Dron, 2017).

Students' Motives for Using Social Media

Interpersonal interaction, passing time, obtaining information, convenience, and leisure were identified by scholars as reasons for using the Internet (Jiyoung Cha, 2010; Liu, Zhang, Ye, & Liu, 2018; Papacharissi & Rubin, 2000). Previous studies on the advantages of social media showed that students have the need to maintain social relationship with former classmates, communities and families when they are away from them (Özad & Kutolu, 2010; Shabir, G., Yousef, M., Yousef, H., Safdar, G., Farouq, 2014; Zolkepli & Kamarulzaman, 2015). Some students take social media as a platform to escape from their daily routines and problems and to kill boredom. Information seeking is also prevalent among students, whether for the purpose of homework or assignment. They are motivated to utilise social networking because of the feature of interactivity which ensures them to engage in personal and group conversation (Rdouan Faizi, El Afia, & Chiheb, 2014) as well as to obtain instantaneous information (Zolkepli & Kamarulzaman, 2015). Reading comments are regarded as seeking information (Lee & Ma, 2012). Besides that, social media is perceived as being convenient and easy to use as it is now accessible through most electronic gadgets such as iPhone, android phone, iPad/tablet and computers. In addition, it allows synchronization too. Entertainment is viewed as one of the personal needs for escapism and re-laxation (Khan, 2017). Through social media, students seek entertainment from various sources such as comments, videos, pictures and jokes which can be created by users or shared by other websites (Liu et al., 2018), and follow friends' profile, trends, artists and fashions. A finding which aims to unearths the motives of students for engaging in YouTube revealed that most of the students read comments for entertainment besides seeking information (Zolkepli & Kamarulzaman, 2015) but did not write for the same purpose (Muyingo, 2017).

Some researchers found that there are statistically significant differences exist in social media usage by gender in which number of women users on social media compared to men were found (Gwena, Chinyamurindi, & Marange, 2018; Khan, 2017). In this study, it also aims to investigate whether there is any significant difference in the factors contributing to the use of social media across the gender among primary school pupils.

Integration of Social Media into ESL Writing Classroom

With the increasing number of social media sites in existence and the increasing number of users, social media is undoubtedly influencing the writing of students (Saad, Yunus, Embi, & Mohd Yasin, 2014). With the rapid evolvement of web technology and its effectiveness, a number of educators are delving deeper into incorporating social media in their teaching and learning process to develop pupils' learning abilities in writing skills. Without underestimating the role of traditional media, digital media is deemed to be more largely accepted by students (Fauzi, 2017). To ensure learners to be successful in writing skill, educators have to choose appropriate method, technique or media to assist pupils in learning.

Previous studies of integrating social media in ESL writing classroom has yielded positive results in learners' writing attitudes, for example, developing language awareness through collaborative writing on social media (Tay & Allen, 2011), enhancing their writing motivation (Chandran, Plaindaren, Pavadai, & Yunus, 2019) and building confidence in learning ESL writing (El-Sawy, 2015; Saad et al., 2014). The interactions among students through writing on social networking site has fostered cooperative and collaborative learning (Toetenel, 2014). In association to this, a higher quality of students' writing and critical peer feedback are observed based on a quasi-experimental study on using blog-mediated feedback (Novakovich, 2016). Moreover, tweeting has also contributed to the development of a new literacy practice, such as Twitteracy, which assist formal and informal learning (J. Li & Greenhow, 2015).

When social media is incorporated in writing activities, it promotes two way of interactions among both teacher-students and student-student. At school, students often write only for the teacher but when they know that they will be writing for a wider audience as it will be shared on the social media, they put in more efforts into writing (R Faizi, Afia, & Chiheb, 2013; Rdouan Faizi et al., 2014). Therefore, this shows that social media has the potential to boost learners' motivation and self-worth towards writing.

Furthermore, using social media in writing classroom could inadvertently resolve the problems encountered by educators in providing timely feedback on students' composition. With proper guidance from the teacher, students can also give constructive feedback to their peers' writing (Yusof, Manan, & Alias, 2012). This is also supported in another study which found that Google+ provides students with convenient and attractive features to engage them in knowledge sharing, giving feedback to correct others errors or add new ideas in others writing and review their own writing at their own pace (Mohammad, Ghazali, & Hashim, 2018). When students post their writing on the social networking website, other students could also give feedback in the form of 'likes', 'emoticons' or short comments.

Besides that, not only the students who receive feedback would benefit but the students who give feedback would also learn to give critical response. Peer feedback through social media platform can consequently help a number of learners to be self-reliant so that they could self-edit their own work so that students can write better (Rollinson, 2005). Mervat Abd Elfatah Ali Said Ahmed (2016) also reported based on the quasi-experimental research on using Facebook grammar discussion and writing skills that students wrote better using more meaningful contents with well-organized and grammatically structured essay in the post-test. This is also in line with studies which discovered that social media-facilitated writing could help the students to be more conscious towards punctuations, spelling and grammar structures in writing (Akhiar, Mydin, & Kasuma, 2017; El-Sawy, 2015; Hashim et al., 2018).

Social media could bridge the gap between formal learning in the classroom and informal learning outside the classroom (Mustapha, Rahman & Yunus, 2010(a); Mustapha, Rahman & Yunus, 2010(b)). Majid & Stapa (2017) showed that scaffolding from teacher in the form of modelling, instruction, feedback and questioning based on the descriptive writing topic could be facilitated by Facebook on secondary level students. Students who had undergone

the treatment of scaffolding through Face-book in accomplishing descriptive writing scored better in the post-test compared to the students who only received face-to-face scaffolding in the classroom.

Despite the advantages that social media brings, some disadvantages were found in the findings. It is true that social media can provide a platform for language interaction. However, participants could develop indifference to the technology. Some students failed to manage social media rightly as the time spent on social media is rather higher than time spent studying, compared to the non-user of social media (Abdurahman et al., 2019). Some students claimed that using social media does not contribute much in improving their grammar, vocabulary, spelling or other linguistic features (Hashim et al., 2018). Moreover, teachers also need to reconsider their roles as teacher in facilitating the use of social media effectively in education.

3. METHODOLOGY

In order to attain the purpose of this study, a total of 37 primary 4 pupils were selected by using non-probability of convenience sampling method from an urban Chinese vernacular school in one of the states in southern of Malaysia. The respondents for this study were chosen as most of them are coming from intermediate or above-intermediate social financial background status with experience of using social networking. Besides, their English proficiency level are of intermediate level and above intermediate level. As this study employed quantitative research design using survey, having these criteria allows them to have good understanding and experience in answering the questions in survey.

Under the supervision of the researcher, the respondents were first given explicit delivery of the aims of the research and were told to complete the questionnaire thoroughly according their own experiences of using SM. The participants were also informed that the result of the research is confidential and it will not do any harm to them. In order to keep their privacy, all the participants' names were concealed and would not be used in reporting the research. The participants should complete all the questions within 30 minutes with teachers' guidance.

The data collected from the questionnaire were analysed by using a statistical software, SPSS version 25. There were five sections in the questionnaire, which were as follow:

- Section A consists of questions which aimed to identify access of ICT tools among the respondents.
- Section B consists of questions which aimed at eliciting information on how often the respondents use each listed social media.
- Section C consists of questions which aimed at eliciting information on how respondents perceive their own competency in using each social media.
- Section D consists of questions which aimed at eliciting information on factors affecting the use of social media among the respondents.
- Section E consists of questions which aimed at eliciting information on their perceptions towards the use of English in writing on social media.

4. FINDINGS AND DISCUSSION

Demographic Profile of Respondents

The participants consist of (40.5%) male and (59.5%) female. The frequency of the pupils starting to use social media is shown in Table 1.

Table 1. Demographic profile of respondents

Gender	Male	40.5%
	Female	59.5%
Experience in using SM	1-3 years	27.1%
	4-6 years	37.8%
	7-9 years	35.1%

From the statistics in Table 1, pupils started using social media as early as 1-3 year-old. More than half of the pupils (64.9%) had the access to social media before they started entering elementary school at the age of 7, indicating that most of them had at least 4 years' exposure to social media.

1.1 Access to ICT tools

Table 2. Number of pupils who have access to ICT tools

Access	Yes %	No %
Computer	67.6	32.4
Laptop	97.3	2.7
IPAD	59.5	40.5
Internet	100	0
Using Social Media	100	0

Based on Table 2, among computer, smartphone and IPAD, smart phone is the most frequent tool accessed by the

pupils. A great number of 97.3% pupils have access to smart phone while only 2.7% respondent does not have the access. This is followed by a number 67.6% pupils who have access to computer while 32.4% respondents do not have the access to computer. The least used tool is IPAD. However, more than half of them, 59.5% pupils have the access to IPAD while 40.5% respondents do not have the access to computer. From these data, it can be concluded that these pupils are not strange to technology tools as they have exposure to at least one of these tools. Besides that, all the 37 pupils reported they have access to Internet and they use social media. From the statistics, it is evident that all the pupils were indeed tech-savvy as they were familiar with either computer, smart phone, IPAD, Internet or social media.

1.2 Frequency Use of Social Media (SM)

Table 3. Frequency use of Social Media (SM)

Social Media	Number of respondents %				Mean score
	Never	Seldom	Sometimes	Always	
YouTube	0	2.7	35.1	62.2	3.59
Whatsapp	13.5	21.6	18.9	45.9	2.97
Facebook	35.1	32.4	29.7	2.7	2.00
Tik Tok	48.6	29.7	10.8	10.8	1.84
Wechat	48.6	35.1	10.8	5.4	1.73
Instagram	70.3	13.5	2.7	13.5	1.59
Snapchat	62.2	21.6	13.5	2.7	1.57
LINE	75.7	16.2	5.4	2.7	1.35
Twitter	97.3	0	2.7	0	1.05
Telegram	97.3	2.7	0	0	1.03

Rating from 'Always' to 'Never' ranged from 1-4 (mid-point is 2.5)

In this section of the questionnaire, the frequency of using of SM ranged from 1 – 4, 1 indicated 'never', 2 indicated 'seldom', 3 indicated 'sometimes' and 4 indicated 'always'. The SM applications were arranged from the most often used to the least used based the mean obtained. By analysing the mean of the frequency use of SM in Table 3, it can be seen that YouTube, WhatsApp and Facebook were the three most favourable SM application used by the pupils. The result of YouTube application showed the highest mean value (M=3.59), with more than half of the respondents (62.2%) who always use YouTube and none of them claimed that they had never use YouTube. This is followed by WhatsApp (M=2.97), the SM with the second highest number of frequent users and Facebook (M=2.00), the SM with the third highest number of frequent users among the respondents. Twitter (M=1.05) and Telegram (1.03) were the least used of SM by the respondents. From these results, it could be induced that the used of SM were only limited to YouTube, WhatsApp and Facebook, indicating that pupils at elementary level were not widely exposed to a variety of SM. This result is similar to the past study which also attempted to explore the use SM for English learning (V. Li, 2017). This could possibly reflect students' preference of tools for English learning. This result could also be associated with their experience in using Internet. The shorter the people have exposed to the Internet, less time they spend and less activities they engage in on the web (Jiyoung Cha, 2010).

1.3 Competency in Using SM and its Relationship with the Frequency of Using SM

Table 4. Competency level in using Social Media (SM)

Social media	Mean score
YouTube	4.16
Whatsapp	3.43
Facebook	2.41
Wechat	2.24
Tik Tok	2.03
Snapchat	1.81
Instagram	1.76
LINE	1.57
Twitter	1.19
Telegram	1.16

Rating from 'very good' to 'not applicable' ranged from 1-5 (mid-point is 3)

Table 5. Correlation between frequency and competency level in using Social Media (SM)

	Frequency	Competency level
Frequency	1	.998**
Competency level	.998**	1

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

Based on the mean value in Table 4, YouTube and WhatsApp were the SM that pupils were good at using. In accordance to the previous result which revealed YouTube had the most frequent users, it is not strange that YouTube, with the mean value of 4.16, turned out to be the SM that was very well-mastered by most of the pupils. As YouTube was always used by most of the pupils, it was most likely that they were familiar with the features of the website. This was followed by WhatsApp, with the mean value of 3.43 also indicating their good competency level in WhatsApp. Facebook (M=2.41), which was ranked as the third SM that is often used, was moderately mastered by the pupils. As for Twitter and Telegram which were revealed as the least frequent user, the result in Table Twitter (M=1.19) and Telegram (M=1.16) are weak.

It was found that the frequency use of a social media tends to increase their competency level in using that social media. Results of the Pearson correlation in Table 5 indicated that there is a significant positive association between the frequency use of social media and competency level in using social media, ($r(37) = .998$, $p<.01$). This result is in line with a study which found that the Internet experience is positively related to the frequency of the utilisation of social networking (Jiyoung Cha, 2010). The more hours they spend on using the SM, the higher their competency level in using it.

1.4 Factors Affecting the Use of SM and Factors Contributing to the Use of SM across Gender

Table 6. Distribution of factors

Items	Number of respondents (%)				Mean score	Mann-Whitney Test (Sig.)
	SD	D	A	SA		
Fill my free time.	5.4	32.4	43.2	18.9	3.30	.061
Follow the current trend (fashion, movie, music).	8.1	8.1	40.5	40.5	3.22	.290
Communicate with my friends.	10.8	13.5	32.4	40.5	3.11	.748
Communicate with my family.	10.8	13.5	32.4	40.5	3.11	.843
Write on SM.	16.2	10.8	51.4	21.6	2.78	.453
Gain knowledge.	5.4	32.4	43.2	18.9	2.76	.915
Easy to use.	10.8	24.3	43.2	21.6	2.76	.112
Learn new things.	13.5	21.6	43.2	21.6	2.73	.453
Learn English.	21.6	18.9	40.5	16.2	2.59	.213
Share my ideas on SM.	43.2	27.0	21.6	8.1	1.95	.135
My friends use it.	75.7	10.8	10.8	2.7	1.41	.748
Do business.	83.8	8.1	8.1	0	1.24	.748

Rating from 'strongly disagree' to 'strongly agree' ranged from 1-4 (mid-point is 2.5)

The factors from Table 6 can be explained and linked to the motive for using SM. The top factor contributing to the use of SM was 'passing time'. Most of the respondents (M=3.30) strongly agreed that they use SM as they wanted to fill their free time. This associated with the study (Zolkepli & Kamarulzaman, 2015) which revealed the passing time as one of the personal needs which could lead to greater participation in SM. Besides that, a great number of respondents (M=3.22) strongly agreed that trendiness was one of the major factors of using SM. They used SM to fashion, movies and music which is regarded as entertainment motive for using SM (Jiyoung Cha, 2010; Papacharissi & Rubin, 2000). Apart from that, social need was perceived to have a relatively strong influence. An equal number of pupils (M=3.11) strongly agreed that they embrace SM in order to stay connected with their friends and family. This is in line with the study shown in (Rdouan Faizi et al., 2014) that most of the students opt for social media to interact with their friends and family. Having interactivity experience through SM contributed a positive attitude towards the use of LMS in learning (Anderson & Dron, 2017). In technology based writing classroom, pupils can use interactivity experience to interact with peers and teacher. Then, this is also related to the writing skill in the next finding with showed that more than half respondents (M=2.78) were identified that they write on SM. Opposing to the finding in (Zolkepli & Kamarulzaman, 2015), although social interaction is one of the major factor found in this study, the result in Table 6 revealed that the respondents' motive in using SM was scarcely socially influenced by people around them (M=1.41).

Besides that, learning is also a relative important factors in using SM. Many of them agreed that they used SM to learn new things (M=2.76), to gain knowledge (M=2.73). This result could be because most of them are frequent users of YouTube. It has been found in the findings that YouTube users mostly seek information through viewing videos and reading comments (Muyingo, 2017). However, an information seeker would not typically disseminate or post videos (Khan, 2017). Therefore, a relatively less number of respondent (M=1.95) claimed to do sharing on SM. As for convenience motive, slightly more than half pupils (M=2.76) perceived SM as easy to use. It is believed that convenience motive was positively related to the frequency of SM use. The more frequent user of SM will find SM easier to be used.

As this study also aimed to investigate whether there was any significant factor contributing to the use of SM across gender, Mann-Whitney U was carried out. The p significant results in Table 6 uncovered that there was no significant factor contributing to the use of SM between boys and girls. This is however, inconsistent to other findings (Gwena et al., 2018; Khan, 2017; Majid & Stapa, 2017).

1.5 Use of English in Writing on SM

Table 7. Perception using English in writing on SM

Items	Yes (%)	No (%)
I prefer English when using SM.	48.6	51.4
I prefer to write in English on social media.	40.5	59.5
I feel confident to use English on social media with my friends.	43.2	56.8
I read what I have written to see if it is good before I post on SM (chat, comment, write status).	54.1	45.9
I am aware of spelling when I write on social media (chat, comment, write status).	48.6	51.4
I am aware of punctuations when I write on social media (chat, comment, write status).	32.4	67.6
I ask my family or my friends to correct my mistakes before posting them on SM.	24.3	75.7
I ask someone for uncertain words or phrases when I write on SM (chat, comment, write status).	48.6	51.4

Based on Table 7, the result showed that the number of (48.6%) pupils who preferred English is almost equal to the number of (51.4%) pupils who did not. It is clearer that the use of English in writing was less prevailing among pupils even when they were on SM. There were more than half (59.5%) pupils who did not prefer to write in English on SM. In relation to this, (56.8%) pupils were not confident to utilise English to interact with their friend. This is consistent to the factors of anxieties and insecurities in writing (Alfian, 2017). As most of pupils were less confident to the use of English on SM, (54.1%) pupils read what they had written to see if it was good before they posted it on SM. As stated in the result, there was an equal number of pupils (51.4%) who was unconscious about spelling and they did not ask people around for help with uncertain words or phrases when they write on SM. As for punctuation, also, more than half of the pupils (67.6%) perceived themselves as not being aware of punctuations in writing on SM. 75.7% pupils would not ask their family or friends to correct their mistakes in writing. This large amount of pupils could have involved those pupils who do not write on SM. Referring to the demographic profile of this group of participants, most of the pupils' English proficiency are at intermediate and above-intermediate. This result can be generalised that most of the primary 4 pupils face the same problem towards writing. This result could be treated as the guideline for future researchers who attempt to use SM to teach writing skills on pupils of all English proficiency level at primary 4.

The overall results of the questionnaire showed that all the pupils have exposure and experience in using social media. Thus, it should be no problem for the educators to incorporate social media platform in learning writing among the primary 4 pupils in their school. YouTube appears to be the most prominent tool used among the pupils, followed by WhatsApp and Facebook. This could possibly reflect students' preference of tools for English learning. The educators should look into adopting the features from YouTube, Facebook and WhatsApp in choosing the right leaning writing platform for pupils so that the pupils can access to it and learn writing skill at ease (Tay & Allen, 2011; Omar, Embi, Yunus, 2012). The reason that pupils engage themselves more often in using YouTube, WhatsApp and Facebook might be due to some of the factors that have been identified in this study. In fact, the factors could be categorized into academic and non-academic purposes. More than 80% of pupils engage in non-academic purposes such as to fill their free time by watching videos from YouTube or read the updates from various resources on Facebook, communicate with their family and friends through Facebook and WhatsApp. Although the results for academic purpose might not be as high as academic purposes, the results also revealed more than half pupils engage themselves in learning English as well as gaining knowledge through social media. The higher competency level in using YouTube, WhatsApp and Facebook could be due to the reason of ease of use of the tools, which is also one of the motive indicator in using social media (Papacharissi & Rubin, 2000). All these can be concluded that the pupils have benefited themselves academically and non-academically by using social media (Khan, 2017). As for the perceptions of pupils towards the use of English in writing on social media, although the overall results are deviated towards negative perception, the number of negative responses are just slightly above half of the total number of participants. In other words, there are also nearly half of the pupils perceived positively towards writing using social media.

5. CONCLUSION

Taking these findings into account and in addition to the previous studies which have proven the effectiveness of social media in language learning, it is suggested that social media could be adapted and adopted as valuable education-al tools in language learning prior to modern technology prosperity. As far as the study concern with pupils' motives for using social media and its features of communicating, collaborating and contributing factor, pupils could write with confident, be more aware towards writing mechanism and thus perceive the impact of social media positively on their writing through some proper intervention using social media. In order for all the primary school pupils to be on par with learning using social media, there is a need to brush up competency level for using social media since some of them are not frequent user of social media and their experiences in using social media are different from each other. As social media is being rampantly used, it is important to educate pupils the risk of using this platform as such not to jeopardise their learning. The Ministry of Education in Malaysia should advocate the implementation of computer literacy course at primary education level so that pupils can make good use if it in potential learning. It is also suggested that the teaching and learning writing skills could either be conducted in fully online or in blended setting.

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Discourse Theory: Language, Politics, and Society

Teoría del discurso: lenguaje, política y sociedad

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ABSTRACT

This article tries to review definitions of discourse and origin and purposes of discourse analysis. It points out that discourse theory integrates language, power, ideology, politics, and society. Plus, it provides a dynamic domain to analyze social and political phenomena to prove that under the light of discourse theory it is possible to recognize the influences of language on the political and social life of nations.

Keywords: discourse theory, discourse analysis, language, society, politics.

RESUMEN

Este artículo trata de revisar las definiciones del discurso y el origen y los propósitos del análisis del discurso. Señala que la teoría del discurso integra el lenguaje, el poder, la ideología, la política y la sociedad. Además, proporciona un dominio dinámico para analizar fenómenos sociales y políticos para demostrar que, a la luz de la teoría del discurso, es posible reconocer las influencias del lenguaje en la vida política y social de las naciones.

Palabras clave: teoría del discurso, análisis del discurso, lenguaje, sociedad, política.

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Introduction

According to some resources, history of the term discourse dates back to the 14th century. To illustrate its meaning, as it is used in everyday language and dictionaries, discourse is said to be a form of language in use; for instance, a speech or even more generally oral language or style of speaking (MirFakhraie, 2004: 24). Up to the turn of the 20th century, intellectuals were faithful that language plays the role of a tool to express the preexisting realities. However, after the turn of the century, they held the view that language shapes realities. At present, after the introduction of structuralism and under the influence of Nietzsche, Wittgenstein, and Hiedger a theory was presented which asserted that we know the world only through language forms and our human experiences gain meaning by means of language.

Previously and based Plato's theory of mimesis, literary and art texts were supposed to be copy of the world. However, after the turn of the 20th century, this premises turned opposite according to which it is the real world itself that gains implications from the texts preceding it. In other words, our everyday biological experiences have their roots in the texts, not only literary but also all linguistic and semiotic experience, which we have read. We access reality through language. It does not denote that there is no reality but it connotes that we recognize realities by means of language relations. Indeed, we mold our experiences through language so as to get hold of them. Reality makes sense only through language or discourse. Language helps shape social world, social identities, and social relations. Over recent decades, discourse has been noticed and acted upon by intellectuals and theoreticians of a variety of domains like literary theories, philosophy, sociology, politics, psychoanalysis, even socio-psychology, and also other social sciences. The root of the term can be found in Greek verb "Discurrere", which literary means wandering, trekking, traversing, digressing, disseminating.

Dialogue or Dialog is considered to be the prerequisite of any discourse. Every type of speech, be it oral or written, is a social issue, i.e. they have social disposition, nature, and structure. Discourses vary in accordance with place and time. Every country has its own different discourse. Moreover, inside every country discourses vary.

Discourses vary in accordance with different social institutions and applications, where they are formed. In addition, they are different depending on the situation, prestige, and dignity of the individuals who utter or write them or even their addressees. Therefore, background and domain of discourse is not homogenous, unique, and consistent.

Discourse can be taken to be a social phenomenon, category, or issue. To put it in a better way, discourse is an issue or domain with a social background. Usage and meaning of all the mentioned expressions, speeches, statements, premises, words, or phrases depend on the point that the expressed materials, the presented statements, and the assumed premises, and the like are to answer the questions when? where? How? Who? Or against whom? They are used.

In other words, time and place setting of the applied cases or subjects of every point, statement and premises determine from, type, and content of every discourse. Discourses are embodiment of meaning and social interactions. Words and concepts, components of the structure of language, are not stable and consistent and depending on different times and places, their relationships undergo changes and they gain different meanings. Hence, structure of language is also instable. Given this, discourse can be claimed to be the representation of language presented above sentence, words, and phrases. Indeed, it should be sought after in nonverbal signs and practices and in all relationships between individuals. (Salimi, 2004: 55). It should be taken for granted that discourse is a multifaceted concept and basically is underdeveloped, vague, and controversial. Regardless of it etymology, which can be followed in Greek classic text, its new definition for various intellectuals is referring to a variety of signifieds so that every one of these individuals accentuates their own specific concept and takes it.

It is likely to assume to be a potential system. This potentiality is the one which allows us to create some principles that can be correct or incorrect. This issue makes discourse possible to be a branch of knowledge. Nevertheless, principles of discourse are not the ones followed by individuals unconsciously. Discourse is not a method or locus of an investigation but it is a collection of rules which provide the preconditions required for the establishment of these principles so that they are above interlocutors of discourse. In fact, prestige, practice, and characteristics of the knowers, writers, and listeners of discourse are duty and function of this type of discursive principles (Philip, 2002: 161).

By means of the help of institutions and organizations to which discourse is related and also based on situation or position from which discourse originates and positions or prestige it assumes for the speaker, discourse can be defined as a specific domain of language in use. However, this position or situation per se does not exist and is not independent but it can be taken to be a perspective or position which every discourse gains according to its relationship with other opposite discourses. Thus, every discourse, directly or indirectly, is administered through its relationship with or addressing another discourse. Nonetheless, every discourse relates to certain issues, subjects, and purposes and takes specific concepts and themes into account while putting other concepts aside.

Different discourses present different concepts and categories. From time to time, it is possible to take some concepts, which are presented in a specific discourse, and in a different discourse think it over and present it. But, this is not the case always. Everything which signifies something or is meaningful can be taken to be part of discourse. Meanings are embedded in technical processes, institutions, public etiquettes, different ways of communication, and dissemination of different forms of education and training.

Different discourses make up different systems. The required conditions for meaning come together and get consolidated and by means of the help of social and institutional position from which discourse originates (not through structure of positive structures and interpretations) are framed as certain meanings (or they gain certain meanings). Terms, words,

expressions, premises, and the like change their meaning depending on the positions their users take (McDaniel, 1998:41).

Background and significance of the study

Discourse today is considered by researchers and critics as one of the approaches to studying literary works. Discourse is term which has been widely used in such diverse areas and fields like philosophy, sociology, anthropology, and linguistics. Different philosophers and theoreticians have proposed a variety of theories concerning its domain, concept, role, and function and have had diverse perspectives towards it. Ever-increasing development of knowledge and sciences along with complexity, dynamicity, variety, and plurality of issues and needs of community has made higher education system of different countries move from field-dependent paradigms towards interdisciplinary and metadisciplinary paradigms.

By means of establishing a relationship and bond among various fields, discourse, as a practical science, not only helps develop cohesion and effectiveness in universities but also provides the possibility of removing gap and vacant spaces among sciences and also satisfying the needs of community. Hence, scientific communities increasingly seek to integrate knowledge originating from various science fields in the form of interdisciplinary integrated approaches. It is crystal clear that appraising the contemporary interdisciplinary discourse, particularly in linguistics and sociology, requires profound investigation and study. Over recent years, studying literary works from a sociological perspective has been one of the concerns of contemporary researchers and literary works have been considered by means of referring to Foucault, Habermas, and Fairclough theories. However, discourse theory has not been well-established in Iran, especially in linguistics and literature fields. Plus, there is no meticulous research available on discourse. Based on the emerging theory of discourse, the present study has made attempts to probe into sociolinguistics concepts present in this theory.

Up to now, various quantitative and qualitative methods of analysis have been used to study linguistic phenomena. However, since discourse analysis methods are new and unknown, still no attempt has been made to employ discourse methods in language studies fields. The main aim of the present study is to initiate this way. But, as both discourse approach and language field are of wide complexity and variety, elaboration of discourse analysis and its effects on deciphering linguistic phenomena is certainly of specific significance. In line with discourse theory, the primary purpose of the present study is to present a novel technic and method for studying text, language, and society. Data collection method of this study is library-based, content analysis, and descriptive-analytical with structuralist approach. The present research is to indicate the relationship between discourse theory and language and society.

Definitions

Discourse analysists endeavor to cross borders of definition. They take it for granted that discourse is a form of language in use. However, as still this definition is vague and often imprecise, discourse researchers resort to more theoretical concept of discourse, which has its own specific limits but at the same time has wider applications. They are willing to add some elements like who? How? Why? And when? intends to use language to the concept of discourse (MirFakhraie, 2004: 8 , 9).

The term "discourse" has been translated into Persian language as discussion, dialogue, speaking, conversation, and speech. Nevertheless, there is no clear consensus as to the nature of discourse, the way it functions, and its analysis. Even, there is no common agreement upon discourse analysis as well (Fazeli, 2010: 46).

There are a variety of definitions presented on discourse and discourse analysis some of which are pointed to here:

Jorgensen and Philips define discourse as "a specific style of speaking about the world and the way it is understood". (Jorgensen et al. , 2010: 17).

Teun A. van Dijk believes that discourse consists of three elements; namely "language use, communication between beliefs (cognition), and interaction in social situations" (van Dijk, 2002: 19).

Fairclough defines discourse and discourse analysis as: I see discourse as a collection of three integrated elements: social practice (deed), discursive practice (production, dissemination, and consumption of the text), and the text itself. Analysis of a specific discourse requires analysis of any of these aspects and their interrelationship. Our assumption is that there is a significant relationship between specific features of texts, the ways in texts interact with each other and are interpreted, and the nature of social practice (Fairclough, 2000: 97-98).

Therefore, Fairclough views critical discourse analysis a combination of text analysis, analysis of the text's production, dissemination, and use, and socio-cultural analysis of discursive occurrence as a whole.

Stubbs sees discourse as language over sentence and phrase. (Jaworski, 2014: 28). Fasold also holds that studying any aspect of language use is studying discourse. (Blakemore, 2003: 31). Gee believes that discourse has to do with something more than language. Discourses always are to coordinate language with the style of practice, interaction, objects, tools, technologies, beliefs, and values. (Gee, 2015: 59). Javorsky and Kaplan present a more sociological definition of discourse. They assert that discourse is language use in terms of social, political, cultural,

and linguistic formations which reflect social order; meanwhile, it forms social order and reactions of individuals to society. (Jaworski, 2014: 22).

Azdanlou considers discourse to be one of the effective means which is used to trap language, comprehend various features of the relationship between individuals, and also categorize their subject matters. He assumes discourse to be the indicator of linguistic elaboration over bigger criteria (Azdanlou, 2000:36). Further, Shaerie defines discourse as "discourse provides the text with a purposeful and cohesive meaning. Indeed, the text owes its contextual and semantic identity, which is formed in a specific and cohesive direction, to discourse. (Shaerie, 2006:45). To Shaerie, discourse is a sort of mind presence which as a mega-meaning discloses, appears, and presents gradually and dynamically in the form of a mega-sign (spoken or written text). He takes discourse to be a type of speech making process in which interactive position of discursive factors (speaker and speech) together with disclosing hidden aspects of language, leads to production of a text with a cohesive meaning (Shaerie, 2006:1-5).

Yar-Mohammadi, in his book *Common and Critical Study of Discourse*, points to three general and very common definitions of discourse.

1. Discourse is part of a meaningful language whose components are in a way related to each other and have a specific purpose.

2. Discourse is the production resulting from the relationship and interaction between interlocutors in a socio-cultural context.

3. Discourse is defined as speech practice or reaction against speech product or the text, which represents formal structure of the discourse (Yar-Mohammadi, 2014:12).

Michelle Foucault writes: we call a collection of statements discourse as long as they belong to a common discursive formation…it consists of a limited number of statements for which a collection of existential conditions can be defined (Soltani, 2005: 40).

Foucault considers discourse to be social knowledges which are formed based on some aspects of reality. He believes that these knowledges are formed in a specific social context and are created in a way which is compatible with the interests of social activists present in these contexts. Now, these contexts can be big, like multinational companies or small, like a family, or even it is likely that they are some institutionalized contexts like the press and/or somewhat informal contexts like discussion at dinner table and the like (Van Lion, 2016:189).

In terms of discourse, Foucault points to some discourses in which economics and ideology, as explanatory issues or in Foucauldian terms contents, are pronounced. The main point here is plurality of discourses, i.e. possibly there are various forms of awareness about a common knowledge object and indeed there are. Obviously, that object exists. However, our knowledge about it essentially is formed by discourse and depends on community. This point means that an individual can have different interpretations from one object. Plus, it is likely that depending on situation and also his specific interests and objectives of a certain subject; he may speak in different styles. On the whole, in terms of the definition of discourse from Foucauldian perspective it can be said:

1. Discourses are grounds for representations, i.e. they are knowledges about some aspects of reality which at the time of representing that aspect of reality, the given discourse may be referred to. Discourses do not determine what we can express about a certain aspect of reality; nevertheless, without them no knowledge can be represented. Therefore, we need them as a framework to comprehend the issues.

2. Discourses are plural. It is likely to have different discourses, i.e. different ways of understanding the same aspect of a reality, where different issues are taken into account or discarded or different interests are represented.

3. There is some evidence to indicate the presence of granted discourse in the text, whether spoken or written, and/or this evidence is expressed by means of other semiotic styles. Particularly, this evidence originates from the similarity between the points stated or written in different texts about the same aspect of reality. Based on these similar statements, which are repeated or represented in different texts and in different ways are disseminated in the texts, we can reconstruct the knowledge which is represented through these statements (Van Leeuwen, 2016:191).

As it was mentioned, there are a variety of definitions for discourse. On the whole and beyond all the approaches to discourse, it should be taken for granted that discourse is a meaningful piece of language whose components in a way are related to each other and follow a specific goal (Yar-Mohammadi, 2006: 1).

Discourse Analysis

Discourse analysis is an interdisciplinary field of study which emerged from the mid-1960s to the mid-1970s due to extensive developments in science and knowledge in the fields like anthropology, ethnography, microsociology of perception and sociology, poetry, semantics, linguistics, psychology, semiotics, and other social and human sciences concerning systematic study of structure, function, and process of producing speech and writing. This tendency,

because of its being interdisciplinary, was very soon welcomed as one of the qualitative methods in different fields of political sciences, social sciences, communication sciences, and critical linguistics.

Discourse theory was basically born in linguistics and up to now has undergone various stages. Although linguistics was ignorant to discourse analysis for long, the term discourse analysis was first used by the famous English writer, Zelik Heris, in an article (Bahrampour, 2000: 7-8). In this article, Zelik Heris provided a formalistic view of statement and viewed discourse analysis to be merely a formalist (and structuralist) view of statement and text. In structuralist discourse analysis, discourse as language, is defined something more than a sentence. As functionalism developed in the 1960s and 1970s, some linguists brought the concept of context in discourse analysis and considered discourse to be language in use. This type of discourse analysis can be called functional discourse analysis. Context in functional discourse analysis means the limited time and place conditions in which language is used. The pitfall of this approach is that the given context is very limited and local. Hence, Fowler, Hatch, Crouse, and Tervo brought power and ideology in the form of critical linguistics into the current dominant discourse analysis in linguistics.

After Heris, many linguists considered discourse analysis to be opposite text analysis. They hold the view that discourse analysis includes analysis of the structure of spoken language (like dialogue, interview, and speech); while, text analysis includes analysis of the structure of written language (like article, story, report, and etc.). It took no long for some linguists to use this concept in different meanings. The latter group believed that discourse analysis has more to do with function or structure of sentences and discovering and describing their relationships.

In other words, for this group, discourse analysis was recognizing the relationship between sentences with each other and observing whole of the thing which is the outcome of such a relationship. According to this definition, in discourse analysis-unlike conventional linguistic analyses- we do not merely deal with syntactic and lexical elements forming a sentence as the major basis for explicating meaning, i.e. context, but more than that we resort to some factors out of text, i.e. cultural, social, and other contexts of situation (Bahrampour, 2000: 8).

Therefore, discourse analysis considers the way meaning is formed and presented along with the message of language units in conjunction with in-language factors(context of the text) , language units (the immediate given linguistic setting and also the whole system of language), and out-language factors (social, cultural , and situational contexts) (Lotfipour Saedi, 1993: 10). But, Zoellick Harris uses it in a general sense. He believes that the discussion on discourse can be concluded from two aspects: the first is to develop conventional procedures and methods in descriptive linguistics and their usage at meta-sentence level (text) and the second is to create a relationship between lingual and non-lingual data like the relationship between language, culture, environment, and society. In the first aspect, merely lingual data are noticed. However, in the second aspect, non-lingual data like culture, environment, and society, which are out of linguistic domain, are considered (Bahrampour, 1999: 9).

Brown and Yule define discourse analysis as analysis of language in use. In this way, discourse analysis cannot merely be the description language forms independent from goals and functions to refer to which these forms are created in human affairs (Bahrampour, 1999: 9).

Discourse analysis tries to study meta-sentence system and order of language elements. Therefore, it considers language units like oral interactions or written texts. Hence, discourse analysis deals with language in use in social contexts particularly interactions or conversations between interlocutors (Lotfipour Saedi, 1993: 10). Juxtaposition of the quoted definitions of discourse analysis indicates that as to discourse analysis, linguists propose two perspectives: one which defines discourse analysis as a way to consider and analyze language units longer than sentence; while, the other takes discourse analysis to be a specific focus on why and how language is used.

The first perspective, which considers form of text, is called structuralist; while, the second, which takes function of text into account, is called functional. The former sees discourse as a certain unit of language, which is longer than sentence, and discourse analysis is to analyze these units. The latter, however, holds that discourse analysis is studying different aspects of language in use, which concentrates on the functions of language units. The second group notice people's actions and deeds along with their certain purposes of using language. They make attempts to discover their social, cultural, and situational meanings (Bahrampour, 10).

Discourse analysis is studying the way texts are created, their functions in different contexts, and contradictions in them. This approach has a variety of sources ranging from speech act theory of Austin to structuralism, to post-structuralism, to hermeneutics, critical theory, and finally Foucauldian views. Recently, researchers of critical discourse analysis have employed discourse analysis in socio-linguistics, psycholinguistics, and raciolinguistics. The paramount studies in this sense are conducted by van Dijk, Halliday, Fairclough, and others. Intellectual foundations of discourse analysis are above just analyzing oral or written texts.

Discourse analysis is based on some presuppositions, which follow:

1. A unique text provokes different interpretations.
2. Reading is always reading text wrong.

3. Text a meaningful whole whose meaning is not essentially in the text itself.
4. Texts are laden with ideology.
5. Truth is always at risk.
6. Every text is produced under certain circumstances. Hence, social context of the text is very important (Emami, 2007).

For Zoellick Harris, discourse analysis is a way to analyze a constant oral or written text. This point assumes that descriptive linguistics extends over sentence limit at a time towards establishing a bridge between culture and language. Discourse analysis is analyzing such a language unit above sentence. Chief believes that such a unit is of high variety.(Yar-Mohammadi, 2003: 198-199). Discourse and text analysis is a branch of current linguistics whose purpose is to describe a meaningful constant speech which is over sentence (Aghagolzadeh, 2006: 46 & 57).

Purposes of Discourse Analysis

The most remarkable purposes of discourse analysis can be summarized as follow:

1. To indicate the relationship between author, text, and reader.
2. To clarify the deep and complex structure of producing text, i.e. the way discourse is produced.
3. To demonstrate effects of context of text (language units) and situational context (social, cultural, political, historical, and cognitive factors) on discourse.
4. To show the specific situation and circumstance of interlocutor (conditions of discourse production).
5. To prove instability of meaning, i.e. meaning always undergoes changes and never is it complete. It also is never fully comprehended.
6. To hold that written or oral text is never unbiased but it depends on a specific situation. This issue may be completely unintentional and unconscious.
7. To show that the primary purpose of discourse analysis is to establish a novel technique and method to study texts, media, cultures, politics, society, and the like. Intellectual foundations of this approach are akin to the presuppositions of postmodernism (Bahrampour, 1999: 25).

Critical Discourse Analysis

Discourse analysis did not stop in linguistics and in a short while (about two decades) through the help of intellectuals like Foucault, Derrida, Pecheux, and other western dominant thinkers, from sociolinguistics and critical linguistics this approach entered cultural, social and political studies and acquired a critical form. These intellectuals who mainly developed discourse analysis as critical discourse analysis are indebted to Frankfurt critical school and its direct and indirect antecedents of new Marxists in the 1960s, particularly Gramsci and his followers, structuralists like Althusser, and neo-feminism thinkers (Bahrampour, 2000:10).

Critical discourse promotes discourse analysis by one level. In terms of inclusion of meaning, discourse analysis lays in a wider domain than socio-linguistics and critical linguistics. Intellectuals like Derrida, Pecheux, and Foucault, and especially thinkers such as van Dijk and Fairclough, who directly studied this field, helped discourse analysis bring in cultural, social, and political studies, where it gained a critical form.

Now if we take discourse analysis a level of description, critical discourse analysis promotes it to the level of interpretation and representation. And, while explaining and interpreting text, answers the question why this text should be selected out of possible linguistic options. And, over a certain occurrence, why individuals use certain expressions. Critical language and syntax discourse analysis relates these whys? Less to author. It asserts that institutions and organizations manage this collection and from text and individual is only part of it. Indeed, it holds that production and comprehension of text has to do with macro contexts like history, ideology, society, culture, and power.

On the other hand, its critical view is toward the theory assumes language to be a mirror which clearly reflects concepts and thoughts. Critical discourse analysis believes that unlike the mentioned definition, language is an opaque mirror which most of the time misinterprets realities. Critical discourse analysis opines that footprints of worldview, values, and socio-cultural categories are observable all over language (Emami, 2007).

Discourse Theory: Language, Politics, and Society

Now discourse analysis has surpassed mere analysis stage, which is the initiative of any science, and has sufficiently achieved principles. Hence, it can be considered to be a science, which can be termed discoursal. (Yar-Mohammadi, 2003: 8). In general, discoursal is the science of studying theories concerning discourse. It includes all the discourse studies.

Discourse studies can be distinguished based on at least three criteria. These criteria are:

- Level of analysis (micro and macro)
- Moving from or toward text analysis
- Type of study (experimental, theoretical, and philosophical) (Fazelie, 2004: 50)

It can be claimed that the first steps in creating discourse theory were taken by Ferdinand de Saussure (1857-1931). Through introducing the term semiotics, which in his view is the science of studying the system of signs and signifiers and their meanings, he brought language, as one of the most important system of signs, to center of attention. For de Saussure, language as the system of signs encompasses the essential regulations through which the interlocutor establishes a meaningful relationship with others and stays faithful to it. He believes that structure of language as a system is a network of signs each of which gives meaning to others and relates the signifier and signified. He accentuates the point that language (langue) is different from speech (parole) because language is a social entity while speech is something personal. (de Saussure, 1999: 31). De Saussure pays a special attention to main structure of language and holds that because of being affected by tastes and mistakes of individuals, speech cannot be a valuable factor. In other words, the main elements of language in Saussurean structuralism are the signs which in spite of no predetermined and natural relationship between the signifier and signified, bring them together as a specific system of meaning. Therefore, the relationship between the signifier and signified is intentional and incidental (Sojoudi, 1991: 21). He assumes the relationship between language and outer world as a triangle whose sides are signifier, signified, and referent. Saussure likens language to chess where every sign acquires its identity and value in relation with others in a regulated system (Saussure, 1999: 126).

Therefore, one element, either signifier or word, is important only when it is used in the whole system. Words and signs like components of chess require a common collection of values and regulations, too. Discourse theorists accept Saussure's theory about relational identity of signs but they do not accept his point concerning the precise distinction between language and speech. They believe that signs acquire meaning when they are in use. Every sign acquires a variety of meanings based on different situations. Hence, in this theory, fixing meaning of signs is transitory and time-dependent and structure of language constantly changes as it is used (Sadra, 2007: 173).

Referring to Saussure's theory, Straus, one of the prominent anthropologists of the 20th century, brought his structural analysis in social sciences. He emphasizes that there are some invariable elements among apparent discrepancies which can be discovered through structuralist approach (Straus, 2001: 7). Although development in structuralism drew science and philosophy domain's attention, some Marxist thinkers were impressed as well. One of them was Louis Althusser, the French philosopher, who influenced discourse theories, particularly comprehension of subject, through integrating Marxism and structuralism. He held that subject is subdued by ideology and assumed no independence and freedom to it. In his view, ideology puts individual in specific situations and regrading it the individual is expected to have special actions. The emphasis of structuralism on structure and its characteristic; and itself determining them and denying time-dependency of structures and conservative characteristic of structuralism provided the ground for it to be marginalized and leave its place to poststructuralist reading (Davoodi, 2010: 54).

By means of accentuating the pitfalls of Saussure's theory and structuralism, poststructuralists and postmodernists revised these theories. The common index of these revisions was questioning the overall concept of the package which was the foundation of conventional structuralism. Hence, if identities are only the present differences in discourse system, then no identity is fully formed unless it is a closed system.

Jacques Derrida criticized and challenged Saussurean structuralism and through presenting a poststructuralist view, introduced deconstructuralism approach as the most important concepts of intellectual and social domains. Derridean deconstructuralism, which centers on deconstructing text, aims to surpass borderlines and limitations and discover uncharted domains of meaning concepts (Zamiran, 2000: 7). Through presenting this plot, Derrida not only emphasizes the stark suspension in overlap between mind and meaning but also questions and deconstructs distinctions and dual tradition, which has a lot to do with will to power; and, indicates how transcendental discourses are internally vulnerable and owe their entity and identity to otherness and contrast with the other (Hagigi, 2003: 272).

In Derrida's theory, discourses are incomplete language systems tending to disseminate plural meanings with endless interpretations which are produced through representation and play of distinctions. Indeed, they play the role of a medium to make us comprehend the world and help shape our experience of the world. In contrast to this reality, as signs enjoy historical aspects and depend on situation and text, discourse encounters restrictions as to representation of the world. Because of this, language system cannot consolidate identity of signs and also the relationship between theories, words, and objects. Therefore, complete consolidation of meaning and arriving at a closed discursive system is impossible. Plus, it is unlikely to overtake it because deconstructuralism always tends to move towards metaphorical and verbal aspects and does not see plot of language but a game (Norris, 2006: 115).

Michel Foucault brought about a substantial revolution in the concept of discourse. Foucault presents two relatively different interpretations titled archeology and genealogy. Foucauldian theory of discourse is part of his archeology. For Foucault, since discourse consists of a limited number of statements, a specific can be defined to help them emerge. He believes that discourse should be analyzed in archeology and genealogy framework. From Foucault's perspective, there is nothing eternal and ideal but from the very beginning it is historical and temporal and also embodies meaning and social relationship and forms mentality and socio-political relationship (Davoodi, 2010: 57).

In his works, Foucault moves towards genealogy. In these works, he often probes into the relationship between power, knowledge, and truth. In fact, genealogy secures centrality of power and dominance in forming discourses, identities,

and institutions and tries to develop power dependent feature of master discourse. For Foucault, power should not be limited to political institutions but it should flow through the whole body of society and play a productive role (Dreyfus, 1997: 392).

The changes having occurred in the field of discourse indicate that modern methodologies, post-Saussurean linguistics, and Foucauldian hermeneutics rely on transcendental turn in modern philosophy and through surpassing the analysis concerning real affairs, take the circumstances that make them possible seriously. The fundamental assumption of poststructuralism as to discourse is that the possibility of envisioning thought and action depends on structuralizing mindfulness domain, which exists before any objective immediacy (Laclau, 1998: 31)

Conclusion

Discourse theory is one of the novel and influential theories in linguistics, social sciences, and political sciences domain. Over recent decades, sociologists and politicians have widely benefited from this theory in analyzing social and political phenomena and structures. Discourse theory considers meaningful social practices and beliefs in political life. This theory investigates the method applied by semantic systems to discover the way people get aware of their roles in society. Plus, it analyzes the way these semantic systems or discourse influence political activities.

Discourses should not be assumed to be ideology in its conventional and limited sense, i.e. a collection of beliefs through which social individuals justify and explain their organized social practices. From discourse theory perspective, discourse encompasses all political and social practices including institutions and organizations. (Howarth, 1998: 45). Although in discourse theory mostly explanation of philosophical premises and theoretical concepts, a myriad of practical and experimental studies are to emerge social sciences based on discourse theory framework. Discourse theory integrates language, power, ideology, politics, and society and provides a dynamic domain to analyze political and social phenomena. History, religion, culture, and politics are embedded in language. Under the light of discourse theory the impacts of language on social and political life of nations can be discovered. Since it entered the domain of theoretical discussions, discourse theory has left deep impressions on theories concerning language, power, and community.

Fontanille holds that the first and foremost important issue regarding discourse is language practice. The relationship between human and language is an interactive one. However much human is affected by language affects it. Language and the world both have vacancy and only an interactive practice can fill up such a vacancy. Meanwhile, speech as a practice, which can lead to production of discourse or text, serves language and fills up its vacancy (Fontanille, 1998: 64).

Change in discourse is means to change the world. If we change our language, we will change our world. This is the primary goal of discourse and discourse analysis.

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Electronic voting in modern Russia: discussions, technologies, am experiments

Voto electrónico en la Rusia moderna: debates, tecnologías, experimentos

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ABSTRACT

We discussed the increasing interest in the use of technical means for voting in elections and referendums with a gradual transition to electronic voting. Our article deals with the peculiarities of the experiment on the organization and conduct of remote electronic voting in the elections of deputies of the Moscow City Duma of the seventh convocation, scheduled for September 8, 2019. In addition, the article analyzes the advantages and disadvantages of electronic voting, offers recommendations on eliminating some risks associated with the use of this type of electronic voting. The received results of the experiment will allow to define directions of the further work on perfection of legal regulation of introduction in selective process of modern digital technologies. In case of positive results, practical and technological solutions can be developed, which will ensure further development of the remote electronic voting system in Russia.

Keywords: Elections, remote electronic voting, electronic voting systems

RESUMEN

Discutimos el creciente interés en el uso de medios técnicos para votar en elecciones y referéndums con una transición gradual al voto electrónico. Nuestro artículo aborda las peculiaridades del experimento sobre la organización y la realización de la votación electrónica remota en las elecciones de diputados de la Duma de la ciudad de Moscú de la séptima convocatoria, prevista para el 8 de septiembre de 2019. Además, el artículo analiza las ventajas y desventajas de votación electrónica, ofrece recomendaciones para eliminar algunos riesgos asociados con el uso de este tipo de votación electrónica. Los resultados recibidos del experimento permitirán definir las direcciones del trabajo posterior sobre la perfección de la regulación legal de la introducción en el proceso selectivo de las tecnologías digitales modernas. En caso de resultados positivos, se pueden desarrollar soluciones prácticas y tecnológicas que garanticen un mayor desarrollo del sistema de votación electrónica remota en Rusia.

Palabras clave: Elecciones, votación electrónica remota, sistemas de votación electrónica.

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INTRODUCTION

Active introduction of information and communication technologies in democratic processes and institutions has caused a public inquiry and serious scientific discussion on the modernization of the electoral process and introduction of electronic voting (Cybervote Project, 2000; Auer, Trechsel, 2001; McGaley, McCarthy, 2004; Agarwala et al., 2006; Emerson, 2012; Digital, 2018). It should be noted that in modern scientific literature the concept of electronic voting is considered in two senses. In a broad, as a means to implement (legal form of implementation) democracy in electronic form, or in a narrow, as a way to conduct voting at elections (Antonov, 2016a). Thus, in V.Y. Antonov's works electronic voting is defined as a set of information and communication technologies that ensure the process of citizens' expression of will, based on the principles of electronic governance (Antonov, 2016b). This provision predetermined the need to develop the conceptual framework, organizational and technical specifics of the use of electronic voting in elections.

For the first time the term "electronic voting" was introduced by the Federal Law of July 21, 2005 N 93-FZ "On Amendments to Legislative Acts of the Russian Federation on Elections and Referenda and Other Legislative Acts" (Rossiyskaya gazeta, 2005). Electronic voting means voting without using a paper ballot and using technical means in accordance with Article 2, paragraph 62 of Federal Act No. 67 of 12 June 2002 "On basic guarantees of electoral rights and the right to participate in referendums for citizens of the Russian Federation" (hereinafter referred to as Federal Law No. 67-FZ), (On basic guarantees, 2002).

In addition, the term "electronic ballot" is provided in paragraph 63 of this article. This is a ballot paper prepared by software and hardware in electronic form, used in electronic voting (Collection, 2002).

Federal Law No. 67-FZ lays down the general legal basis for organizing and conducting electronic voting in the premises for voting. During elections and referendums, instead of voting with paper ballots, electronic voting can be conducted. The decision to conduct electronic voting is taken by the Central Election Commission of the Russian Federation or, on its behalf, by the relevant election commission of a constituent entity of the Russian Federation (Article 64, paragraph 15, of Federal Law No. 67-FZ). When conducting electronic voting, electronic voting systems are used. When conducting elections or referendums using an electronic voting system, an electronic ballot is used.

At the same time, in the professional literature, depending on the place of voting, there are two types of electronic voting: remote (remote) electronic voting, as well as uninstalled (stationary) electronic voting (Matrenina, 2016). The latter type of e-voting is characterized by the fact that elections are held at the polling station, as in traditional voting, but with the use of modern technologies, for example, voting by means of electronic voting systems (hereinafter - EVM). This type of voting has long been familiar with Russian election practices. For the first time, the procedure for using electronic voting systems for voting at elections and referendums held on the territory of the Russian Federation was approved by Resolution of the Central Election Commission of the Russian Federation No. 181/1152-4 dated July 14, 2006 (On the procedure, 2016).

Ten years later, in the presidential election of 18 March 2018 (On the use, 2018), 762 polling stations were equipped with electronic voting (EVM) in 106 locations in 14 constituent entities of the Russian Federation (Election, 2018).

Thus, the issue of developing a legal and organizational framework for remote electronic voting, which allows voters to exercise their active voting rights regardless of their place of residence, actual location or other circumstances affecting their participation in the elections, is of particular relevance today.

Methods

The object of research in this article is a set of public relations arising in connection with the discussion, consolidation and implementation of the mechanism of remote electronic voting in elections in the Russian Federation. The subject of the research is the legal norms that fix and regulate the experiment on the use of remote electronic voting in the elections of deputies of the Moscow City Duma of the seventh convocation.

The basis for the study were the provisions of the Federal Law of May 29, 2019 N 103-FZ "On the experiment to organize and implement remote electronic voting in the elections of deputies of the Moscow City Duma of the seventh convocation (hereinafter - the Federal Law) (Rossiyskaya Gazeta, 2019) developed and adopted "for the purpose of testing the use of modern technologies in the voting process, which will create additional conditions and guarantees for the exercise of citizens' suffrage rights" (Explanatory note, 2018). The relevant law of the city of Moscow, acts and other documents of the Central Election Commission of the Russian Federation and the Moscow City Election Commission have been adopted to develop the norms of the said Federal Law.

Thus, the main method of research is an experiment, the results of which will determine the direction of further work on improving the legal regulation of the electoral process and the introduction of modern technologies in this process. In the event of positive results, technological solutions may be developed that will allow citizens to vote electronically without visiting the polling station.

DEVELOPMENT

Results

The analysis of legal and organizational bases of experiment on the organization and carrying out of remote electronic voting at elections of deputies of the Moscow city Duma of the seventh convocation, appointed on September 8, 2019, allows formulating the following conclusions.

Firstly, the federal legislator attempted to define remote electronic voting, which in Article 2 of the Federal Law is understood as "voting without using a paper ballot, using special software of the regional portal of state and municipal services of the city of Moscow".

Secondly, such experiment is carried out for the first time in the conditions of voting at real elections. According to Article 3 of the Federal Law, the experiment is conducted in one (or several) single-mandate constituencies of the city of Moscow, determined by the Moscow City Election Commission. The decision of the Moscow City Election Commission on June 13, 2019 determined that "at the elections of deputies of the Moscow City Duma of the seventh convocation on September 8, 2019, at the same time as voting, conducted in the manner prescribed by Chapter 10 of the Election Code of the city of Moscow, in single-mandate constituencies N 1, N 10 and N 30 remote electronic voting of voters" (On remote, 2019).

Thirdly, remote electronic voting is considered as an additional and alternative way for voters to exercise their right to vote. In accordance with article 3, paragraph 3, of the Federal Law on Remote Electronic Voting, remote electronic voting is conducted simultaneously with traditional voting in the manner prescribed by Chapter IX of the Federal Law "On Basic Guarantees of Electoral Rights and the Right to Participate in Referendums of Citizens of the Russian Federation". In order to participate in remote electronic voting, a voter shall submit a corresponding application in accordance with the procedure established by the Moscow City Election Commission. The deadline for submitting an application is established by the law of the city of Moscow on the conduct of an experiment. The submission of such an application by a voter shall not deprive the voter of the right to vote in accordance with the requirements of the current election legislation, if the application is withdrawn in accordance with the procedure established by the Moscow City Election Commission (On the requirements, 2019).

Fourth, for the first time, the legislator determines the method of carrying out certain election activities when conducting remote electronic voting. In accordance with part 5 of article 3 of the Federal Law, the voter's participation in remote electronic voting, including the submission of an application is carried out using special software of the regional portal of state and municipal services of Moscow City.

Fifth, the legal basis for the experiment in a significant part of the special legislative acts of the regional level. The Federal Law enshrines the need to adopt the law of the city of Moscow on the conduct of the experiment, giving priority to such acts. Based on part 2 of the article of the Federal Law "Election Code of the City of Moscow is applied in the course of the experiment in the part that does not contradict the legislation regulating the procedure of the experiment".

On May 22, 2019, the Mayor of Moscow S. Sobyanin signed the Law of the City of Moscow "On conducting an experiment on the organization and implementation of remote electronic voting at the elections of deputies of the Moscow City Duma of the seventh convocation" (hereinafter - the law of the city of Moscow) (On conducting, 2019).

What is the experimental model of remote electronic voting enshrined in the law of the city of Moscow? The following stages of the implementation of active suffrage by citizens when using e-voting can be conventionally singled out. The first stage is the determination by the voter of the method of exercising active suffrage by means of electronic voting. At this stage, it is envisaged that the voter should submit an application for its inclusion in the voter list of the polling station for remote electronic voting.

In accordance with part 2 of article 6 of the Moscow City Law, an application is submitted by a voter using the "Personal Cabinet" subsystem of the state information system "Portal of State and Municipal Services (Functions) of the City of Moscow" (hereinafter referred to as the "Portal"), provided that the voter has full access to the specified subsystem.

The application can be submitted by the voter not earlier than 45 days and not later than three days before the voting day. A voter has the right to withdraw his or her application within this time limit. Withdrawal of an application by a voter does not deprive the voter of the right to reapply within the general deadline.

The voter, who submitted or withdrew the application, is sent a corresponding notification in the subsystem "Personal account" of the Portal.

The form and procedure of submission and withdrawal of the application shall be established by the Moscow City Election Commission (hereinafter - the City Commission). The City Commission may establish additional ways to confirm the identity of the voter who submitted the application.

The second step is to compile a voter list by polling station for remote electronic voting.

According to part 1 of article 6 of the Law of the City of Moscow, the list of voters in the polling station for remote electronic voting may include voters with active voting rights on the day of voting in the single-mandate constituency of the city of Moscow, where remote electronic voting is conducted, and who have applied for inclusion in the list of voters in the polling station for remote electronic voting.

The third stage is the implementation of remote electronic voting by the voter. In accordance with Article 8 of the Law of the City of Moscow, the voter using special software in the subsystem "Personal Account" of the Portal carries out remote electronic voting. Access to the special software in the "Personal Account" subsystem of the Portal is carried out by the voter using a personal computer or other electronic device that has access to the information and telecommunication network "Internet" and is compatible with the special software in the subsystem "Personal Account" of the Portal, including that installed in the premises of the district commission.

The procedure of remote electronic voting is regulated as follows. On the election day, during the voting period, the voter included in the voter list of the polling station for remote electronic voting gets access to the ballot in the subsystem "Personal Account" of the Portal with the use of special software in the specified subsystem, provided that the voter enters the confirmation code sent by SMS message to the voter's phone number specified in the subsystem "Personal Account" of the Portal.

Information about the voter's access to the ballot in the subsystem "Personal account" of the Portal immediately after the voter confirms the voter's access to the ballot is reflected in the electronic version of the voter list and is printed by the software and hardware complex of remote electronic voting on paper in the manner and form established by the City Commission (On approval, 2019).

The voter carries out remote electronic voting by putting a mark in the ballot box, which refers to the candidate in favor of whom the choice was made, and confirming the implementation of the vote. Vote of the voter is accepted by special software in the subsystem "Personal account" of the Portal. Encrypted information on the voter's will expressed in the "Personal Account" subsystem of the Portal, after the acceptance of the voter's vote is printed on paper according to the form established by the City Commission, and is displayed electronically on the display panel of the software and hardware complex of remote electronic voting. The City Commission may establish additional ways to confirm the voter's identity, which is carried out before the acceptance of the voter's vote by special software in the subsystem "Personal account" of the Portal. Special software in the subsystem "My Account" of the Portal ensures the secrecy of the voter's vote by encrypting the data. It is not allowed to link the personal data of the voter with the result of his or her expression of will for the purpose of further identification of the voter.

Discussion

The legislative introduction of the new method of voting caused active practical and scientific discussion among the scientific community, political scientists and electoral lawyers, election organizers (Antonov, Ovchinnikov, 2015, 2016; Fedotova, 2016; Antonov, 2016b, 2017a, 2017b). In general, a positive assessment of the new mechanism should be noted. In modern conditions, there are advantages of remote electronic voting.

First, the choice of such form of voting is the right of the voter and is considered as an alternative to the traditional voting procedure. Second, the legislator proposes a worthy replacement of the institutions of early voting and absentee voting, which traditionally cause many complaints from the participants of the electoral process. Third, it greatly enhances the ability to vote outside of the voting room, not just to vote at home for health or disability reasons. This innovative method of voting becomes relevant for voters with disabilities, who can cast their vote without assistance because of a simple and secret procedure. Fourth, it creates the most comfortable voting environment for the voter, regardless of their location, at any convenient time during the voting period, using a variety of mobile devices. Potentially, e-voting attracts more voters to vote remotely, and thus increases the likelihood of an increase in mobile voter turnout. According to S.G. Gontar (2019), this method of voting is the most convenient for young voters and in the near future will conquer the electoral space; it meets the concept and strategy of development of modern Russian society. The experience of other countries shows a constant increase in remote voting through the Internet. In addition, according to supporters of the introduction of this type of voting, the development of remote electronic voting over time will help to reduce the overall costs of organizing and conducting the electoral process.

However, there are also potential difficulties associated with the introduction of electronic voting. First, there is a need for serious protection against unauthorized interference with the electoral process by third parties. Given the current level of development of information technology, additional safeguards should be put in place to protect the software. It is also possible that, in the event of a failure of a fully automated system and the absence of a paper copy of the data backed up, recounting would be extremely problematic or not possible at all. At the same time, the source of malfunctions and equipment failures is more difficult to calculate and identify than when using paper procedures.

In the context of remote electronic voting, special attention should be paid to the procedure to ensure the secrecy of the vote. Access to the voting system should be restricted to citizens with the right to vote, which means that every voter should be identified and their right to vote should be confirmed. In order to prevent duplication of votes and other violations, a voter record should be maintained to allow for verification of the voter's vote or not. When

using remote electronic voting, it should be ensured that there is no link between the vote cast and the individual voter (Electronic voting, 2006; Goldsmith, Ruthrauff, 2013; Implementing and overseeing, 2005).

One cannot but agree with Antonov's opinion that "in any case, fundamental constitutional changes are necessary to implement the system of remote electronic voting at the national level in order to clarify the content of the basic constitutional principles of elections, perhaps even up to their radical revision and subsequent adoption of fundamentally new legal acts" (Antonov, 2017c).

CONCLUSIONS.

M.M. Kuryachiy (2017) rightly notes, "The development of electronic electoral technologies is a global electoral trend". At the same time, general legal, organizational and technical standards of electronic voting have not been formed in international practice so far. According to the Committee of Ministers of the Council of Europe, the system of electronic voting should respect the principles of democratic elections and referendums ensure reliability and security in the same way as in the traditional voting system. It is noteworthy that this fundamental idea covers all electoral issues related to the electronic voting system. Transparency, accountability and verifiability of the electronic voting system should also be required, and international standards and recommendations should be respected (Ovchinnikov, Antonov, 2015). Experience of legal regulation of remote electronic voting in foreign countries also shows the use of an experimental approach (Das Potenzial, 2005; Electoral pilot, 2010; Xenakis, Macintosh, 2005).

M.M. Kuryachiy (2017) summarizes the practice of using electronic voting in some foreign countries (USA, Great Britain, France, the Netherlands, Switzerland and Estonia). As the author notes, "initially electronic voting was used as the main form of voting in the U.S. However, failures of the technical nature of internet voting significantly reduced the image of electronic voting in America".

In 1999 European Parliament elections in Germany, electronic voting was used. However, the German Constitutional Court has recognized that this method of voting does not ensure transparency of elections, as there is no control over voting, which led to the return of traditional forms of voting. In 2002, Ireland launched an electronic voting experiment, but a year later, the government decided to cancel the experiment because the feedback was negative. The researcher cites as a positive experience of the use of electronic voting system the practice of electronic voting in Brazil, also used since 2005 in elections of different levels of internet voting in Estonia. In particular, in Estonia, the e-voting process is based on the use of an identification card (ID card), which stores all the information of its holder. In addition to the possibility of electronic voting, the card generally provides access to public electronic services and acts as an identity document (Kuryachiy, 2017).

According to the majority of researchers, the experiment being conducted in Moscow today will make it possible to assess the prospects of introducing remote electronic voting in the electoral process of modern Russia. This will create additional opportunities to ensure the constitutional right of voters to participate in elections, ensure further development of the "mobile voter" system, identify problematic issues in the organization and conduct of remote electronic voting, and establish the level of interest of voters in this form of voting.

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The effect of fun and interactive games as a strategy in teaching coordinates to enhance students' performance in Mathematics

El efecto de los juegos divertidos e interactivos como estrategia en la enseñanza de coordenadas para mejorar el rendimiento de los estudiantes en Matemáticas

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ABSTRACT

This research is aimed to help students develop their mathematical concept, as well as emphasizing the appropriate use of information technology among Year Three students. The current mathematics curriculum in Year Three primary school in Malaysia was introduced in 2018. This quantitative study used a quasi-experimental method. Thus, this study examines the differences in performance between a controlled group and experimental group from a school in Malaysia. Paired samples test results have proven that the experimental group performed better than the controlled group. It was also found that fun and interactive games can increase students' understanding and interest towards mathematics. Interactive games can contribute least time to master some mathematical concepts in a fun way. Therefore, the fun and interactive game is a superior instrument that can be utilized by primary students in learning mathematics in order to encourage learning and innovation skills in the 21st century.

Keywords: fun and interactive games, students' mathematics performance.

RESUMEN

Esta investigación tiene como objetivo ayudar a los estudiantes a desarrollar su concepto matemático, así como enfatizar el uso apropiado de la tecnología de la información entre los estudiantes de tercer año. El plan de estudios matemático actual en la escuela primaria del tercer año en Malasia se introdujo en 2018. Este estudio cuantitativo utilizó un método cuasi-experimental. Por lo tanto, este estudio examina las diferencias en el rendimiento entre un grupo controlado y un grupo experimental de una escuela en Malasia. Los resultados de las pruebas de muestras emparejadas han demostrado que el grupo experimental se desempeñó mejor que el grupo controlado. También se descubrió que los juegos divertidos e interactivos pueden aumentar la comprensión e interés de los estudiantes hacia las matemáticas. Los juegos interactivos pueden aportar menos tiempo para dominar algunos conceptos matemáticos de una manera divertida. Por lo tanto, el juego divertido e interactivo es un instrumento superior que los estudiantes de primaria pueden utilizar en el aprendizaje de las matemáticas para fomentar las habilidades de aprendizaje e innovación en el siglo XXI.

Palabras clave: juegos divertidos e interactivos, rendimiento matemático de los alumnos.

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1. INTRODUCTION

Education is essential to every developing country. Achieving the high-performing education system would put Malaysia on the same level as other developed countries. The desires of Malaysia to be in the top third nations as far as execution in universal evaluations as estimated by results in Trends in International Mathematics and Science Study (TIMSS) and Program for International Student Assessment (PISA) within 15 years. Extra evaluations that address different elements of value that are important to the Malaysian setting might be incorporated as they are created and being acknowledged worldwide models (Pelan Pembangunan Pendidikan Malaysia (PPPM) 2013-2025).

In order to achieve the purpose of PPPM 2013-2025, the Ministry of Education had decided to revise the mathematics curriculum by introducing the new learning areas which are relationship and algebra. Ratio and proportion as well as coordinates are two new topics that need to be learned by the nine years old students. As a professional educator, teachers need to use their creativity to achieve the objectives of the lesson as stated in the standard curriculum document. BPK (2017) mentioned that teachers are advised to use a variety of sources such as modules, books and the internet to provide suitable teaching and learning activities.

One of the aspirations of Primary School Standard Curriculum is to produce pupils with the 21st century skills by focusing on creative thinking skills, living skills and career guidance that are based on practical moral values. On the other hand, 21st century skills aim to prepare students with the needed characteristics such as being resilient, communication skills, thinking skills, teamwork, and curiosity, principled, informative, and attentive as well as patriotism to ensure that they are able to compete globally. Mastering the Content of Standard (CS) and Learning Standard (LS) in the primary school mathematical curriculum contributes to the acquisition of 21st century skills among pupils (Pelan Pembangunan Pendidikan Malaysia (PPPM) 2013-2025).

Benefits of Games: Games are the most talked and played medium not only by adults but to children as well. A fun and interactive game is a game intended to show individuals a particular subject and to show them an expertise (Keesee, 2012). Educational games are intended for learning and to engage in enhancing students' performance in mathematics. The fun and interactive games can support understudies' inspiration, and furthermore can urge them to learn at their very own pace (Brawerman et al., 2013). Based on Prensky (2001), games are a subset of play and fun where there are six essential segments of games, which comprise of guidelines, objectives or destinations, results or criticism, strives, rivalry, challenge, cooperation, and portrayal or story. Theories of collaboration exist at the interfirm and intergroup level, but not the intragroup or team level (Colbry et al. 2014). This mean that games is a part of communication among students to work and to solve the problems as a team not to provoke someone to acheive the goals of learning.

Teaching new STEM topic to young students is not an easy way for teachers in order to deliver the mathematical concepts. Based on the study by Cita and Subiyanto (2017), both found that from the experimental group findings, the creation of android instructive games can improve understudies' perusing capacity in the medium class. In this way, the android instructive game can be utilized as an elective apparatus for picking up perusing which is superior to a book. In a way to improve pupils' performance in mathematics, researcher wants to examine the effect of teaching coordinates using online and other educational games in teaching coordinates topic.

Gros (2007) stated that students improve slightly and show changes in their habits by far from the previous. Nowadays, children have started to use visual electronic devices such as computers, tablets, digital music players and of course educational games since their toddler age. Educational interactive games is a type of helpful tools, as children gain from a youthful age on the most proficient method to pursue explicit methodologies to accomplish their objectives. In addition, when students engage with the educational interactive games routinely, it contributes to the improvement of visual attention as the user is able to focus on different matter at the same time. Therefore, educational games can give big impact to those young students that having difficulties to understand the mathematical concept abstractly.

2. METHODOLOGY

The purpose of this study is to scrutinize the effect on students' performance towards mathematics when online and other interactive games are utilized in teaching coordinates. This descriptive study was implemented to identify the Year Three students' understanding in coordinates topic through the interactive games. The quantitative method of pre and post-test were used to collect the data. A set of 21 questions were used in the pre and post-test for both controlled and experimental groups. The used of quasi-experimental method using pre-test and post-test is easily to assist the researcher to obtain and to analyse the data.

The research was implemented on a total of 60 Year Three students that were studying in two different classes at the same primary school located in Malacca. The participant in this study are formed by nine years old students those learning mathematics in SK syllabus. Both classes formed by mix abilities students. Seventeen (56.7%) students were male and thirteen (43.3%) were female in the experimental group. Meanwhile in the controlled group, fourteen (46.7%) students were male and 16 (53.3%) students were female. 60 students were formed to be in the controlled group and experimental group. Matching and stratifying groups require researchers to match participants in each group on as many characteristics as possible to ensure that control and experiment groups are as similar as possible before the treatment is introduced (Shadish et al., 2002). In this study, the two classes were selected from the same school, where the students in both classes have similiar scores in mathematics performance and the teachers that teach them have similiar teaching styles. The controlled group consisted of 30 students was not affected by the independent variable. While the experimental group consists of 30 students was affected with teaching using online and educational interactive games. The size of the sample in quantitative study typically follows random sampling procedures is enough to carry out one's study (Cresswell, 2015). To implement the pre-test and post-test in order to determine whether any significant differences exist, the hypotheses were tried by looking

at the variety in score (Bulduk

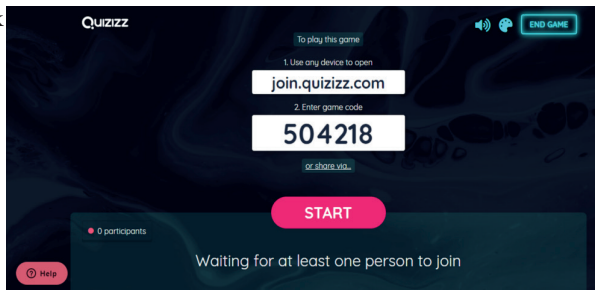

Figure 1: Code used to enter and answer the questions

Procedures

A topic in Relationship and Algebra Learning Area that was "Coordinates" was chosen for this study. This topic is selected because it was a new STEM topic introduced in Year Three syllabus. In identifying that this topic should be used, two variables were taken into consideration. Firstly, according to the current mathematics standard curriculum in Malaysia (BPK 2017), Year Three students relied upon to the knowledge and mathematical skills to solve problems related to coordinates, give mathematical reasoning, make connections, make representations, communicate and use technology to solve the situation involving coordinates. Secondly, studies' findings have revealed that students had trouble in this topic (Monk 1992; Oehrtman et al. 2008; Dubinsky & Wilson 2013). According to Moore and Thompson (2005), the conventional activity of plotting point by moving over x units and up y units did not support students in engaging in an em

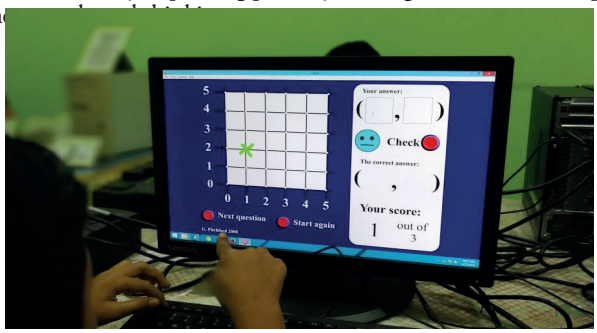

Figure 2: Teaching coordinates using games by students in experimental group

For the controlled group, classes were taught using conventional activities via online and educational interactive games were used on the experimental group. The educational games were prepared in the form of flash player and projected on a screen using LCD projector and with sounds as an interesting element to attract students' attention. The Mathematics Performance Test (MPT) consisted of 21 questions were developed using the Quizizz Online. Students needed to enter the special code to answer the questions and the test was conducted in the computer lab. Time was given to them to solve all the questions. The pre-test result was obtained from both groups, then the same set of questions was also used in order to get the results for the post-test. Analysis of data gathered by students from the Mathematics Performance Test from pre-test and post-test were evaluated using the Statistical Package for the Social Sciences (SPSS) software on a computer. The independent group t-test was used in paired comparisons between different groups and dependent group t-test in paired comparisons within the groups themselves depending on the type of data. Differences between the experimental and controlled groups were found to have significant level of $p<.05$ according to the relevant variables.

3. RESEARCH FINDINGS

Before conducting the independent samples t-test and the paired samples t-test, the normal distribution test was implemented. Drezner et al. (2008) stated one of the most frequently used tests to evaluate how far is the data are from normality is the Kolmogorov-Smirnov (K-S) test. A set of data is normally distributed with a mean of 5. Kolmogorov-Smirnov (K-S) test was used to assess the normality of the distribution of scores in the sample to a normally distributed sets of scores with the same mean and standard deviation. K-S test is to compare statistical distribution on the result of Mathematics Performance Test to two groups of study. The results of normality using K-S test on the controlled group and the experimental group are as follows: Kolmogorov-Smirnov test (P=0.088) and Kolmogorov-Smirnov test (P=0.149), while the results of the Kolmogorov-Smirnov test which were conducted on the results of the post-test are as follows: Kolmogorov-Smirnov test (P=0.183) and Kolmogorov-Smirnov test (P=0.148). The tests for pre-test and post-test show that the tests are non-significance where $p>0.05$. This indicates that the samples are not significantly different and can be assumed to be normally distributed. Since the tests shown

are normally distributed, it was decided to use the t-test in the next analysis to answer the objectives of the study.

The results of the independent group t-test implemented on the MPT for pre-test scores of the controlled and experimental groups show no significant difference, as there is only a statistical level of significance of 0.05 in terms of the performance toward mathematics between the two groups t(58)=0.823 which has proven to be statistically insignificant (p=.414). The mean difference score between the controlled and experimental group is 1.633 only which the above data shows the controlled group students ($\bar{x}$=19.30) were more excellent in pre-test of mathematics performance compared to students in experimental group ($\bar{x}$=17.67).This shows that both groups' performance toward mathematics are equal prior to introducing teaching using interactive games.

According to the scores obtained by the experimental and controlled groups from the subdimensions of the pre-test based on the paired sample t-test results, students' mathematics performance in controlled group for pre-test and post-test respectively t(29)=33.079 proved to be statistically significant (p<.05) and the result for students' mathematics performance in experimental group for pre-test and post-test respectively t(29)=-33.174 is also proven to be statistically significant (p<.05). Both results show that there are significant differences between controlled and experimental groups before and after the lesson implemented. According to the mean score obtained by the controlled group ($\bar{x}$=63.700) and experimental group ($\bar{x}$=-67.533), it shows that the experimental group has higher of mean score compared to the controlled group. This data indicates that conventional teaching method can develop students' understanding and performance but teaching the coordinates using educational interactive games can promote interesting lessons which will also contribute to the development of students' performance.

4. DISCUSSION AND CONCLUSION

This investigation is embraced, as it is important to the current as well as the future needs of the country especially in terms of economical instruction (Muhammad Ridhuan et. al. 2012). The choice made by the analyst in choosing the topic to be studied is likewise founded on the thought of specially explored zones in education particularly related to innovation of upgraded advancement in primary education. Studies conducted have shown that there has been a significant positive relation between the students' performance in the pre-test and post-test for both group studies. It was found that the mean score increased higher for the experimental group compared to the controlled group. This result shows that teaching using interactive games has positively influenced students' interest towards mathematics and they can also explore the mathematical concepts of coordinates at their own pace. They also played the interactive games during their leisure time either at home or school. Regardless of the format of the game, students can simultaneously build their mathematical concepts while having fun throughout the process as long as the interactive games are well-designed (MacKenty, 2006, Harris, 2009). Therefore, interactive games can contribute least time to develop some mathematical concepts in a fun learning environment.

Students in experimental group had higher mean score difference compared to the controlled group because students in experimental group have several positive features such as cooperative game playing and interpersonal competitive playing. These features are important in 21st century learning where cooperation is a part of labour between group members. It occurs when a task is splited up into individually manageable subparts, which are subsequently developed into a final outcome. Despite the fact that this is conceptually different to collaboration, at a fine-grained level, all collaborative tasks have a degree of cooperation (Lai & Viering, 2012). To support genuine collaboration effort (which would then be able to be observed and measured) assessors need to control bunch individuals' encounters with each other so channels of communication and shared comprehension are improved before appraisal begins. (Simon and Stuart 2016).

In conclusion, from the discoveries of this study, interactive games are perceived as a powerful classroom-learning tool, which expedite critical and positive outcome on students' retention and mastery of coordinates topic as compared to students who rely only upon conventional classroom instructions.

As suggestion, teachers should consider using the educational interactive games or other online games in their classroom to improve the students' self-efficacy in studying mathematics, which has positive correlation with their learning achievement. The present study only investigates the effects of teaching coordinates via online and other educational interactive games on students' achievement in mathematics without further analysing what factors that cause such effects. Future research is suggested to start considering and investigating such factors to obtain more interactive tools to apply in the teaching and learning process to enhance students' performance in mathematics.

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Legal protection of cross-border use of intellectual property

Protección legal del uso transfronterizo de la propiedad intelectual

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ABSTRACT

The paper analyzes the issues of legal regulation of cross-border use of intellectual property on the example of the Eurasian Economic Union. Among the key problems of cross-border use of intellectual property within the Eurasian Economic Union (EEU) is the need to create a unified system of registration of trademarks and service marks and elimination of double registration of trademarks, establishment of common approaches to the problem of admissibility of "parallel imports" within the EEU, and the creation of an effective patent system. The authors conclude that the development of legal regulation of the use of intellectual property in cross-border relations will follow the path of adoption of normative acts within the framework of regional unions of states, taking into account the specifics of their economic and social development, as well as the way of improvement of national legislation, taking into account the position of states on this issue.

Keywords: Intellectual property, cross-border use of intellectual property, Eurasian Economic Union, parallel import, trademark.

RESUMEN

El artículo analiza los problemas de regulación legal del uso transfronterizo de la propiedad intelectual en el ejemplo de la Unión Económica Euroasiática. Entre los problemas clave del uso transfronterizo de la propiedad intelectual dentro de la Unión Económica Euroasiática (EEU) está la necesidad de crear un sistema unificado de registro de marcas y marcas de servicio y la eliminación del doble registro de marcas, el establecimiento de enfoques comunes para el problema de admisibilidad de "importaciones paralelas" dentro de la EEU, y la creación de un sistema efectivo de patentes. Los autores concluyen que el desarrollo de la regulación legal del uso de la propiedad intelectual en las relaciones transfronterizas seguirá el camino de la adopción de actos normativos en el marco de las uniones regionales de estados, teniendo en cuenta los detalles de su desarrollo económico y social así como la forma de mejorar la legislación nacional, teniendo en cuenta la posición de los Estados sobre este tema.

Palabras clave: Propiedad intelectual, uso transfronterizo de la propiedad intelectual, Unión Económica Euroasiática, importación paralela, marca registrada.

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INTRODUCTION

The development of legal regulation of intellectual property is important for the economy of any state. In the conditions of modern international economic relations, globalization of economy, activation of innovation processes, intellectual property becomes one of the key factors increasing competitiveness of national economies.

The modern model of legal regulation of intellectual property is based on the concept of exclusive law, which forms a powerful incentive to create new markets for intellectual property owners, where the goods are the rights of access or use of intellectual property (Ghosh, 2016). In addition, modern scientists confirm the impact of the level of legal protection of intellectual property on the development of national economies, in particular, their export opportunities (Gnangnon, Moser, 2014). Although most developed countries have assumed international obligations to ensure intellectual property rights, they are parties to the main international conventions in this area; the systems of ensuring rights in them are significantly differentiated, even within regional unions, including the Eurasian Economic Union.

Traditionally, the national law of the countries is based on the principle of territoriality as applied to the protection of intellectual property, which in its most general form means that the grounds and conditions for granting protection of intellectual property rights are determined by the laws of the state where it is sought. This is partly offset by the adoption of international agreements on intellectual property issues, the unifying requirements of which, especially the Agreement on Trade-Related Aspects of Intellectual Property Rights – TRIPS Agreement (Trade-related, 2019), bring together the rules of intellectual property protection in most countries. International treaties minimize the negative aspects of the territorial nature of intellectual property rights and allow foreigners to have access to national legal systems of protection, reduce material and time costs in the process of registration of rights in several States (priority right, international registration, patenting and deposit systems), but the main issues of intellectual property protection are still solved on the basis of the national law of the State where the relevant protection is sought. At the same time, along with the substantive issues of the law, there are also problems of searching for applicable law for the protection of intellectual property rights in cross-border use of intellectual property (conflict of laws regulation, Leanovich, 2009).

Transboundary economy in the context of globalization poses a challenge to the principle of territoriality in the protection of intellectual property rights: intellectual property objects are actively commercialized, becoming objects of circulation not only within the borders of one state, but also outside them, which is facilitated by the Internet.

This, in turn, requires a review of the principal approaches to the protection of intellectual property rights and even suggests the possibility of universal protection of intellectual property rights (Sterling, 2005).

The development of integration processes in the Eurasian space and the strengthening of economic ties have also led to the active use of intellectual property in cross-border relations, in particular, in the import and export of goods between the countries of the Eurasian Economic Union. In this regard, the analysis of the current state of legal regulation of cross-border use of intellectual property on the example of the Eurasian Economic Union is of interest.

Materials and methods

The methodological basis of this study is made up of general and private methods of scientific research, primarily the method of comparative law and complex analysis, the empirical method of research. Modern national and international legislation regulating both the protection of intellectual property in general and legislation defining the peculiarities of cross-border use of the results of intellectual activity is analyzed.

The study of the peculiarities of law enforcement in the cross-border use of intellectual property involves a comparative analysis of the national legislation of the Eurasian Economic Union member states. Regulatory acts of such countries as the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan, the Republic of Armenia and the Kyrgyz Republic have been studied. Both national civil codes of these countries and special laws regulating relations with regard to certain types of intellectual property were studied. The application of the comparative analysis method aims to identify common approaches in the regulation of cross-border relations within the Eurasian Economic Union, as well as differences that hinder the harmonization of national regulations in the system of unified law of the Eurasian Economic Union.

Among other private scientific methods used in this study is the formal legal method, which consists in the frontal study of international acts of the Eurasian Economic Union on the legal protection of intellectual property. Based on this analysis, a general idea of the state of legal regulation in the designated area is formed. In addition, the use of formal legal method allows us to identify the shortcomings of the existing legal regulation of the sphere of public relations. In addition, based on the formal legal method, proposals are formulated to improve the regulatory framework for the development of acts of the Eurasian Economic Union on the legal protection of intellectual property.

In parallel with this method, the method of interpretation of law is used, which allows to deepen and expand the results of the application of the formal legal method, to identify both literal and systemic meaning of legal prescriptions and to make a general picture of aspects and parties of legal regulation in the field of legal protection of intellectual property in cross-border use. An important role is played by acts of interpretation of legal regulations, which accumulate the results of interpretation activities of both national and international bodies in the field of legal protection of intellectual property.

The basis of the study was formed by international acts on intellectual property protection, acts of the European Union and the Eurasian Economic Union, which define the peculiarities of intellectual property protection, as well as national legislation and court practice of the Eurasian Economic Union member states.

DEVELOPMENT.

Results and discussions

Since the second half of the 20th century, the need for separate regulation of intellectual property protection has become apparent to developed countries, as reflected in the adoption of the TRIPS Agreement, and there has been an increase in the number of regional trade agreements, including those dealing to some extent with intellectual property protection. However, researchers have noted a number of shortcomings in the system of legal protection of intellectual property in cross-border use, as set out in the TRIPS Agreement. For example, K.Yu. Peter (2015) notes that this agreement, like many other international instruments on intellectual property, sets minimum standards for its protection, but not a unified set of mandatory rules. This feature does not allow for uniform enforcement, as national laws on intellectual property protection may conflict with each other.

The current trend is regionalism and the desire of countries to build trade relations taking into account the interests of regional partners.

At the same time, the integration of countries into the global economic system is impossible without appropriate attention to intellectual property protection issues, which are based on multilateral, national and regional agreements. At the same time, it is necessary to take into account the specifics of the functioning of each individual regional association, including their level of involvement in the world trade system. Thus, within the framework of the Eurasian Economic Union (Russia, Belarus, Kazakhstan, Armenia, Kyrgyzstan), there are both members of the World Trade Organization (WTO) and the country in the status of observer (Republic of Belarus), which implies their different obligations in the international trading system.

Currently, the legal regulation of cross-border relations regarding the use of intellectual property on the territory of the Eurasian Economic Union in the most general form is contained in the Agreement on the Eurasian Economic Union of 2014 (Agreement, 2014).

According to Article 89 of this Agreement, one of the important tasks of legal regulation of relations in the field of intellectual property is to protect the interests of holders of intellectual property rights of the Eurasian Economic Union member states. The cooperation of the Eurasian Economic Union member states in the field of intellectual property protection covers, in particular, such areas as the introduction of the system of registration of trademarks and service marks of the Eurasian Economic Union and appellations of origin of the Union's goods; ensuring the protection of intellectual property rights, including in the Internet; ensuring the effective customs protection of intellectual property rights, including through the maintenance of a single customs bond. In accordance with Article 90 of the Eurasian Economic Union Agreement, persons of one member state in the territory of another member state are entitled to national treatment with regard to the legal regime of intellectual property objects.

The Protocol on the Protection and Enforcement of Intellectual Property Rights (Annex No. 26 to the Agreement on the Eurasian Economic Union) does not contain provisions regulating in detail the issues of cross-border use of intellectual property within the Eurasian Economic Union. Rather, these rules are intended to ensure harmonization and unification of national regulation of relations in the field of intellectual property of the member states of the Eurasian Economic Union based on the standard established in the Agreement on the Eurasian Economic Union. At the same time, it is possible to single out certain provisions directly related to the legal regulation of certain issues of cross-border use of intellectual property.

Thus, one of the rules provides that the member states of the Union give right owners with regard to cinematographic works the right to permit or prohibit public commercial distribution of originals or copies of their works protected by copyright in the territories of other member states (paragraph 5 of the Protocol on the Protection and Enforcement of Intellectual Property Rights).

Other provisions of the Agreement on the Eurasian Economic Union provide for the possibility of registration of trademarks and service marks of the Eurasian Economic Union. Legal protection of these marks will be provided simultaneously in the territories of all member states of the Eurasian Economic Union (paragraph 14 of the Protocol on the Protection and Enforcement of Intellectual Property Rights). A similar rule is also provided for appellations of origin of goods of the Eurasian Economic Union (paragraph 22 of the Protocol on the Protection and Enforcement of Intellectual Property Rights).

The practice of registration of regional trademarks is well known to the European Union (EU): the registered trademark of the European Union is protected simultaneously and equally in all member states of the European Union on the basis of the European Union Trademark Regulation No. 2017/1001 (Regulation, 2017).

The abovementioned provisions of the Protocol on the Protection and Enforcement of Intellectual Property Rights will be fully operational after the entry into force of the Agreement on Trademarks, Service Marks and Appellations of Origin of the Eurasian Economic Union signed by the Council of the Eurasian Economic Commission at its meeting in St. Petersburg in late 2018. The document will work after 2020 (Order, 2016). It seems that on its basis the legal protection of these types of intellectual property in case of cross-border use will be carried out in a simpler manner.

The Agreement is aimed at creating a new system of registration of trademarks and appellations of origin of goods

of the Eurasian Economic Union. If right holders now have to register trademarks in five countries, the agreement will allow them to do so once in any of the intellectual property offices of the Union member states. Thus, the applicant will receive a single protection document, and all information on registered trademarks and appellations of origin will be contained in the unified registers of the Union (The EEC, 2018).

At the same time, the member states of the Eurasian Economic Union should resolve the issue of dual registration of the same intellectual property objects, primarily "Soviet" trademarks. Along with the existing national systems of registers of intellectual property objects of member states within the framework of the Eurasian Economic Union, a single register was created, as a result of which, after the opening of borders, the problem of double registration of the same intellectual property objects appeared within the association. This problem is one of the specific features of this regional association of states, predetermined by their joint historical past within the USSR. To solve this problem, the experience of the European Union in the creation of a single trademark of the European Union and the formation of a single electronic market can be used. In order to solve this problem, the Eurasian Economic Commission adopted a number of documents and established a special Advisory Committee on Intellectual Property.

As the recent report of the World Intellectual Property Organization (WIPO) shows, cross-border disputes on violation of intellectual property rights, including in the Internet, primarily concern trademarks (Khusainov, 2018).

Another important problem that needs to be solved within the framework of the Eurasian Economic Union is the need to create an effective patent system of the Eurasian Economic Union, which allows investors to avoid double registration in addition to the national patent offices and customs registers, which significantly increases costs and complicates the process of obtaining protection and entering the market (Soldatenko, 2017).

Particular attention should be paid to the problem of exhaustion of intellectual property rights, primarily exclusive trademark rights, in the territory of the Eurasian Economic Union countries with "parallel imports". Paragraph 16 of the Protocol on the Protection and Enforcement of Intellectual Property Rights provides for a regional regime of the principle of exhaustion of exclusive rights not only with respect to trademarks of the Eurasian Economic Union, but also with respect to national trademarks. In case of entry into the territory of the Union, intellectual property rights shall be exhausted when crossing the border of one of the member states of the Eurasian Economic Union. At the same time, insufficient regulation of issues related to the exhaustion of exclusive trademark rights at the level of national legal systems of the member states of the Eurasian Economic Union and the lack of uniform approaches to this issue does not remove today the problem of admissibility of "parallel import" of goods within the Eurasian Economic Union.

In the most general way, the principle of exhaustion of law means the possibility of a third party to use the result of intellectual activity without the consent of the right holder as a result of its introduction into circulation. The modern doctrine of exhaustion of intellectual property rights is based on the idea of circumventing artificial barriers to free trade, which may be created by holders of exclusive rights to protected results of intellectual activity and the means of individualization equal to them, which was developed in the German law enforcement practice of the beginning of the XX century.

The idea of "parallel import" is based on the assumption that the goods marked with a registered trademark are imported into the territory of the state by a person other than the owner of the right or its official distributor, and another person - a "parallel" importer without obtaining a special permission of the right holder, it is enough that the goods were legally put into circulation within a certain territory. At the same time, if the legislator has fixed the possibility of free use of the result of intellectual activity as a result of the introduction of goods into circulation in any country, the international principle of exhaustion of the exclusive right is established, if only in the territory of this state (a group of states, for example, members of the economic community) - national (regional).

Today, the states have adopted different approaches to defining a territory where turnover within a territory will exclude infringement of intellectual property rights by parallel importers. Some follow the international principle of exhaustion of rights, allowing parallel importers to import goods lawfully introduced into civil circulation in any country of the world (Mexico, Thailand (with an exception for medicines), Azerbaijan, Georgia, and Armenia). Under this approach, exclusive rights "run out" at the time of sale of the goods. Other states recognize the national or regional principles of exhaustion of law, i.e., they prohibit or restrict parallel imports to some extent, such as Russia, Belarus and Kazakhstan. This provision of the national legislation allows to keep the market under control, which limits price competition, but at the same time makes it attractive for rights holders wishing to produce and import original products. In a number of countries, the principle is not established or a conditionally international principle is in force, according to which certain import restrictions are imposed.

The European Union has a regional principle of exhaustion of rights, which allows for parallel imports between EU countries. The legal position of the European Court of Justice is based on the principle of freedom of movement of goods in the European Union, enshrined in Art. 30 and 36 of the Agreement of Rome. This principle, in fact, is recognized as prevailing in relation to the EU legislation on intellectual property rights.

The assessment of the significance of this principle from the point of view of balancing the interests of rights holders and other interested parties is ambiguous. Thus, in the Recommendations of the International Chamber of Commerce it is indicated that the issue of the use by the right holder of intellectual property rights to control the distribution of goods put into circulation by himself or with his consent, by means of the doctrine of exhaustion of rights (the issue of parallel imports) with the globalization of the economy ... The importance of the issue is becoming increasingly

important. While many believe that international exhaustion of rights will have a strong negative impact on intellectual property rights and the distribution system, others argue that international exhaustion is a necessary and logical result of globalization and trade liberalization, as well as the emergence of electronic commerce (Recommendations, 2012).

The choice of the principle of exhaustion of intellectual property rights is one of the so-called flexibilities of the TRIPS Agreement. Guided by Article 6 of the TRIPS Agreement, the states have the right to decide this issue at their own discretion, based on their own national interests, taking into account their membership in the Eurasian Economic Union.

At present, the national legislation of the member states of the Eurasian Economic Union provides for different approaches to fixing the principle of exhaustion of the exclusive right to a trademark, which predetermines the possibilities of "parallel import" within the framework of this Union. Thus, today in the Russian Federation the principles of national and regional exhaustion of the exclusive right to a trademark are in force at the same time. The first one with regard to imports from countries that are not members of the Eurasian Economic Union (Article 1487 of the Civil Code of the Russian Federation), the second one - from member states of this Union. This means that those goods with trademarks placed on them, which were introduced into the civil turnover in the territory of the Russian Federation (a state that is a member of the Eurasian Economic Union), directly by the right holder or with his consent, may in the future be freely in circulation in the territory of these states. Import from other states of goods with trademarks of these right holders is allowed only with the consent of the right holders of these trademarks.

In the Republic of Kazakhstan, the international principle of exhaustion of rights was in force (although it was not officially established) until 2012, which allowed for the importation into the territory of the state of goods marked with a trademark by any person without the consent of the right holder at its first introduction into circulation in any country in the world. Since 2012, the national principle of exhaustion of exclusive rights, enshrined in paragraph 7 of Art. 19 of the Law of the Republic of Kazakhstan dated July 26, 1999 № 456-1 "On trademarks, service marks and appellations of origin of goods", as amended on 12.01.2012 (Law, 1999). In connection with the conclusion of the Agreement on the Eurasian Economic Union of May 29, 2014 and the harmonization of national legislation in accordance with the provisions of this Agreement from the beginning of 2015 in Kazakhstan is the regional principle of exhaustion of rights to the trademark. However, the national principle of exhaustion of rights continues to apply to goods that have crossed the border of the Eurasian Economic Union, which coincides with the "external" customs border of Kazakhstan.

Thus, if the goods cross the border of Kazakhstan and China, which coincides with the border of the Eurasian Economic Union, the national principle of exhaustion of law will be applied, then the turnover of goods will be based on the regional principle.

Thus, today parallel import in a number of states of the Eurasian Economic Union (the Russian Federation, Belarus and the Republic of Kazakhstan) is actually prohibited; only the right holder or other person with his written consent can import the goods. However, in the judicial practice of both the Russian Federation and the Republic of Kazakhstan we can observe a certain evolution of views on the problem of "parallel imports" from its complete prohibition to the assumption under certain conditions (Kiryusina, 2018; Serebryakov, Kiryushina, 2018).

"Parallel import" is perceived today as one of the instruments of free trade and one of the means of price equalization in the markets of different countries. The legalization of "parallel imports" in Russia is particularly relevant in relation to medicines, in Kazakhstan - in relation to spare parts for automobiles, which is possible in the context of the differentiated principle of exhaustion of the law allowing "parallel imports" in relation to certain types of goods. Draft Protocol of the Eurasian Intergovernmental Council of 24 April 2017 N 30 allows member states to establish exceptions to the regional principle of exhaustion of exclusive rights to the trademark in respect of certain types of goods, including goods not available in the domestic market of the Eurasian Economic Union or inaccessible in sufficient quantities (On the draft, 2017). However, to date, this problem has not been resolved in the national legislation of the Eurasian Economic Union member states.

At the same time, in the national practice of individual member states of the Eurasian Economic Union, there are approaches that actually contribute to cross-border violations of intellectual property rights. Thus, in paragraph 156 of the Resolution of the Plenum of the Supreme Court of the Russian Federation № 10 of 23.04.2019 "On the application of part four of the Civil Code of the Russian Federation" it is stated that "such actions as the acquisition of goods in which the trademark is expressed, regardless of the purpose of acquisition, as well as storage or transportation of such goods without the purpose of introduction into the civil turnover on the territory of the Russian Federation, do not violate the exclusive right of the right holder" (Resolution, 2019).

An ambiguous approach from the point of view of the problem of exhaustion of exclusive rights also has the problem of export of goods with trademarks applied to them. Despite the fact that the legislation of the Russian Federation does not explicitly refer to the export of goods containing intellectual property as a way of using a protected result of intellectual activity or means of individualization, in particular, a number of international agreements on intellectual property protection pay attention to this aspect. In particular, the Agreement on Trade-Related Aspects of Intellectual Property provides in Clause 51 that the right holders should be given the opportunity to apply to the competent authorities with a request to suspend the release into free circulation of counterfeit goods not only at the time of their import, but also at the time of their export. It seems that the legal export of goods containing the results of intellectual activity is possible only as a result of their legal introduction into the civil turnover on the territory of any of the member

states of the Eurasian Economic Union.

Thus, at present, separate steps have been taken within the framework of the Eurasian Economic Union to regulate the issues of cross-border use of intellectual property: along with the existing national systems of registers of intellectual property objects of the member states, the Eurasian Economic Union has created a unified register, adopted a number of normative documents that predetermine common approaches to intellectual property protection at the level of the governing bodies of the Eurasian Economic Union At the same time, among the unresolved issues remain the creation of a unified system for the registration of trademarks and service marks of the Eurasian Economic Union and the elimination of double registration of trademarks, the establishment of common approaches to the problem of admissibility of "parallel imports" within the framework of the Eurasian Economic Union, and the creation of an efficient patent system of the Eurasian Economic Union.

Despite the above trend towards the development of a supranational (regional) level of legal regulation of cross-border use of intellectual property, the improvement of legal regulation of intellectual property protection in the context of cross-border use of intellectual property should be carried out not only within the framework of national or regional legal systems, but also at the international level. Since the late 1990s, the World Intellectual Property Organization (WIPO) has been discussing the need to adopt new international legal rules on jurisdiction in cross-border intellectual property disputes (WIPO, 2001). Preliminary drafts of conventions have been developed, but there has been no willingness on the part of member countries to start negotiations on them.

At the present stage, the gradual abandonment of the territorial principle of intellectual property will also be carried out as national legal regulation develops. Countries with high standards of intellectual property protection are more inclined to remove territoriality from their protection. In particular, the European Union (Justifications, 2008) initiates the discussion about this within the World Intellectual Property Organization. The development of conflict of laws and jurisdictional norms in relation to intellectual property rights will expand the possibilities of protection and enforcement of these rights for foreigners. Countries that are cautious about increasing the level of protection of intellectual property rights in order to protect the interests of national producers of goods and services are unlikely to seek to abandon the territorial principle. In any case, however, modification of the legal framework through the adoption of new national, supranational and international instruments is inevitable.

CONCLUSIONS

At the present stage, legal regulation of the use of intellectual property in cross-border relations is carried out at the international, national and supranational levels, in particular within the framework of economic unions of states, and their mutual influence on each other is noted: international standards in the field of intellectual property protection have a significant impact on the formation and development of national legislation, and in the context of regional integration, supranational law is becoming increasingly important. At the same time, the development of general legal regulation within the framework of the Eurasian Economic Union, including on intellectual property issues, may face the problem of its rejection by national legal systems. Such risks were previously mentioned in the scientific literature (Agamogademova, 2013; Karliuk, 2017), and were noted in the course of this study.

Currently, within the framework of the Eurasian Economic Union, there is no holistic system of legal regulation of cross-border use of intellectual property, which determines the peculiarities of intellectual property rights protection in such use. At the level of the Eurasian Economic Union, separate norms defining such peculiarities have been adopted, for example, within the framework of the Protocol on the Protection and Enforcement of Intellectual Property Rights (Annex No. 26 to the Agreement on the Eurasian Economic Union). However, the actions of these "framework" acts are hindered by the fact that so far they have not been adopted acts designed to detail the specifics of certain issues of cross-border use of intellectual property, for example, the Agreement on Trademarks, Service Marks and Appellations of Origin of Goods of the EAEU.

The unresolved issues of exhaustion of the exclusive right to a trademark at the level of the national legislation of the EEU member states does not allow to fully resolve the issues of admissibility of "parallel import" within the framework of the Eurasian Economic Union, which restrains competition in the national trademark markets of the Eurasian Economic Union member states.

Among the key problems of cross-border use of intellectual property within the framework of the Eurasian Economic Union is the need to create a unified system of registration of trademarks and service marks of the Eurasian Economic Union and to eliminate double registration of trademarks, to establish common approaches to the problem of admissibility of "parallel imports" within the framework of the Eurasian Economic Union, and to create an efficient patent system of the Eurasian Economic Union.

It appears that at present the improvement of legal regulation of the use of intellectual property in cross-border relations will follow the way of adoption of normative acts within the framework of regional unions of states (the Eurasian Economic Union, the European Union), taking into account the specifics of their economic and social development, as well as the way of improvement of national, including collision legal regulation in the field of intellectual property, taking into account the government position on this issue.

Thus, in the document of the European Commission "Single market of intellectual property rights" it is noted that the main purpose of the European Union strategy with regard to intellectual property rights is the formation of an integrated

regime of the European Union with regard to the protection of intellectual property rights, which determines the main directions of development and unification of the legislation of the member states of the European Union, including through the creation of a unified patent system, a system of protection of trademarks and brands, regulation of issues

At the same time, not all issues of cross-border use of intellectual property can be resolved at the level of national or regional legislation. A number of issues require the adoption of international legal acts, for example, in the framework of the World Intellectual Property Organization (WIPO), which is restrained today by the inconsistency of positions of the member countries of this international organization.

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Vocational Education Systems in Germany and Turkey: Comparative Analysis*

Sistemas de educación profesional en Alemania y Turquía: análisis comparativo

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ABSTRACT

Globalization challenges, which affected the geopolitical and economic processes, labor market transformation and education internationalization have shaped the urgency of the problem. The purpose of the article is to compare vocational education systems in Germany and Turkey (using the dual system as an example) in order to identify the possibilities of transferring ideas and practices of the dual education system. A comparative analysis is the leading research method, which uses the context, transfer and forecasting methodology. Description and comparison of the context main elements allow determining the possibilities and conditions of the dual education system transfer. The findings provide an opportunity to identify transfer risks and predict the consequences of borrowing. The research results significance consists in context, transfer, and forecasting substantiating as the comparative analysis elements and applying this methodology to the processes of professional education.

Keywords: comparative analysis, context methodology, professional education, dual education system.

RESUMEN

Los desafíos de la globalización, que afectaron los procesos geopolíticos y económicos, la transformación del mercado laboral y la internacionalización de la educación, han configurado la urgencia del problema. El propósito del artículo es comparar los sistemas de educación vocacional en Alemania y Turquía (utilizando el sistema dual como ejemplo) para identificar las posibilidades de transferir ideas y prácticas del sistema de educación dual. Un análisis comparativo es el método de investigación líder, que utiliza el contexto, la transferencia y la metodología de pronóstico. La descripción y comparación de los elementos principales del contexto permiten determinar las posibilidades y condiciones de la transferencia del sistema educativo dual. Los hallazgos brindan la oportunidad de identificar los riesgos de transferencia y predecir las consecuencias de los préstamos. La importancia de los resultados de la investigación consiste en el contexto, la transferencia y el pronóstico que se justifican como elementos de análisis comparativo y se aplica esta metodología a los procesos de educación profesional.

Palabras clave: análisis comparativo, metodología de contexto, educación profesional, sistema de educación dual.

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1. Introduction

The research objective, which is based on the comparative studies methodology, is to conduct a comparative analysis of modern vocational education systems development in Turkey and Germany.

Globalization and education internationalization all over the world are perceived as a fait accompli (Brown, Kirpal, Rauner, 2007) and entail changes in the system of vocational education. The beginning of the new millennium and the Fourth Industrial Revolution were marked by a crisis for vocational education in many countries, requiring the comprehension of existing experience and determination of development paths (Mulder, 2017). The economy and labor digitalization, the production modernization changes, the demographic indicators trends and the migration flows of the last ten years have stimulated the need for reforming vocational education systems. It is possible to change and develop national vocational education systems in the context of globalization through the search, adaptation and implementation of best practices, so it is highly necessary to compare the conditions, characteristics, and functioning of the world vocational education systems (Pizmony-Levy, 2011). The desire to borrow effective educational models actualized the need to analyze the prerequisites for their creation, implementation mechanisms and conditions of effectiveness.

The European Union highly prioritizes the issues of vocational education system. Initiatives such as the European Qualification Framework, research projects studying the problems of introducing international performance indicators and the system of loans transfer in vocational education, and international mobility programs are being implemented. Germany is the leader among the countries of the European Union in the field of vocational education and training. The German dual system has established itself as a unique, high-tech and effective model for the reproduction of the country's workforce, claiming the status of a universal global system. Since the 1980s, when the German dual system participated in cross-border cooperation within the framework of European educational programs, Germany has pursued an active policy of disseminating the experience of dual education in the global educational space (Stenstrom, Lasonen, 2000). Germany is expanding its educational policy through exporting the dual system model to the countries of Asia and Latin America, indirectly forming platforms for the workforce that both Germany and all countries of the European Union need. Germany's neighboring countries as well as its political and economic allies, actively use Germany's experience.

In this regard, it is logical that Turkey, which historically had strong ties with Germany, in the last decades of the 20th century has become a country that has gained experience in implementing projects to introduce elements of the dual system of Germany. Moreover, declaring its desire to enter the European Union at the end of the 20th century, Turkey was forced to compensate for the shortcomings of the resulting voids in the field of professional education in order to use the results of these projects to stabilize the country's economic and social situation (Barabasch, Petrick, 2012).

2. Methods

International projects and vocational education and training development initiatives consist not only of material support, but also mean the transfer of ideas that can be formally regarded as an ideology export in the field of vocational education. While financial support and technical equipment are less sensitive to the situation context, the success of borrowed ideas and practices implementation directly depends on the context and potential of people in this context.

Understanding the problem of local reception of foreign educational policy from a context position has been discussed since the first days of the globalization study. Verger (2011) studied the resonance reasons of a particular practice or reform in a specific context, tried to get away from the global level to the regional one, analyzing the reception and translation of the global educational policy into the local context. Researchers transferring reforms and practices (Landman, 2003, Little, 2000) often use this methodological approach. Joseph Tobin argued that '... a comparative study requires reflection on space and time at the same time' (Tobin, Hsueh, Karasawa, 2009: 17); just because each process of transferring ideas and practices is selective, there might be some questions like why only some aspects of the best practices in the field of education are borrowed and how they are modified at the local level?

Academic fields such as pedagogical comparative studies borrows methodology from anthropology, economics, sociology and political science. Foreign comparativists rely on interpretative research methods that are associated with specific disciplines. Gita Steiner-Hamsey, a professor at Columbia University, insists on theories and methods beyond disciplinary boundaries that are best for explaining a phenomenon. She writes about the need to create strong methodological foundations that will form not only methods of cognition, but also the ability to observe phenomena (Steiner-Khamsi, 2014). The comparison method is based on an interdisciplinary approach in summarizing the conclusions about the similarities and differences of ideologies and educational practices. The study of best practices, international standards and a detailed analysis of institutions' work that not only implement them, but also manage, finance and use them as program conditions, have become relevant topics in comparative research in pedagogy. Thus, the answer to the questions that arise when analyzing the process of transferring ideas and practices can only be given after a detailed analysis of the context, from observing global trends in education to researching a specific country.

The context methodology is important when considering the transfer of ideas and mechanisms for borrowing educational practices. According to Phillips and Oaks (2004: 780), '... all aspects of educational policy are embedded in the context, and the degree of contextuality varies depending on each situation'. Explaining the concept of 'social rooting' through the prism of an educational phenomenon, Cowan (2006) lists such factors as history, economics, geography, language, religion and political philosophy, and considers them to be the most important elements of a specific context. The expanded concept of the context (Wolf, 2014) includes such important elements such as work culture concept, the work regime, labor legislation, and the development and application degree of modern labor technologies, social development mechanisms of

safety and the administrative order of society. Wolf believes that all of these elements can influence the interpretation, implementation, and success of borrowed ideas and practices in vocational education.

The term 'context' is widely used in postmodern humanitarian literature. It can be used when it is necessary to describe the background, environment, situation, circumstances, situation, conditions, or indicate the studied object perception peculiarity, i.e. the point of view, position, aspect or study perspective, etc.

The context concept is ambiguous and multifunctional, therefore, it is possible to replace it with a significant number of various special terms, which often happens in scientific texts. In particular, Kasavin (2008) proposed a line for the development of contextualism as a methodological program of research in philosophy. A number of Western scholars developed this philosophical approach in their works: Dewey, Lewis, Cohen, Morris, Unger, Pepper et al. They considered the context as a situation or process that determine understanding and interpretation one or another phenomenon. Kasavin (2008) considered the context in its broad meaning, as a set of conditions for interpreting various cultural phenomena and solving cognitive problems on this basis, i.e. as a methodological term.

To achieve the goal, it is necessary to conduct a comparative study, analyzing the origin or formation of vocational education systems, the functioning and development of vocational education systems, the effectiveness of the vocational education system. Therefore, in order to conduct a comparison of vocational education systems formation in Germany and Turkey, the main context elements were used, i.e. the formation of vocational education history; the influence of religion on human attitudes to work; the role of national traditions in the work culture formation; the state role in educational and social policies formation, in economics and the labor market.

Particular attention should be paid to visualizing the image of the future system and forecasting challenges and problems. Comparative analysis involves 'ontological work and the formation of a new picture of the world' (Shchedrovitsky, 2018: 126) followed by 'creating images of a possible future', as a result, the institutional matrix of the vocational education system will be formed, which will support cooperation between the subjects of this system. It will help individuals, communities, corporations and social organizations set goals and see understandable indicators of their achievement, it is necessary to build value images of a possible future for professional areas of activity and problem situations. When building a new image of the future, it is important to see the activity 'voids' to predict the possibilities of filling them.

3. Result

Historical background of vocational education.

Germany. The history of the dual education system in Germany has its roots in the Middle Ages, the organization history of crafts and the guilds formation with certain requirements for its members. In addition, Protestantism formed a special work ethic, which later became the cornerstone of German professional pedagogy. The late 19th and early 20th centuries were marked by several significant events in the life of European society, which served as the basis for the formation of the dual education system. The industrialization, which entailed many social changes, has become a fertile ground for innovative philosophical and pedagogical ideas. In particular, the pedagogical ideas of Georg Kershensteiner, who proposed to teach students not only the skills of the profession, but also the theoretical foundations of professional knowledge, had a significant impact on vocational education in Germany (Kershenshtainer, 2017). During this period of state development, German Chancellor Otto von Bismarck actively developed the idea of national security and a social state (Obolenskaya, 1992). Bismarck conceived his reforms as a means to transform the working class into a community of state loyal and conservative German citizens. This concerned the least protected segment of the labor society, to which the students belonged. In the era of the First and Second World Wars, marked by the militarization of Germany, the country's victorious Nazi politics and the ideology crisis, the crisis of vocational education broke out. In Germany, after the Second World War, the concepts of labor education were based on Protestant values, normative pedagogy, spiritual and moral national traditions, which fit into the historical outline of the state development. In the German Democratic Republic, where the ideology of socialism was adopted, universal and collective values were declared and atheism was proclaimed. This situation undoubtedly divided the education of Germany and, after reunification, influenced the further development of vocational education.

Christian culture values revived in education of the united Germany. The concept of labor education, personality-centered approaches aimed at developing the abilities and self-realization of the student were updated, and active labor was considered and is considered the main condition for development.

Turkey. The history of handicraft as a prototype of modern vocational education in Turkey has more than one hundred years.

The historical path of Turkey's vocational education regarding the influence of religion is similar to the history of dual system formation in Germany and work ethic of the Germans. This conclusion is supported by the fact that family succession in the craft still dominates in Turkey; there is a pre-religious guild form similar to a religious union.

Researchers claim that the history of vocational education began along with the history of the modern Turkish Republic, founded in 1923 (Aydin, 2013). Prior to this, the institution of vocational education was not developed in the Ottoman Empire and there was no tradition of obtaining systemic vocational education.

In the period from 1923 to 1927, after the republic proclamation, there appeared nine vocational schools and 1060 people studied there. A great number of vocational educational institutions were reorganized as well. The first vocational educational institution was opened in 1937, and its task was to provide the process of advanced training for vocational school teachers (Bolat, 2015). The duration of vocational education, from 1924 to 1962, was five or six years and involved general academic training and vocational education. Since the beginning of the 1980s, vocational education in Turkey has had a double purpose, i.e. academic preparation for university exams and vocational training for further employment (Aybede, Orbay, 2016).

The influence of religion on attitude to work

Germany. Culture and religion have always determined the state policy and have been a factor in influencing the efficiency of economic development, society, and education. Considering the development of the German state and society, it is worth highlighting the special role of religion in the development of culture, education, and attitudes towards law, labor, and duties. The ideas of early and ascetic Protestantism of 16th and 17th centuries were embodied in the provisions of German labor education, in which labor was seen as a moral improvement of man and was the creation basis for children labor schools. Protestantism, as a branch of Catholicism, carried ideological postulates as such simplicity and modesty in everyday life, honesty and conscientiousness in fulfilling professional duty, industriousness, frugality, accuracy, punctuality. It was for these ideologems that laid the foundations of the German national character, they were embodied in its moral culture, combining traditionally pragmatic values, and influenced the principles of professional activity (Heine, 1994). Moreover, the Protestant work ethic condemned poverty, idleness, idleness and begging while a person could work, and considered it a sin, which, of course, developed entrepreneurship and rationalism as the main work ethics features, which later became the basis of the pragmatic moral German culture.

Turkey. As noted above, despite the Westernization processes of the entire social and political Turkish life in the twentieth century, religion has still had a significant impact on the system of vocational education and training. It is a well-known fact that some guilds of artisans came from medieval brotherhoods, who elected leaders and gave their earnings to provide the brotherhood with food and clothing. If we talk about the attitude to work and craftsmanship in Islam, then the category 'labor' is considered fundamental. Having learned to distinguish good from evil through labor, a person can find their way to self-improvement. Thus, labor is central to the teachings of Islam. According to Islam, upbringing in labor is, first, 'upbringing and instilling a love of labor', while labor is the development of inclinations, the upbringing of character, morality, and beliefs. All pedagogical tasks and goals come down to one thing, that is work. The Qur'an says 'it is necessary to combine both types of labor, to develop both (raas) head and (ayadin) hands' (Soong-Yong, 2004).

Religious influence can also be seen in labor division, when certain crafts were exclusively a male prerogative, and a woman could work, observing certain laws of organizing the workspace. Subsequently, thanks to Ataturk's reforms, women, according to a special article in the Turkish Civil Code devoted to women's rights, received the right to education, the right to work in public institutions, to participate in local elections, and since 1934 in Mejlis elections. At the same time, the traditions of dividing the professions into male and female are still very strong and determine the current state of Turkish labor market.

National traditions and work culture

Germany. Pedantry and rationality as the German mentality main features have become synonymous with the word 'German'. It is believed that these very qualities are the source of many advantages of German life and service. The famous 'German quality' expression arose after products manufactured in Germany had received high appreciation worldwide. There is an opinion that the German rationality is manifested by a step-by-step description of any situation. Protestantism, due to the close attention to a human personality, according to the fair remark of Khadartseva and Kokoyeva, has influenced the European historical and cultural tradition, in particular, the development of German society and the state. It has given a new model of socio-economic development based on the respectful attitude of society towards work, family, private property, freedom, the law; based on the desire of simplicity and, at the same time, prosperity (Khadartseva, Kokoeva).

Turkey. Turkish work culture has generally remained unchanged, despite the formally declared principles of democracy and equality. In the Ottoman Empire times, the military, theologians, and the aristocracy were particularly privileged castes. Artisans and peasants were at the bottom of the hierarchy. At the beginning of 20th century, the intellectuals and the military became the pillar of the Ataturk reform movement, and the purpose was to modernize and create a high-society (Arslan et al., 2009). Religion began to lose its influence mechanisms not only in public policy, but also in everyday life. However, the stratification of society was not broken, despite social reforms. Historically, higher education has been quite privileged and prestigious for young people in Turkey. Higher education meant having a high status and belonging to certain areas, i.e. medicine, politics and business. This category of people was distinguished by the desire to Europeanize their life, which was reflected in their moral culture, stimulated the borrowing and translation of European values. For handicrafts, farmers and people working in service sector, obtaining a university diploma did not become a social elevator, since income and welfare depended not on higher education, but on hard work and a desire to support their family, which ultimately contributed to an increase in the number of students in professional schools (Barabasch, Petrick, 2012).

The state role in the vocational education development

Germany. The dual education system in Germany is characterized by a wide variety of vocational schools their legitimacy is determined by the Federal Republic of Germany Law on Vocational Education, the Youth Labor Protection Act, the Handicraft and Trade Code, which regulate its functioning at the federal level. Legislative acts of the land govern the education sector and initiatives aimed at improving the training system.

The most effective socio-economic mechanisms that support dual education are legislation regulating the participation of enterprises in dual education, state and regional funding, and scholarships as a stimulator of interest in studying at a vocational school, and attracting trade unions and chambers of commerce to participate in dual education, guaranteed employment of future vocational school graduates (Pleshakova, 2019).

The dual education system effectiveness is largely determined by comprehensive legislative support at all levels of government, i.e. from federal to local.

Turkey. Mustafa Kemal Ataturk accession to power, the architect of the new secular state marked the beginning of the 20th century. Having set a goal to make Turkey a developed pro-European state, Ataturk carried out a number of state and social reforms aimed at reforming the education sector. The social welfare has traditionally been the concern of the state: prices and working conditions were regulated and mass unemployment and layoffs were not allowed. In 1936, the Labor Law was adopted, which established an eight-hour working day, overtime was limited, working conditions were regulated, hard work was prohibited for women and adolescents, and social benefits were introduced (Akpinar, Gun, 2016). In our opinion, the relevance of Ataturk's reforms to the reforms of German labor schools has a definite answer. This was a kind of copy of Bismarck social state. However, nine centuries of the sultanate and the Islamic state could not be wasted; therefore, the main stratum that currently supports Erdogan in his policy of returning to religiosity is precisely the part of society that has always been engaged in craft and trade. His reform of education satisfies their desire to merge religion and everyday life.

Turkey has always been a country of contrasts in many ways. On the one hand, historical and political development in the 20th century brought a national reorientation towards secularism and Europeanization; on the other hand, the traditions of the Ottoman Empire and Islam remain the fundamental foundation of the state and society. The unique location of Turkey at the crossroads between East and West has made the country fertile ground for the exchange of goods and ideas, and with the increasing internationalization of trade, skilled workers have become an important competitive advantage of the country. For many years, decades of internal political conflicts did not allow Turkey to pay due attention to improving the quality and accessibility of education. The economic situation of small and medium businesses in Turkey, the traditional gap between vocational educations, the apprenticeship system and the labor market have become factors that negatively affect the process of acquiring the professional competencies. Thus, the strengthening of vocational education in Turkey and the transition to formal employment are necessary to increase the production quality and efficiency, as well as to reduce poverty risks and create more stable living conditions.

4. CONCLUSION

The 'Historical background of vocational education' context makes it possible to conclude that Germany and Turkey have a rich heritage of craft work culture, and this community creates an important prerequisite for the German dual education system transfer to vocational education in Turkey. In addition, both countries experienced the need for social reforms and implemented them. However, the period for implementing social reforms between Germany and Turkey was about fifty years, which affected their timeliness and quality. The lag naturally identified the transfer risks and predetermined its subsequent implementation difficulties.

'The Religious Influence on Attitudes towards Labor' context analysis showed that both in Islam and in Catholicism, labor is the main value. Labor education has always been one of the German and Turkish pedagogy foundations. At the same time, two religions determine male and female roles in society quite differently. Such types of labor as handicraft, agricultural sector and service, a traditional province of men, have always been intensive and required hard work. That is cultivated in children by pre-religious education and the traditions of hard and permanent work in the family. This largely determines the characteristics of labor space and individual professional trajectory in vocational education systems in Germany and Turkey, which leads to their qualitative difference and negatively affects the effectiveness of the dual education system in Turkey.

The 'National traditions and work culture' contexts emphasizes that traditions and work culture determine religious and social conditions. The main difference between the two countries is that Germans have a working culture thanks to the Protestantism traditions and the established 'work ethic', which explains their rationality and pedantry, including high society. The Turks have an elite work culture determined by state preferences. They are leisurely in business, because hard work, the amount of money earned and the availability of higher education do not determine neither the position in society and nor they are a social elevator.

'The state role in the vocational education development' context convincingly shows the historical sequence and systematic, hierarchical and consistent German state policy in the development vocational education. The state policy of Turkey in the field of education does not possess such features. Ataturk's reforms did not develop in subsequent historical periods; vocational education support was not consistent due to internal political conflicts. It was the analysis of this context that showed the greatest risks of the dual education system transfer and its development.

Thus, the comparative analysis results prove the study main hypothesis, i.e. the model of the country's vocational education system is a product of national identity. Any external elements will modify, lose or acquire additional features, passing through the local reception by the national education system.

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The Diversity of Adversities with Psychometric Properties Assessment across Youth Categories through Rasch Model

La diversidad de adversidades con evaluación de propiedades psicométricas en categorías juveniles a través del modelo Rasch

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ABSTRACT

This study will be focusing on several aspects such as the pattern of items distributions of adversities across youth categories, the pattern in reliability and separation index of the items and persons in measuring adversities across youth categories, the pattern in category probability curves across youth categories, and the pattern in item unidimensionality across youth categories. The research was provided empirical evidences on psychometric assessment of newly developed adversity measurement using modern psychometric theory. This information is valuable to expanding research on youth specifically in differentiating responses based on demographic profiles.

Keywords: adversity, Rasch Model, psychometric, youth, diversity, pattern.

RESUMEN

Este estudio se centrará en varios aspectos, como el patrón de distribución de elementos de las adversidades en las categorías juveniles, el patrón en la confiabilidad y el índice de separación de los elementos y las personas en la medición de las adversidades en las categorías juveniles, el patrón en las curvas de probabilidad de categoría en las categorías juveniles, y el patrón en la unidimensionalidad del ítem entre las categorías juveniles. La investigación proporcionó evidencias empíricas sobre la evaluación psicométrica de la medición de la adversidad recientemente desarrollada utilizando la teoría psicométrica moderna. Esta información es valiosa para expandir la investigación sobre la juventud específicamente en la diferenciación de respuestas basadas en perfiles demográficos.

Palabras clave: adversidad, modelo Rasch, psicométrico, juventud, diversidad, patrón.

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1. INTRODUCTION

The issue of youth development is crucial as Malaysia has a total of 14.7 million youths, 46 percent of its 31.7 million population based on Department of statistics Malaysia in 2015 and continuously increasing. This shows that almost half of the population in Malaysia is youth. Youth development is an important issue in national development. Youth are an important asset of the country in which they are the largest contributor to improve the living standards either from the economic, social or political aspects. The Youth Societies and Youth Development Act 2007 (Act 668) define youth as individuals between the ages of 15 to 40 years. However, in 2015, the Malaysia Youth Policy (MYP) changed the youth age limit definition to individuals between the ages of 15 years and before reaching the age of 30 years. In an increasingly competitive global environment, Malaysian youth are faced with various challenges. It is anticipated that youth challenges will multiply in the future if not properly managed (Institut Penyelidikan Pembangunan Belia Malaysia (IYRES), 2016). Malaysia Youth Policy (Ministry of Youth and Sports Malaysia, 2015) had identified four major challenges facing Malaysian youth namely politic, economy, social and technology.

While the Malaysian Youth Index (MYI) was built in 2015, item assessment was only demonstrated through reliability of item indices alone without considering psychometric testing of challenge items from MYP. The development of adversities item amongst youth is important to ensure that dominant adversity can be identified for the purpose of empowering youth or specifically by the youth age category. In addition to the general definition of youth in general from 15 to 29, youths are also categorized into three; namely early youth which categorized under 15-18 years old, mid youth for 19-24 years old, and end youth for 25-30 years old (Institut Penyelidikan Pembangunan Belia Malaysia (IYRES), 2016). Additionally, the psychometric item testing using modern measurement theory is believed to provide more empirical information than Classical Test Theory (CTT). One of the modern theories is Rasch measurement model. Rasch model is very popular and been extensively applied in numerous fields, especially in psychology and education assessment specifically on cognitive or achievement level (Azrilah Abdul Aziz, Mohd Saidfudin Masodi, & Azami Zaharim, 2013). However, the lacking part on the research towards psychometric properties for the items measuring adversity are very limited especially on how to see the items responded across group of different youth. The items are newly developed and this is a good effort to investigating how different response will give different impact on item functionality.

This study will be focusing on several aspects such as the pattern of items distributions of adversities across youth categories, the pattern in item and person reliability also separation index for measuring adversities across youth categories, the pattern in category probability curves across youth categories, and the pattern in item unidimensionality across youth categories.

2. LITERATURE REVIEW

What is adversity?

Adversity or challenges is connected with problems or obstacles experienced by an individual. The examples of challenges such as hardships, difficulties, challenge, unlucky, sadness, misery, distress and sources of stress. Stoltz and Weihenmayer (2010) categorized challenges into inner and outer adversity. The examples for inner adversity such as anxiety, loneliness, fear, lack of confidence, and depression. The external or outer adversity examples such as failure in examinations, computer breakdown, friends fighting and economic problems. For this research context, adversities or challenges among youth are based on Malaysia Youth Challenges.

Youth major challenges

Malaysia Youth Challenges has outlined four key indicators of the politic, economic, social and technology domain (Indeks Belia Malaysia, 2015; Institute for Youth Research Malaysia (IYRES), 2016). Table 1 shows a specific indicator for each domain. This indicator is defined operationally in the context of the research.

Table 1. List of indicators for Malaysia Youth Challenges

Domain		Indicator
Political	P1	Political literacy
	P2	Political Maturity
	P3	Leadership
	P4	Global Thinking
	P5	Regional and International Relations
Economy	E1	Cost of Living
	E2	Entrepreneurship Culture
	E3	Skills
	E4	Employment
	E5	Urban Poor Youth
	E6	Remigration
	E7	Personal financial
Social	S1	Education
	S2	Social Problems
	S3	Spirituality and Religion
	S4	Good Values
	S5	Self-identity and Unity
	S6	Volunteerism
	S7	Mental and Physical Well-being
	S8	Family Institution

	S9	Human Touch
	S10	Community Institution
Technology	T1	Information and Communication Technology
	T2	Social or Digital Media
	T3	Innovation and Creativity
	T4	Science and Technology

Rating Scale Model (RSM)

The RSM is an extension of the dichotomous model in terms of the case in which items have more than two response categories such as Likert scales. In this research, every item has four choices of response (Likert 1 represents "not at all a problem", 2 r represents "minor problem", 3 represents "moderate problem", and 4 represents "serious problem"). This four response will be having three thresholds. Each item threshold (k) has its own difficulty estimate (F). This estimate is modelled as the threshold at which a person has a 50/50 likelihood of choosing one category over another (Bond & Fox, 2015) as shown in Equation (1).

(1)

Where, $$P_i = \frac{\exp[\beta_n - (\delta_i + \tau_k)]}{1 - \exp[\beta_n - (\delta_i + \tau_k)]}$$

P_i = probability of getting a correct answer for Item *i*

$_n$ = ability parameter for respondent *n*

$_I$ = difficulty parameter of an item *i*

τ_k = k_{th} threshold

Item difficulty parameter means the ratio of the number of students who answer wrongly. Respondent's ability parameter is basically calculated based on the ratio of the number of correct items. Both parameters is directed through calibration. The responses for each item is transformed into equal interval score call '*measure*' using natural log (*ln)*. The measure is in *logits* unit. Some of the researchers show their interests in evaluating items based on Rasch concept (Mohd Effendi Ewan Mohd Matore, 2019a, 2019b; Mohd Effendi Ewan Mohd Matore & Ahmad Zamri Khairani, 2018; Mohd Effendi Ewan Mohd Matore, Ahmad Zamri Khairani, Siti Mistima Maat, Nor Adila Ahmad, & Effa Rina Mohd Matore, 2018)

It has four research questions in this research.

a) What is the pattern of items distributions of adversities across youth categories?

b) What is the pattern in reliability and separation index in measuring adversities across youth categories?

c) What is the pattern in category probability curves across youth categories?

d) What is the pattern in item unidimensionality across youth categories?

2. METHODOLOGY

The quantitative approach has been applied with survey because of its capability to collect the data and clarify the phenomena in research. The self-administered online survey was used because cheap, no copying surveys cost of printing, and no coding needed. Thus, the results are being ready for proceed to statistical analysis (Gay & Mills, 2018). The data collection using an online survey was conducted and required the participants to respond to all items and prohibited the possibility of missing data. The total of respondents are 500 youth with 250 (50%) for each group of males and females The respondents were into range of 15 to 29 years old who categorized by 200 youth (40%) from early youth category, 150 youth (30%) represented mid youth and 150 youth (30%) from end youth. Subjects were chosen from five zones by convenient sampling which 100 respondents represented by South, East, West, North and Borneo. The convenient sampling applied with 100 respondents were chosen from five zones (South, East, West, North and Borneo). They respondents were selected based on the sample appropriateness, and willingness to participate in this study. The characteristics of the respondents are (1) they are still within the age of youth categories (15 to 30 years old); (2) willing to answer the questionnaires items and participate; and (3) able to answer items through the medium of online. Participations also was strictly voluntary and anonymous.

Malaysian Youth Challenges model from Ministry of Sports and Youth was applied to the instrument. It has four main domain challenges comprising (a) Political (Political Maturity, Political literacy, Global Thinking, Leadership, Regional and International Relations), (b) Economy (Cost of Living, Entrepreneurship Culture, Employment, Skills, remigration, Urban Poor Youth, and personal financial), (c) Social (Education, Social Problems, Spirituality and Religion, Good Values, Self-identity and Unity, Volunteerism, Mental and Physical Well-being, Family Institution, Human Touch, and Community Institution), (d) Technology (Information and Communication Technology, Social or Digital Media, Innovation and Creativity, and Science and Technology) (Institut Penyelidikan Pembangunan Belia Malaysia (IYRES), 2016). The items are coded from 1 to 10 (politics), 11 to 24 (economy), 25 to 44 (social) and 45 to 52 (technology) with the total number of items is 52.

The instrument is based on four Likert scales by seriousness of the problems which measure from not at all a problem (1) until serious problem (4) (Vagias, 2006). The respondents had been given one week for finishing answer the items. The data will transformed from mean score to logit using Rasch (Wright, 1993). The lower logit score show

that the items are easier to endorse by the respondents and the higher logit show the items are harder endorsing the items.

3. RESULT AND DISCUSSION

This section will elaborate some aspect of Rasch psychometric elements across youth categories (early, mid and end youth). The results will be emphasizing on item distributions of dominant adversities, the pattern of items and persons reliability and separation index of the in measuring adversities, the pattern of category probability curves and item unidimensionality.

Result 1: What is the pattern of items distributions of adversities across youth categories?

The profile of items distributions have been categorized using Tukey's Hinges as shown in Table 2. The items will be categorized into quartile. The Tukey's Hinges values are not interpolated slightly, they are approximations that can be obtained with little calculation. The cutting score in this research will be at 75th percentile or first quartile for the adversities among youth (dominant adversity). The higher logits value shows the item is hard to be endorsed by respondents and assumed as adversity.

Table 2. Item distributions of adversities across youth categories

	Percentiles (Tukey's Hinges)		
Types of youth	**25**	**50**	**75**
Early youth	-.6050	-.0200	.5600
Mid youth	-.6550	-.0550	.5200
End youth	-.3200	-.0350	.2950

Table 3 indicated that the economy is the dominant construct for early and mid-youth. The politics is the most dominant construct for end youth. In terms of the total of adversities, the combination for early youth is (Economy-Politics-Social), mid youth (Economy-Social-Politics), and end youth (Social-Politics-Economy). It means that economy dominated by two groups of youth which are early and mid-youth.

The economy covers seven major aspects in Malaysian Youth Challenges model, for example entrepreneurship culture, cost of living, urban poor youth employment, and skills. This shows that Malaysian youth have difficulty in the aspects such as financial management and debt burden, lack of cultivating entrepreneurial culture, weak manpower skilled, unemployment and marketability, limited work opportunities, competition and cost of living, urbanization problems for employment and management of personal finances. In Malaysia, youths have financial management problems such as bankruptcy. Previous studies have discussed about bankruptcy factors among youths. Youths are likely to become depressed and unable to manage financially well because of the rising cost of living. Malaysia Department of Insolvency statistics from 2005 to 2012 recorded 243,823 people declared bankruptcy. 57 percent comprise of those under age 45. The total of 50 percent of these groups are credit card holders under the age of 30 (Nurauliani Jamlus Rafdi, Noor Aimi Mohamad Puad, Wan Shahdila Shah Shahar, Fadilah Mat Nor, & Wan Shazlinda Shah Shahar, 2015). Furthermore, it shows the evident that most of the youths are bankrupt because of the burden of serious debt obligations such as credit cards, car loan purchases and personal loans. Recent studies have put highlighting on financial literacy and decision making issues concerning colleges and universities students (Rubayah Yakob, Hawati Janor, & Nur Ain Khamis, 2015). Youths are faced with the changing economic and financial environment in line with more complex system and financial transformation including education or personal finance loans, and education investments.

Table 3. Type of dominant adversities across youth categories based on rank

Early youth			**Mid youth**			**End youth**		
Entry	Measure	Adversity Type	Entry	Measure	Adversity Type	Entry	Measure	Adversity Type
24	1.98	Economy	24	1.65	Economy	5	0.95	Politics
22	1.44	Economy	4	1.27	Politics	22	0.91	Economy
4	1.40	Politics	22	1.25	Economy	24	0.91	Economy
5	1.31	Politics	5	1.11	Politics	11	0.73	Economy
30	1.20	Social	35	1.09	Social	30	0.73	Social
35	1.03	Social	30	0.85	Social	3	0.63	Politics
39	1.03	Social	41	0.76	Social	4	0.63	Politics
41	0.94	Social	17	0.66	Economy	35	0.47	Social
7	0.85	Politics	19	0.64	Economy	19	0.43	Economy
3	0.67	Politics	33	0.52	Social	33	0.43	Social
17	0.67	Economy	3	0.52	Politics	38	0.34	Social
11	0.61	Economy	11	0.52	Economy	40	0.34	Social
33	0.60	Social	23	0.52	Economy	39	0.32	Social
			39	0.52	Social			

Result 2: What is the pattern in reliability and separation index for measuring adversities across youth categories?

Table 4 display four criteria's for reliability and separation index including person and item reliability, person and item separation index and Cronbach Alpha. The person and item reliability were recorded within the range of 0.86 to 0.90 (for person) and 0.91 to 0.98 (for item). This value is acceptable as suggested by Bond & Fox (2015). The Cronbach's

alpha value recorded a reliability value of within the range of 0.88 to 0.90 and this value considered good (Fisher, 2007).

Table 4. Reliability and separation index across youth categories

Criteria/youth category	Early youth	Mid youth	End youth
Person Reliability	0.90	0.88	0.86
Item Reliability	0.98	0.96	0.91
Cronbach Alpha	0.90	0.89	0.88
Person Separation	2.99	2.70	2.49
Item Separation	6.27	4.94	3.22

The person reliability show that the items are capable to differentiate between one individual to another for a given measured variable (Bond & Fox 2015; Wright & Masters 1982). The high reliability of persons or items means that there is a high probability that persons (or items) estimated with high measures actually do have higher measures than persons or items assessed with low measures. Person separation is purposely to classify people and item separation is useful to validate the item hierarchy. The results show that value is more than two as suggested by Bond & Fox (2015). For person separation, it shows that items might be sensitive to discriminate concerning high and low performers. Sufficient item separation suggests that the person sample is huge enough to endorse the item difficulty hierarchy (or called construct validity). For the separation index, it shows three levels of person abilities and four to seven levels of items difficulty. (Linacre, 2012). Figure 1 visually show that early youth respondents have the best results in fulfilling the Rasch needs of reliability and separation index.

For overall items assessment, the results show items reliability was recorded 0.99 and it is consider excellent (Fisher, 2007). The person reliability is 0.88. The reliability value located within range of 0.81 to 0.90 and consider good (Fisher, 2007). High reliability of persons and items means that there is a high likelihood that persons or items estimated with high measures actually do have higher measures than persons or items estimated with low measures (Linacre, 2012). The Cronbach's Alpha value recorded a reliability of 0.89 and this value considered acceptable and fulfill the internal consistency (Hair, Celsi, Oritinau, & Bush, 2017). The item separation index of 8.35 is consider excellent and person separation index is 2.75 and consider as fair (Fisher, 2007). Separation index shows three levels of person abilities and nine levels of items difficulty.

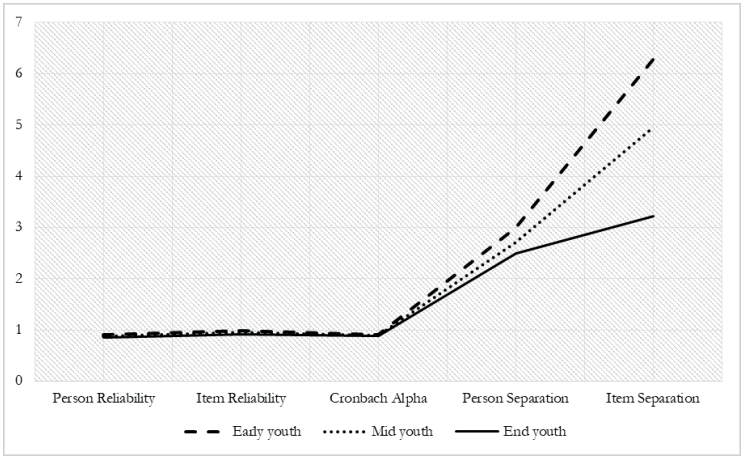
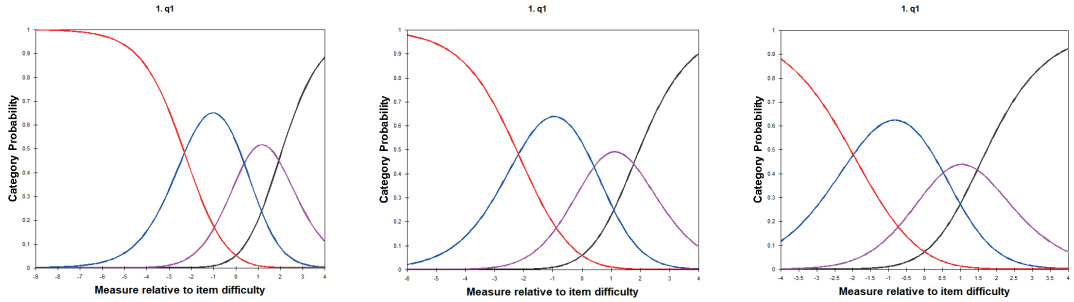


Figure 1. The visual comparison of reliability and separation index across youth categories

Result 3: What is the pattern in category probability curves across youth categories?

The category probability curves displays the likelihood of observing each ordered category based on Rasch model. The probability of each category is shown when there are more than two categories. The intersection points of nearby categories are called by Rasch-Andrich thresholds or structure calibrations. It has four likert scale in this research as mentioned. These connected directly to category likelihoods. The likelihoods associated to the probability of a observed category, not to the essential order categories of achievement. The pattern shows that every point has obviously shown its curves across youth category. The results also revealed that the curve at point 3 may show the gaps is smaller than the rest of the point.



Early youth Mid youth End youth

Figure 2. The visual pattern of category probability curves across youth categories

Result 4: What is the pattern in item unidimensionality across youth categories?

Table 4 shows the aspect of unidimensionality was scrutinized using the Rasch Principal Components Analysis (PCA). The revealed that raw variance explained by measure is in range 19.3% to 29.5%. Even the respond from end youth respondents stated result less than requirement, the result can consider fulfil the at least 20 percents (Reckase, 1979). The noise level of items are in the range 5.6 to 7.9% which is less than 10% as a sufficient indicator for unidimensionality (Eakman, 2012; Fisher, 2007; Linacre, 2007). The eigenvalues indicated the range of 4.1 to 5.1. It was a sign that the value less than 5.0 show the second dimension is not exist (Linacre, 2005) except for end youth. In addition, the ratio of raw variance explained by items with the unexplained variance in 1st contrast been analysed. The ratio must be more than 3:1 and consider as acceptable (Embretson & Reise, 2000). Two groups of early and mid-youth are more than three except for end-youth with less than two. Based on the data in Table 4, it can be concluded that the item unidimensionality was not fulfil Rasch requirement among end-youth respondents compare to early and mid-youth. The items were best measure adversities for early youth, followed by mid and end-youth.

Table 5. The comparison of unidimensionality across youth categories

Criteria/youth category	Early youth	Mid youth	End youth
Raw variance explained by measures	29.5%	26.2%	19.3%
Raw variance explained by items	22.8%	20.9%	15.3%
Unexplained variance in 1st contrast	5.6%	6.5%	7.9%
Eigen value	4.1	4.6	5.1
Ratio	4.07	3.22	1.93

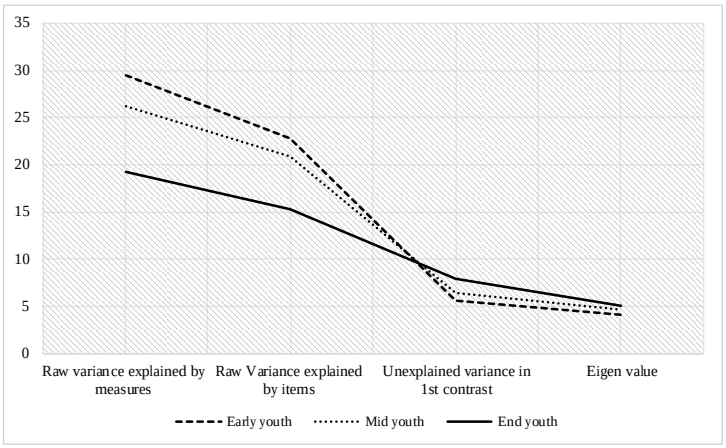


Figure 2. The visual comparison of unidimensionality across youth categories

4. CONCLUSION

The finding revealed that economy was the most dominant adversity among youth in Malaysia and technology is the weakest domain. The psychometric pattern shows good measurement properties such as reliability, unidimensionality and visual scale revision. Items were found to work best for early youth groups, followed by mid youth and end youth. Suggestions for improvements can be made are through the help of the youth on prudent financial management to avoid financial burdens. The items also can be improved by exploring more adversities through qualitative approach. This research also can be expanded to different and specific settings such as at schools and working youth. Further research can be done through the financial management courses to all ages for expose them with the right techniques and awareness of their savings. The limitation of this study is the adversity applied was limited. These types of challenges can be strengthen by adapting other adversities models rather than model used in Malaysia only. Further study can be done through different pattern of psychometric properties assessment according to demographic characteristics.

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