APRIL 2018

International Journal of Law and Interdisciplinary Legal Studies

VOLUME 4 ISSUE 1 ISBN: 978-1-911185-79-6 (Online) ISSN: 2397-6942 (Online)

CONTENTS

FLE Learning

APRIL 2018

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Format for citing papers
This journal may be cited as (2018) 4(1) *IJLILS* 000

Author surname, initial(s), Title of paper (2018) International Journal of Law and Interdisciplinary Legal Studies pp.

IJLILS © 2018 FLE Learning Ltd
ISSN: 2397-6942 (Online)
ISBN: 978-1-911185-79-6 (Online)
This E-journal is published by FLE Learning Ltd (trading as FLE Learning) in Livingston, United Kingdom.

Annual Subscription £150.00

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1.03-AU10-4812

THE RELATIONSHIP BETWEEN CITIZENSHIP AND SOCIAL SOLIDARITY

MR YAOXI SONG[1]

ABSTRACT

Social solidarity is an unfinished area in the research on rights theory. My research interprets it in the sense of citizenship which provides an important solidarity resource for a society full of differences. Citizenship, related to the problem of how to define the relationship between citizens as well as the relationship between citizens and state, is a concept of intersubjectivity. It is, in essence, an exclusive concept, but this exclusion bears a kind of solidarity illusion with the concept of inclusion. This inclusive illusion strengthens social solidarity through the configuration of rights and obligations and identity construction. In our day, the nation–state system and its ethnic cultural background are the boundaries between the inclusiveness and exclusiveness of citizenship. Therefore, to ensure more people can obtain citizenship, we must break through the nation–state system and update citizenship to accord with human rights.

Keywords: Citizenship, Social Solidarity, Relationship

INTRODUCTION

In both the field of thought and the practice of history, there exists an essential theme that seems to be common sense. The theme is the relationship between self and others, individual and society, unity and alienation – namely, how we live in harmony with each other. The theme in question is actually about social solidarity, focusing on how the transformation from "I" to "We" can ensue.

The central question of social solidarity is: how can we co-exist? The issue presses heavily on us in the 21st century for an answer. In most countries and regions, the issue manifests itself as the following aspects: the problems of social inequality and injustice caused by the unfair distribution of social resources; the problems of ethnic identity caused by ethnic differences and immigration politics; the problems of class differentiation caused by the gap in wealth and different degrees of education; the problems of cultural identity caused by multicultural conflict and collision; the problems of body and gender politics caused by sexism and homosexuality; the problems of the insufficient rights of livelihood and democracy caused by different access to social, economic and cultural resources; and the crisis of confidence between governments and citizens, or between citizens, caused by power rent-seeking and market competition in our transformational society. So many such differences exist today; is there one "SOCIETY"? How can social solidarity be possible? The differences in question are expressed in the language of rights and obligations, even of citizenship, which demands the recognition and redistribution of social resources. We, as legal philosophers, have the responsibility to respond to such issues.

SOCIAL SOLIDARITY: THE UNFINISHED AREAS OF RIGHTS RESEARCH

Society is the basis of the study of rights. Rights can make sense only in the context of social relations and social systems. It is necessary to study the issue of identity, which belongs to the field of social relations and social systems, because the identity of the right subjects affects the acquisition and enjoyment of rights. The law is the study of the rights and obligations resulting from the relationship of identity (social relations). The struggle and

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conflict of legal rights are in essence the struggle and conflict of the identity, because of the fact that rights are based on identity. In this sense, it is safe to say that where there is no identity, there are no rights. In pre-modern times, identity was characterised by inequality, such as the relationship between aristocrats and slaves, feudal lords and vassals, kings and subjects, and so on. In modern times, the identity relationship between human beings has gradually been becoming equal. Equality characterises the identity between citizens. The identity of the citizen is the premise that a man can acquire citizenship.

Social solidarity has always been an important subject in political philosophy, sociology and anthropology, and is also a significant theme in legal sociology. legal philosophers focus on the issues of whether society can be united and how society is united. In the fields of political philosophy, sociology and anthropology, the resources to realise social solidarity may be some kinds of ideas, ideology, religious norms, ethics, social customs and institutions, etc. (Marshall, 1950; Turner, 1994; Mann, 1996; Bingzhong, 2006; Xiaozhang, 2009). In the field of legal sociology, it is through the social control of law that social integration and solidarity can be achieved (Hongyi, 2000; Quanying, 2009). But in the study of social solidarity, few scholars study the issue of social solidarity from the perspective of citizenship. And the social ties or social relevance between individual and society established through citizenship are ignored to some extent by scholars.

Citizenship is one of the core concepts in political philosophy, and many scholars have probed into this issue deeply. Among them, both Parsons and Turner have explicitly mentioned the issue of the relationship between citizenship and social solidarity, but it is a pity they have not pursued systematic, in-depth research on it. Alexander (1992, p. 289) offered a criticism of sociology in which the issue of solidarity in civil society was raised:

> "Sociologists have written much about the social forces that create conflict and polarise society, about interests and structures of political, economic, racial, ethnic, religious, and gender groups. But they have said very little about the construction, destruction, and deconstruction of civic solidarity itself. They are generally silent about the sphere of fellow feeling that makes society into society and about the processes that fragment it."

The issue of civic solidarity is actually the issue of social solidarity, which should not and cannot be ignored.

THE BASIC THEORIES OF CITIZENSHIP

The brief review above indicates that few scholars have conducted special or systematic studies on the relationship between citizenship and social solidarity. This paper attempts to study the relationship between social solidarity and citizenship that recognises and requires the redistribution of social resources. The traditional studies of civil rights do not effectively respond to the issue of social solidarity. The current research on citizenship and civil right protection practices mainly focuses on the issue of how to satisfy the rights of individual citizens from vulnerable groups, which usually is a kind of temporary satisfaction for them, because satisfaction of the rights in question does not mean that citizenship is achieved. As a result, the citizenship of vulnerable groups is not recognised in their community, and the vulnerable groups are still marginalised. This intensifies the solidification and division of social classes. This is actually a kind of palliative approach and appeasement that neglects both the social aspect and social integration function of rights; the latter refers to the social solidarity dimension of citizenship. Social solidarity is a central proposition in social theory. It respects social diversity, and at the same time maintains the unity of society so that society does not divide.

This article, therefore, redefines citizen rights according to the meaning of citizenship which provides an important element of solidarity for the existence of a society with

diversity. Parsons (1971, p. 22) understands citizenship as full membership of the community, and points out that there is a kind of relevance between the citizenship and social solidarity: "The development of modern institutions of citizenship has made possible broad changes in the pattern of nationality as a basis of the solidarity of the societal community. In early modern society, the strongest foundation of solidarity was found where the three factors of religion, ethnicity and territoriality coincided with nationality. In fully modern societies however, there can be diversity on each basis, religious, ethnic, and territorial, because the common status of citizenship provides a sufficient foundation for national solidarity." Turner (2000, p. 37) has a similar opinion: "Citizenship provides a form of solidarity, if you like a kind of social glue, that holds societies together which are divided by social class, by gender, by ethnicity and by age groups. The solidarity of the political community of modern societies is provided by citizenship, which works as a form of civic religion."

Citizenship does not just involve civil rights. From the perspectives of legal sociology and political philosophy, it also refers to the institutionalisation of the relationship between citizens on the one hand, and between citizens and nation on the other; it consists of the membership and legal identity of one citizen within a nation, and in the rights and obligations that closely connect with the membership and identity in question. "Citizenship gives individuals and groups access to resources in society. These legal rights and obligations, once they are institutionalized as formal status positions, give people formal entitlements to scarce resources in society, basically economic resources such as social security, health-care entitlements, retirement packages, or taxation concessions, but also including access to culturally desirable resources (within a traditional liberal framework) such as rights to speak your own language in the public arena or rights relating to religious freedoms. These resources therefore include both the traditional economic resources of housing, health, income, employment and so forth, and also cultural resources such as education, religion and language. There are also political resources, which are related to access to sources of power in society, rights to vote, rights to participate politically and so forth. In summary, it may be conceptually parsimonious to think of three types of resource: economic, cultural and political" (Brown et al., 2000, p. 36).

This article regards this kind of civil rights as a force for social transformation and examines how the relationship between citizenship and social solidarity has evolved over time. This evolution includes two aspects. On the one hand, it reveals the conditions under which the state's allocation of citizenship will lead to social schism, and the conditions by which the state's allocation of citizenship will lead to the promotion of social solidarity. On the other, it shows how social schism and social solidarity are counteractive to citizenship, so that citizens' rights and obligations are evolving. That is to say, this article probes both into how citizenship smooths the way for social solidarity, and also how citizenship hinders social solidarity. Namely, the article examines the interplay between citizenship and social solidarity, the effect of citizenship on social solidarity, and the influence of social solidarity on citizenship.

In the west, it is a central theme in the fields of philosophy and politics. Shklar (1991, p. 1) believes "There is no notion more central in politics than citizenship, and none more variable in history, or contested in theory." Citizenship focuses on what a citizen can do, and it is a concept of democratic practice in action. There are "two traditions and interpretations of the nature of citizenship. There are the civic republican style, which places its stress on duties, and the liberal style, which emphasises rights. Now, despite the former's origins in classical antiquity and therefore its longevity, it is the liberal form that has been dominant for the past two centuries and remains so today" (Heater, 1999, p. 4). Habermas (1995, pp. 261-262) also summarises these two seemingly contradictory traditions from the perspective of legal philosophy: "The role of the citizen is given an individualist and instrumentalist reading

in the liberal tradition of natural law starting with Locke, whereas a communitarian and ethical understanding of the same has emerged in the tradition of political philosophy that draws upon Aristotle. From the first perspective, citizenship is conceived in analogy with the model of received secures membership in an organization which secures a legal status. From the second, it is conceived in analogy with the model of achieved membership in a self-determining ethical community. In the one interpretation, the individuals remain external to the state, contributing only in a certain manner to its reproduction in return for the benefits of organizational membership. In the other, the citizens are integrated into the political community like parts into a whole, that is, in such a manner that they can only from their personal and social identity in his horizon of shared traditions and inter-subjectively recognized institutions. In the former, the citizens are no different than private persons who bring their pre-political interests to bear *vis-à-vis* the state apparatus, whereas in the latter, citizenship can only be realized as a joint practice of self-determination."

The core of citizenship is inclusion and exclusion, which are different in different historical periods. The connotation of inclusion and exclusion is expressed through whether citizens have the right to participate in the political affairs of the polis. In modern times, through a membership system based on nationality in a given nation–state, citizenship elevates human beings from a feudal hierarchy to equality; universal and homogeneous citizens come into being, and being and/or not being a member of the nation–state is therefore the sign of inclusion and exclusion. In contemporary times, the basis, body and nature of modern citizenship are challenged by globalisation, post-modern tendencies and multiculturalism. Citizens are no longer an expression of a universal and homogeneous identity, but individual citizens with various differences expressed through a number of aspects, such as ethnic group, race, culture, and so on. These differences turn the minority with some specific features regarding ethnicity, race or culture into "second-class citizens" or the underlying subaltern. Then new changes take place in the criteria of inclusion and exclusion, and nation–states no longer undertake the mission of tolerating all members of society and become the main basis for exclusion.

THE CONTEMPORARY PARADOX OF MODERN CITIZENSHIP

Paradoxically, the extreme development of modernity and the advent of the era of individualism have led to the disintegration of social solidarity. As Mayhew (1990, p. 296) points out: "Modernization, then, becomes a process of dissolving communal. Social mobility, Population density, secular attitudes and above all, the market nexus destroy face-to-face personal ties and loyalties and replace them with the more tenuous, brittle, selfish interpersonal interests created by trade, urban life, and large-scale association." The basic symbol of modernity is the acquisition of subjectivity and the birth of the self. This makes "ego" an "abstract legislator", which excludes "everyone" outside the "ego" as an alienated "Other". Therefore, "the interpersonal relationship becomes a kind of the mutual objective relationship of each other, from which it is impossible to establish a solidarity of mutual recognition between the subjects" (He, 2007). The objective logic that distinguishes extreme "self" from "Other" becomes the most hegemonic ruling principle in modern times, deconstructing the "We". It is the secret of the schism of modern society.

"Various struggles based upon identity and difference (whether sexual, 'racial', 'ethnic', diasporic, ecological, technological, or cosmopolitan) have found new ways of articulating their claims as claims to citizenship understood not simply as a legal status but as political and social recognition and economic redistribution" (Isin and Turner, 2002, p. 2). In other words, in modern times, rather than merely focusing on citizenship as a legal right, there is now agreement that citizenship must also be defined as a social process through which individuals and social groups engage in claiming, expanding or losing rights. Being

politically engaged means practicing substantive citizenship, which in turn implies that members of a polity always struggle to shape its fate (Isin and Turner, 2002, p. 4). This shape provides actually contemporary pluralistic society with a new form of citizenship in the background of modernity, globalisation and multiculturalism, to rebuild political community and social solidarity relationships. This new form of citizenship must have the capacity of tolerating and recognising differences, and the ability to respond effectively to differences. This raises the question of what kind of citizenship is needed in contemporary society.

Kiymlicka and Norman (1994, p. 369-370) said: "Citizenship is not just a certain status, defined by a set of rights and responsibilities. It is also an identity, an expression of one's membership in a political community. Marshall saw citizenship as a shared identity that would integrate previously excluded groups within British society and provide a source of national unity. He was particularly concerned to integrate the working classes, whose lack of education and economic resources excluded them from the 'common culture' which should have been a 'common possession and heritage' (Marshall 1965, p. 101-2). It has become clear, however, that many groups – blacks, women, Aboriginal peoples, ethnic and religious minorities, gays and lesbians – still feel excluded from the 'common culture', despite possessing the common rights of citizenship. Members of these groups feel excluded not only because of their socioeconomic status but also because of their sociocultural identity-their 'difference'." This cultural difference is expressed as the language of citizenship requiring recognition; we call it "multicultural citizenship". Multicultural citizenship "signals a general concern for reconciling the universalism of rights and membership in liberal nation–states with the challenge of ethnic diversity and other ascriptive 'identity' claims" (Joppke, 2002, p. 245). In other words, "How can we construct a common identity in a country where people not only belong to separate political communities, but also belong in different ways – that is, some are incorporated as individuals and others through membership in a group? Taylor calls this 'deep diversity' and insists that it is 'the only formula' on which a multination state can remain united (Taylor, 1991). However, he admits that it is an open question what holds such a country together. Indeed, the great variance in historical, cultural, and political situations in multination states suggests that any generalised answer to this question will likely be overstated. It might be a mistake to suppose that one could develop a general theory about the role of either a common citizenship identity or a differentiated citizenship identity in promoting or hindering national unity (Taylor, 1992b, pp. 65-66; Kymlicka and Norman, 1994, p. 377). The realisation of social solidarity has no universal solution in the world and must be combined with the practice of the struggle for citizenship. Inclusion and exclusion are two sides of the citizenship system, so that we cannot ignore one side when we discuss the other. However, this does not mean that citizenship in practice will be equal and balanced in the social consequences of inclusion and exclusion. Citizenship is, in essence, an exclusive concept, but this exclusion bears a kind of solidarity illusion with the concept of inclusion. This inclusive illusion strengthens social solidarity through the configuration of rights and obligations and identity construction. In fact, the nature of citizenship is exclusion; citizenship is only the result of enlarging citizenship coverage to the population through state grants or underlying struggles. That is to say, inclusion only strengthens and overcomes exclusion, and the exclusive nature of citizenship has not changed. But the significance of inclusion in citizenship is that it regulates and leads the development direction of citizenship. Here, we can see there is a tension characterised simultaneously by conformity and conflict between the exclusive essence of citizenship and social solidarity (the inclusive orientation of citizenship).

CONCLUSION

The fact that the nature of citizenship is characterised simultaneously by inclusion and exclusion results in the fact that citizenship is rigidly limited within the modern nation–state system. It treats citizens as citizens of a nation–state rather than as citizens of the world. Both the exclusion of citizens by national boundaries and through the ethnic culture's discrimination against and exclusion of heterogeneous cultures as the foundation of one nation–state impede the progress and development of citizenship. I believe that the development of the citizenship system should transform from the nation–state to the world, from citizenship to human rights, and ultimately actualise the solidarity of human society as a whole. This is not an unattainable utopia, but an urgent need and an inevitable choice for the realisation of the harmonious coexistence of human beings as a whole.

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2.14-AU32-5465

EVALUATING CONTEMPORARY POLICY MEASURES ON SUSTAINABLE EQUITABLE TENURIAL RIGHTS IN NIGERIA

NELSON MADUMERE[1]

ABSTRACT
Developments and policy measures aimed at enthroning equitable and sustainable tenurial regimes within Nigeria's heterogenous and customarily patrilineal society have often centred on the adoption of statutory legal propositions and judicial interventions. These interventions often entail complete reliance on the "repugnancy clause" mechanism for the eradication of perceived customary practices, the provisions and operations of which are perceived to be contrary to the principles of natural justice, equity and good conscience. However, in view of the limitations inherent in legal approaches to customary reformation, and the inability of most preferred reform measures (like land titling and registration) to guarantee sustainable tenure security and equitable land regimes across many African communities, an urgent need arises for the adoption of other proactive, culture sensitive and sustainable approaches to complement the statutory provisions and judicial proscriptions.

Keywords: repugnancy clause; gender equality; reforms; property inheritance

THE NATURE OF THE NIGERIAN LAND TENURE AND TENURE SECURITY

Land remains the major source of livelihood for a large portion of the Nigerian population. The heterogenous nature of Nigerian society has made it practicably difficult, if not impossible, for the adoption of a centralised system of land governance. This has led to the emergence of given rise to multiplicities of land regimes in reflection of the pluralistic nature of the Nigerian legal system. Unfortunately, most of these land tenure systems, particularly customary tenurial rights, have elicited public criticism and outcries owing to their gendered and discriminatory attributes (Onuoha, 2008, pp. 1-30). Inheritance is the most common way of property acquisition in Nigerian. It entails the transfer of the deceased's bundle of rights and obligations to their heirs or successors in line with the deceased written wills (testate cases) or the deceased personal law (intestate cases). In Nigeria, personal law is either the customary law of the *propositus* or Islamic law; see *Tapa v. Kuka* (1945)[2] and *Ghamson v. Wobill* (1947)[3].

Neither the overwhelming consensus on the implications and inherent socioeconomic benefits associated with robust equitable and secure land rights (Gberu and Girmachew, 2017, p. 1), nor the existence of fundamental statutory provisions against all forms of discrimination, has been able to curb the menace of these obnoxious tenurial principles. Section 42 (1 and 2) of the 1999 constitution of the Federal Republic of Nigeria provides that no Nigerian shall be made to suffer any form of disabilities or restrictions on the grounds of their communal affiliation, ethnic background, places of origin, gender, religious belief or political affiliations. The concept of equitable and secure land rights also forms part of the main objectives of the Nigerian Land Use Act of 1978. In addition, Nigeria is co-signatory to many international instruments on Human Rights, tenurial equity and security, some of which have been ratified and domesticated by the Nigerian parliaments in accordance with the

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[2] (1945) 18 NLR 5, p. 18.
[3] (1947) 12 WACA 181, p. 12.

provisions of section 12(1) of the 1999 Nigerian constitution. However, the existence of these legal documents has been unable to guarantee equitable and secure tenurial rights in patrilineal Nigerian communities where customary practices that dehumanise women and deny them all rights of property inheritance still hold sway. Recently, Nigerian courts have risen to the challenge by clamping down on various customary tenurial rights that discriminate and subjugate women's interests. Thus, in *Mojekwu v. Iwuchukwu* (2004)[4], Justice Niki Tobi of what was then the Appeal Court ruled that the *Nnewi* customary right of inheritance denying women's right of property inheritance was unconstitutional and repugnant to natural justice, equity and good conscience. The Nigerian Supreme Court in *Ukeje and Ors v. Ukeje* (2014)[5] ruled against two elements of the discriminatory *Oli-ekpe* customary practice that prevents female children from inheriting their family assets, and *Anekwe and Ors v. Nweke* (2014)[6] ruled against the customary practice disinheriting barren women and widows without male children.

Before these bold and commendable proscriptions against discriminatory customary practices, the majority of rulings by the Supreme Court of Nigeria on matters relating to women's property rights had always been antithetical to social equality arguments and women's emancipation ideology (*Sogunro-Davies v. Sogunro and Ors* (1929)[7]; *Nwugege v. Adigwe* (1934)[8]; *Suberu v. Sunmonu* (1957)[9]; *Yusuf v. Dada* (1990)[10]; *Akinnubi v. Akinnubi*, (1997)[11]; *Nezianya v. Okagbue* (1963)[12] and *Nzekwu v. Nzekwu* (1988)[13]). Various factors readily come to mind as to the probable reasons for the Supreme Court's recent shift in policy. These factors are worthy of examination to determine the level of correlation between them and the Supreme Court's recent positions.

The first factor that readily comes to mind is the promotion of the "activist justices" from the Appeal Court to the Supreme Court. These are Appeal Court and Supreme Court justices whose pronouncements or concurring statements led to the proscription of several discriminatory customary practices in Nigeria. Among the celebrated land rights and equality cases deliberated upon by the Appeal Court of Nigeria are *Mojekwu v. Mojekwu* (1997)[14]; *Mojekwu v. Ejikeme* (2000)[15]; *Ukeje v. Ukeje* (2001)[16]; and *Uke v. Iro* (2001)[17]. The panel of Appeal Court justices that deliberated on the celebrated case of *Mojekwu v. Mojekwu* were Niki Tobi JCA, Ejiwunmi JCA and Ubaezeonu JCA (as they were then known). In *Ukeje v. Ukeje*, the panel of justices consisted of Oguntade JCA, Galadima JCA and Aderemi JCA. *Uke v. Iro* was deliberated upon by Justices Pats-Acholonu JCA, Akpiroro JCA and Ikongbeh JCA, while the panel of justices in the case of *Mojekwu v. Ejikeme* consisted of Justice Niki Tobi JCA, Justice Olagunju JCA and Justice Fabiyi JCA. Out of all the justices mentioned above, only justices Olagunju, Ubaezeonu, Akpiroroh and Ikongbeh did not make it to the Supreme Court; the rest were eventually elevated to serve as justices of the Supreme Court of Nigeria (Aigbovo and Ewere, 2015, p. 20). Even justice Inyang Okoro, one of the three

[4] (2004) 4 S.C 11.
[5] 2014) 3-4 MJSC 149, [2014] 234 LRCN 1.
[6] (2014) 3-4 MJSC 183; (2014) 9 NWLR (pt. 1412) 393.
[7] (1929) 2 N.L.R. 79.
[8] (1934) 11 NLR 134.
[9] (1957) 2 FSC 30-35.
[10] (1990) 4 NWLR (pt. 146) 657.
[11] (1997) 7 NWLR (pt. 512) 288.
[12] (1963) 3 NSCC 277.
[13] (1988) 1 NSCC 581 (1989) 2.
[14] (1997) 7 NWLR (pt. 512) 288.
[15] (2000) 5 NWLR 402
[16] (2001) 27 WRN 142.
[17] (2001) 11 NWLR (pt. 723) 196.

Appeal Court justices that deliberated on the *Anekwe v. Nweke* case[18], has also been elevated to the Supreme Court (Ibid). It is obvious from the foregoing that the elevation of these crops of Appeal court activist justices to the Supreme Court played a significant role in changing the Supreme Court's unfavourable stance towards women's tenurial rights and freedom in Nigeria. However, some scholars have argued otherwise (Omoregie, 2005, p. 146; Aigbovo and Ewere, 2015, p. 20-21). To these scholars, there is no clear correlation between the elevations of these Appeal court activist justices and the Supreme Court's policy shift. Their position is premised on the claim that some of the activist justices who had demonstrated clear commitments towards the eradication of discriminatory customary land rules against women while in Appeal Court could not maintain this position when they were eventually elevated to the Supreme Court, either because they were eventually trapped in the Supreme Court's web of conservatism or because they were not given the needed opportunity to make their marks (Ibid).

It would be difficult to form any cogent reason for why an activist justice who had assiduously stood against sociocultural, statutory and religious injustices while in the lower courts might suddenly jettison all traces of decades-long activist propositions when finally elevated and presented with an opportunity to put a seal of finality against the continued existence of such discriminatory practices. It is true that Justice Pats-Acholonu, one of the Appeal Court's activist justices, was eventually among the Supreme Court justices that overturned justice Niki Tobi (JCA)'s audacious pronouncement against discriminatory customary rules in *Mojekwu v. Mojekwu* (1997)[19]. However, the matter should not be analysed out of context.

The primary issue under contention in the *Mojekwu v. Iwuchukwu* (2004)[20] case was whether a court has the right to raise a point *suo motu* and proceed to give judgement on it without first hearing the parties; it was not the validity or otherwise of the customary rights of inheritance of the Igbos. This matter is settled in law that the courts do have the power to raise issues *suo motu* that none of the parties to a prior case had raised. However, the courts lack the jurisdiction to proceed and determine the case or any matter thereof on the grounds of the issues the court has raised *suo motu* without first hearing the parties or giving them sufficient opportunity to address the issues so raised. It is the duty of the court to invite the parties to address the raised issues before proceeding to determine the case in question or any matter therein. Anything short of this amounts to procedural error in violation of the parties' right to fair hearing and miscarriage of justice; see *Oke v. Nwizi*, (2013, p. 21252)[21]. Earlier in *Obumseli v. Uwakwe* (2009)[22], the Supreme Court established that on no occasion should a court of law raise a point *suo motu* no matter how clear it may appear to be and proceed to resolve it one way or the other without hearing the parties. If it does so, it will be in breach of the parties' right to fair hearing. This point of law was also restated in *Dalek Nigeria Ltd v. Oil mineral Producing Areas Development Commission (OMPADEC)* (2007)[23], *ODD Ltd v. Joseph Odo and Ors* (2010)[24] and in *Ebolor v. Osayande* (1992)[25], where Nnaemeka-Agu JSC stated that

> our adversary system does not permit a court to dig into the records and fish out issues, no matter how patently obvious, and without hearing the parties, use it to

[18] (2014) 3-4 MJSC 183; (2014) 9 NWLR (pt. 1412) 393.
[19] (1997) 7 NWLR (pt. 512) 288.
[20] (2004) 4 S.C. Pt. 11.
[21] (2013) LPELR-21252, CA.
[22] (2009) All FWLR 486.
[23] (2007) 2 SC 305
[24] (2010) 8 NWLR (pt. 1197) 486.
[25] (1992) 7 SCN 217.

> decide an issue in controversy between the parties to the appeal. It runs counter to the impartial status and stance expected of a judge in the system". Therefore, "it is firmly settled in a plethora of decided authorities [in Nigeria] that any issue or issues which is or are not formulated from a ground of appeal, is incompetent and must be ignored or discountenanced and struck out.

It is unfortunate that various legal minds have joined forces with the press and some human rights activists in their simplistic analysis of *Mojekwu v Iwuchukwu* (Aigbovo and Ewere, 2015, p. 22), as they believe the Supreme Court's position in this case is informed more by atavistic sentiments than by the unambiguous provisions of the non-discriminatory clause as enshrined in our statutes (Omoregie, 2005, p. 146), although one ought to, and can obviously relate to the sentiments informing such thinking. There is no doubt regarding the undesirability of the gendered discriminatory elements inherent in the *Oli-ekpe* customary practice of the Nnewi people, and the danger it poses to our society. However, we must also learn to accept that not all means are legally acceptable. Binding judicial pronouncements must be rooted in established principles of rule of law. Thus, there must be a cause upon which judicial pronouncements are founded. It is a dangerous development for the legal community and society at large to accommodate the violation and abuse of judicial processes on the grounds that doing so overtly or covertly yields positive results. Thus, it is wrong for us to vilify the panel of justices on the grounds of their position in the said matter without putting into consideration the unsavoury precedence such a ruling would establish within our legal system if left to stand. These analysts and jurists ought to know that allowing this would set a wrong precedent and leave an indelible scar on the sanctity of Nigerian legal jurisprudence.

Another factor worth considering is the unprecedented emergence of women jurists on the Supreme Court bench, and their increasing assumption of positions of authority and responsibility within the Nigerian judicial system. Justice Mariam Aloma Muktar was elevated to the Supreme Court bench from the Appeal Court on 8 June 2005, thereby making history as the first ever woman justice to be elevated to the Supreme Court of Nigeria. She subsequently creates another precedent when she emerged as the 13th Chief Justice of Nigeria in July 2012, making her also the first woman to ascend to the position of Chief Justice of the Nigerian Supreme Court (Taire, 2012). Justice Zainab Adamu Bulkachuwa, who was sworn in by Justice Mariam Aloma Muktar on 17 April 2014 as the sixth president of the Appeal Court, also made history as the first female Appeal Court president in Nigeria (Tsan and Olasanmi, 2014*)*. Other women who eventually made it to the Supreme Court after Justice Mariam Aloma Muktar's unprecedented achievement are Justice Olufunlola Adekeye, Justice Mary Peter-Odili, Justice Clara Bata Ogunbiyi and Justice Kudirat Kereke-Ekun (Bamgboye, 2016). As the Chief Justice of the fFderation, Justice Mariam Aloma Muktar was responsible for empanelling the justices for hearing any case before the Supreme Court. Thus, it is not surprising that female Justices featured prominently in the recent Supreme Court's rulings outlawing Igbo customary inheritance practices that discriminate against women. Justice Ogunbiyi was a member of the panel of justices that heard the appeal in the Ukeje case, in which she concurred with the lead judgement. She was also present at the Anekwe case, and particularly wrote the lead judgement for it. Therefore, it is obvious from the foregoing that the elevation of female justices to the Supreme Court and their assumption of positions of authority has played a significant role in sharpening the new-found activist zeal of the Nigerian Supreme Court.

RETHINKING THE NEW DAWN IN WOMEN'S LAND RIGHTS IN NIGERIA

The elemental attributes of any comprehensive legal system and its success is highly dependent on the existence of (and the recognition of) enforceable substantive rights for the people, the establishment of robust procedural rights mechanisms that aid claims and redress, and the availability of robust, functional, transparent, accountable and independent institutions for the enforcement of both the substantive and procedural rights. The lack of strong institutions has particularly been identified as a major constraint militating against the effectiveness of all regulatory and reformatory policies of the Nigerian state, and indeed that of various other African states. This fact was elucidated by President Barack Obama in his speech to the Ghanaian parliaments on 11 July 2009, at the end of which he opined: "Africa doesn't need strongmen, it needs strong institutions" (VOA, 2009, p. 23). It is worth adding at this point that beyond the clamour for strong institutions lies the need for serious commitment and decisive resolutions on the side of stakeholders in standing against the beneficiaries of the old order, who would obviously oppose any reform measures threatening the status quo for their personal aggrandisement.

The recent Supreme Court verdicts against discriminatory customary inheritance rules in Nigeria are highly commendable. Expectations are high in various quarters that this new development will significantly open a new vista into the drive for women's emancipation and the alleviation of poverty within rural communities across Nigeria. However, to others, it only represents a glimmer of hope at the end of the long tunnel of generations of depravity and subjugations against Nigerian women in the name of customary norms. There obviously exists palpable scepticism regarding the possibility of successfully implementing and sustaining the judicial propositions. These misgivings arise because the recent paradigm shift has not been precipitated by reforms, but is the result of the goodwill of the current individual personalities in positions of responsibility who have taken it upon themselves to act in ways that might be beneficial to the state and the general public. There are concerns about what becomes of the Supreme Court's new found activist zeal and women's land rights in Nigeria when the present crop of justices with proven activist credentials and "good individuals" cease to be in their current positions of authority and responsibility. This brings to the fore concerns that the Supreme Court will either declare these judgements were given *per-incuriam* or deliver conflicting verdicts on this single point of law in time to come.

It is not unheard of for the Supreme Court of Nigeria to give a conflicting decision on same question of law (Maduka (n.d); pp. 23-27) or to overrule an earlier decision completely, as it is not bound by its previous decisions). Historically the legal jurisprudence contains quite many cases where the Nigerian Supreme Court overruled earlier decisions. In *Amudipe v. Arijodi* (1978)[26], the Supreme Court overruled its earlier decision in *Babajide v. Aisa* (1966)[27]; in *Oduola v. Coker* (1981)[28], it overruled its position in *Mobile Oil Ltd. V. Abolade Coker* (1975)[29]. The Supreme Court's decision in *B.P. Co Ltd v. Jammal Engineering Co Nig. Ltd* (1974)[30] was also overruled in *Bucknor- Maclean v. Inlaks Ltd* (1980)[31]; in *Egboghenome v. State* (1993)[32], the Supreme Court overruled its earlier decisions in *Oladejo v. State* (1993)[33] and in *Asanya v. State* (1991)[34]; and in *Adisa v. Oyinwola* (2000)[35], it

[26] (1978) 2 LRN 128.
[27] (1966) 1 All NLR 254.
[28] (1981) 5 S.C 197.
[29] (1975) 3 S.C 175.
[30] (1974) 1 All NLR (pt. 2) 107.
[31] (1980) 8/11 SC 1.
[32] (1993) 7 NWLR (pt. 306) 383.
[33] (1993) 7 NWLR (pt. 306) 383.
[34] (1991) 3 NWLR (pt. 180) 422.
[35] (2000) 10 NWLR (pt. 674) 116.

overruled *Oyeniran v. Egbetola* (1997)[36]. It is obvious from the foregoing that the present Supreme Court's positive pronouncements against discriminatory customary rules in Nigeria are not iron-cast. They can be overruled by the same Supreme Court should it see reasons for doing so, and that obviously should be enough source for concern to all stakeholders. Hence, to enhance their long-term sustainability, it becomes essential that all states' positive developments become structured and institutionalised in ways that would enable them to outlast the founding actors. This should be the core of every sustainable developmental goal. Unfortunately, the reverse is the case in Nigeria, as a plethora of governmental developmental strides often die upon the exit of the founding actors. The two case studies described hereafter aptly capture the above analogy.

The first was the achievements of the National Agency for Food and Drug Administration and Control (NAFDAC) under the leadership of Dora Akunyili, the Director General of NAFDAC between 2001 and 2007 and the former Nigerian Minister of Information between 2008 and 2010. Prior to her appointment as the Director General of NAFDAC, the food and drug regulatory environment in Nigeria had no clear-cut institutionalised operational structure, leading to avoidable operational laxity, chaos and confusion. Decision-making was highly subjective, corruption was ripe and there was poor understanding of the roles and responsibilities of the members of staff, which gave rise to ineptitude and inefficiency within the organisation (Akunyili, 2012, p. 223). At her assumption of office as Director General, Dora Akunyili introduced new operational guidelines and functional standard operating procedures to ensure transparency and uniformity in the performance of NAFDAC's regulatory functions. The sweeping restructuring and reorganisation of NAFDAC under Dora Akunyili yielded instantaneous results that attracted unprecedented recognition both locally and internationally; agencies, regulatory bodies within and outside Nigeria, and many international organisations at various times within that period embarked on study tours to NAFDAC in an attempt to learn from the successes recorded by NAFDAC in their fight against counterfeit medicine and other substandard sensitive health products (Akunyili, 2015, pp. 251-266). Organisations like the Global Alliance for Improved Nutrition (GAIN) and the Fund Project for Vitamin A Fortification chose NAFDAC as their executing agency in Nigeria.

Despite the weaknesses and contradictions inherent in the available legal framework for the regulation of the manufacturing, importation, distribution and sales of pharmaceutical products in Nigeria, creating lacunae through which offenders circumvent the law (Erhun, Babalola and Erhun, 2001, p. 24), Dora Akunyili's effective and pragmatic leadership revolutionised the sector and brought about unprecedented improvements within it. The results were visible as the volume of counterfeit medicine in circulation in Nigeria dropped from 41% in 2001 to 16.7% in 2006; the number of unregistered and unregulated medicines in circulation dropped from 68% in 2002 to 19% in 2006 (Akunyili, 2015, pp. 251-253). As of June 2006, NAFDAC had secured a total of 45 convictions against counterfeiters, with 56 other cases pending in various courts in Nigeria (WHO, 2006, p. 9). NAFDAC became the cynosure of other international regulatory bodies across African continent, as various organisations made frantic efforts to emulate its operational strategies. For example, the Drug Regulatory Authorities of Southern Sudan embarked on a working tour of NAFDAC in 2006 to study the reasons for the success in its fight against fake and substandard medicine in Nigeria. Also, the West African Regional Programme for Health (WARPH/PRSAO) organised a study tour of NAFDAC for all the Medicines Regulatory Authorities in West Africa with the objective of learning from the achievements of NAFDAC. The Ugandan National Drug Agency (NDA) visited NAFDAC on 3-4 August 2007 with the sole aim of

[36] (1997) 5 NWLR (504) 122.

learning from the reform measures that had brought so much positive results in Nigeria. The same went for the East, Central and South African Programme (ECSA) (Akunyili, 2012, pp. 251-266).

However, things took a turn for the worse at the end of Dora Akunyili's tenure as Director General. The inability of the Nigerian government to institutionalise the reform measures and operational strategies developed under Dora Akunyili led to the collapse of the robust regulatory capabilities of NAFDAC at the end of her tenure. The present-day NAFDAC is more like a revenue generating agency than a regulatory body. Its internally-generated revenue has increased from 2.5 billion Naira in 2011 to 9 billion in 2015 (Orhii, 2016, p. 5). The agency is currently enmeshed in a long list of controversies and allegations of corruption, including contract scams, air travel racketeering, extortion, dodgy recertification of some companies' operational licences, reception of frivolous donations and large expenditure on fictitious publicity, among others (Adewumi, 2016, pp. 11-12).

Similar to the unfortunate scenario narrated above were the achievements of the Economic and Financial Crimes Commission (EFCC) between 2003 and 2007 under the leadership of Nuhu Ribadu. The myriad problems stifling all Nigerian developmental efforts, ranging from misappropriation and theft of public funds, money laundering, bribery, inflated contract prices, fuel subsidy scams and many other fraudulent financial crimes seemed to have found a lasting panacea in the emergence of Nuhu Ribadu as chairman of the EFCC. He championed a successful anti-corruption campaign that culminated in the indictment and arrest of thousands of corrupt individuals and government officials, over 270 convictions and the recovery of billions of Naira from corrupt public office holders (Iweala, 2012, p. 91). Five governors were indicted and two were successfully convicted. The Inspector General of police was also convicted and jailed for fraudulent enrichment (Alli, 2013, p. 1, 4). EFCC's achievements attracted both local and international recognition and commendation. Antonio Maria Costa, the head of the United Nations Office on Drug and Crime (UNODC), unequivocally described the EFCC as "the most effective anti-corruption agency in Africa" while referring to the chairman of the commission as "a crime-buster made of the hardest steel alloy ever manufactured" (UNODC, 2007, p. 3). It also served as an effective deterrent to would-be financial criminals, and was one of the efforts that led to Nigeria's removal from the financial Action Task Force's list of non-cooperative jurisdictions (Akinosi, 2015, p. 2). However, Nuhu Ribadu was fired by the then Nigerian President, Alhaji Musa Yaradua, for non-declaration of his assets while in office, and that marked the end of the success story of the EFCC. The commission remains a ghost of its past. Lately, the commission has been in the news for all the wrong reasons, mostly on corruption charges against the leadership and members of the commission (Premium Times, 2016, p. 1-8). Some of the hard-earned high-profile convictions have been overturned through presidential pardon (Edukugho, 2013, p. 1-3).

The deplorable positions of the two governmental agencies described above illustrate the limits of the achievements of individual icons in the absence of strong and independent institutions. Whereas strong, charismatic and bold individuals are often needed at the centre to act as catalysts for breaking the cynicism of a jaded public and governmental workforce, only strong institutions can guarantee the sustainability of successes and achievements. Conscious efforts must be made not only to separate the "strongman" from the institution, but also to ensure the establishment of robust, durable, self-sustaining and independent institutions that are immune to political meddling, while simultaneously not being powerful to the point of abuse of power (Akinosi, 2015). It is a shame that the same Nigeria that was recently recognised and commended locally and internationally for her anti-corruption drives is today seen globally as a "fantastically corrupt nation". Thus, it is "not yet uhuru" for the

disinherited and subjugated Nigerian women. While commending the patriotic accomplishments of our individual heroes and the unrivalled doggedness of the activist justices for their bold judicial pronouncements, the fact remains that the sustainability of these noble accomplishments depends largely on robust institutional structures. It is unfortunate and disheartening that the latest efforts to consolidate the legal victories through the introduction of the Gender and Equal Opportunities Bills in 2016 suffered a heavy defeat in the hands of Nigerian parliamentarians (Oshi, 2015).

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3.15-AR05-5192

OUR PLANET'S HEALTH IS OUR WEALTH: SUSTAINABLE HEALTH CARE SOLUTIONS FOR BUILDING A GREEN HOSPITAL FROM THE INDIAN PERSPECTIVE

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ABSTRACT

Notwithstanding the directly proportional relationship between human health and the state of the environment, it is ironic that hospitals are one of the largest consumers of natural resources and among the deadliest generators of waste.

We aim to identify the major causes of pollution and to devise a new system to counter this adversity. While laws in India focus on the issue of biomedical waste management, we shall attempt to build a "green hospital" in light of all three phases of the system, namely production, service and output management. A shift towards renewable sources of energy and modifications in the structural design of the hospital, administrative functions and waste disposal methods, among others, will substantially contribute to the reduction of the hospital's collective environmental footprint. Concerted efforts to adopt this model will thereby alleviate the burden on public health.

Key Words: Green Hospital, Renewable resources, Waste Management, Green Procurement

INTRODUCTION

With a population of over 1.3 billion people and a rapidly growing annual expansion of 7.5%, India ought to embrace the concept of development through the lens of environmental, economic and social sustainability. In this paper, we shall focus on the development of the health care sector in India and shall endeavour to build a model of a Green Hospital to address the issues caused by the present system, while recommending solutions for uniform healthcare throughout the nation.

India has confined its environmental legislations in the health care sector to the management of biomedical waste. However, the operation of health care facilities 24/7 for 365 days a year and the use of high-energy goods and services have turned these facilities into ozone depletion epicentres. The seriousness of the problem posed by the health care industry does not receive adequate recognition on account of the notion that healthcare is of primary concern and thus cannot be compromised, even in the light of adverse environmental impact. On the contrary, it is the lack of adequate regulation and the emission of large quantities of pollutants that cause harm to human health.

For identifying and addressing the major issues associated with health care set-ups, this paper divides the functioning of a healthcare set-up into three distinct phases. Phase 1 deals with the management of input resources, including the architecture of the hospital and the energy and water requirements of the facility. Phase 2 highlights changes that can be made in the daily operations of the hospital to improve efficiency while minimising the waste generated. Finally, phase 3 deals with the issue of output management, since waste generated by healthcare activities can be hazardous or toxic, carrying different types of diseases which can infect the major stakeholders in any healthcare set-up. This stage of the paper looks to

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identify some of the legislation in force and to analyse its implementation to provide sustainable solutions. Building a model for a green hospital will thus contribute positively towards the need to mitigate the pollution of healthcare set-ups, and will also look at sustainable solutions whereby the environment can be protected without compromising on healthcare.

PHASE 1

In the primary phase of the healthcare system, the focus is on the structural components, which includes architecture, the management of input resources and the ancillary facilities integral to its functioning.

Architecture

It must be highlighted at the outset that the structural design of the facility is crucial in not only reducing the carbon footprint of the hospital but also in aiding the recovery of patients. Studies (Ulrich, 1984) support the theory that biophilia, which aims to create strong connections between nature and man-made environments, could influence a patient's emotional state and might accordingly affect recovery. Healthcare design must therefore facilitate maximum sunlight and adequate greenery to incorporate the features of a natural environment. Modern hospitals increasingly make use of electrochromic glass that allows hospitals to program the windows to tint on demand or follow the path of the sun, thereby increasing access to natural light while simultaneously regulating the amount of heat transmitted into the building. The double-glazed glass windows on the north façade and the glazed glass roofs of the CII Sohrabji Godrej Green Business Centre, Hyberabad, allow 90% of spaces to have daylight access and views to the outside with no artificial lights being used till late in the evening.

The Rush University Medical Centre in Chicago, Illinois is a fine illustration of this theory. The unique four-pointed star design maximises the exterior wall surface area, allowing more daylight into each patient room. This structure is placed on a six-story rectangular base building that provides flexibility for future changes, mitigating the detrimental impact of expansion on the environment.

In a developing country like India, however, where nearly 70% of the population (Ministry of Home Affairs, 2011) resides in rural areas, it is vital to recommend low cost solutions. Taking inspiration from traditional architecture, *jaali* windows or perforated stonewalls can be built, as opposed to window spaces, as this enables the diffusion of direct sunlight and the free circulation of air. Proper usage of shutter windows or the construction of cupolas atop small-scale facilities are other techniques to improve air circulation.

Energy

Research shows that health facilities in high- and middle-income countries are among the largest commercial consumers of energy (Franco et al., 2017). In India, while privately run hospitals face the issue of exceedingly high utilisation of electricity, hospitals in the rural sectors have to deal with the complication of inadequate energy supply, which compromises the health of its people. Both these predicaments can be rectified by making the shift towards renewable energy based on the climate of the region. Depending on requirements, hospitals can instal solar panels on the roof to source the energy for various functions, including the operation of medical equipment and the heating of water. Accounting for the high capital cost of solar panels, hospitals in close proximity can also co-invest in energy projects (Cohen, 2016).

Apart from solar energy, reliance can also be placed on wind, and 65% of power from India's renewable sources comes from wind energy (Ministry of Mines, 2013). The viability

of this is attested by the case of the Kohinoor Hospital, Mumbai, which procures 90% of its energy from a windmill installed offsite.

Purchasing hydropower is another viable solution, as India is the 7th largest producer of hydroelectric power, boasting more than 5000 large dams in the country (Banerjee, 2015). Interestingly, in 2016 the Minister of Power stated that India had a surplus of hydropower (Ministry of Power, 2016), so it is time to utilise these resources optimally. It is pertinent to mention that all three forms of renewable energy discussed are currently cheaper than brown energy (Lazard).

For rural healthcare facilities, biomass energy holds strong potential, with about 200 tons of agricultural waste going unused in India (Ministry of Mines, 2013). Additionally, they can also resort to using small photovoltaic (PV) solar systems (alone or in tandem with a fuel-based generator) to power a range of low and medium-power devices efficiently, including refrigerators, small laboratory devices, water pumps and small medical devices.

Energy conservation can be further helped by enhancing greenery, as this reduces the environmental heat stress and in turn the need for air conditioners. A 10% increase in vegetation can reduce the urban heat-island effect by an average of 0.6ºC (Steeneveld, 2011). Incorporating traditional architecture, such as courtyards, would not only reduce the need for artificial lighting but would also improve cross-ventilation (Wu, 2011). The building materials also play a crucial role in alleviating the issue of entrapment of heat. Material such as slag cement, a by-product of the steel industry with an SRI of about 71 (Marceau and VanGeem, 2007); rubber or linoleum flooring, both natural products (Environmental Protection Agency, 2007); and investment in low VOC (volatile organic compounds) anti-bacterial paints are some of the changes that can be considered while constructing a green hospital. Aside from these structural initiatives, energy can be greatly conserved through the idea of green procurement, which will be discussed in detail in the following section.

Water

The climate in India is either tropical wet and dry or humid sub-tropical, where rainfall is unreliable and restricted to a few months in the year. In meeting the requirements for about 500–700 litres of potable water per bed day (Sood, 2016), therefore, it is integral to make optimum use of this limited supply of rainwater by the construction of recharge wells and rooftop harvesting channels. This technique was observed to be effective to recharge the ground water level, as illustrated by the project undertaken by the Marriot Welcome Hotel, Delhi, where at the relatively low cost of Rs 1.5 *lakh*, the building was able to harness a staggering amount of over 8.3 *lakh* litres of water in the semi-arid capital of India.

In addition to regulating the amount of water used for irrigation, ensuring regular maintenance of the plumbing facilities and the reuse of recycled grey water in the cooling towers. Installing sensor and automatic taps not only improves the sanitary level of the premises, but also helps the conservation of water, as these faucets are usually designed with low flow rates. The mechanism for the recycling of grey water and its further use will be explained in detail in the following sections.

Transportation

India's foremost healthcare facility, the All India Institute of Medical Sciences (AIIMS), witnesses an astonishing inflow of over 10,000 patients on a daily basis (Dhaor, 2015). This is merely one of the many examples to substantiate how hospitals have become an epicentre for congestion and traffic, with the high concentration of carbon emissions and the accessibility of transportation becoming a barrier for patients' health. Healthcare facilities must also regulate the vehicles entering their premises and prohibit vehicles running on high pollution fuels barring patients requiring emergency care.

While public transportation amenities do exist, only 20% of patients opt to use these routes (Sankar et al., 2015), as sick and disabled persons find it cumbersome to travel in crowded, confined modes of transportation. Providing for comfortable, adequately spaced, clean energy-fuelled bus shuttles that can transport these patients will minimise the inflow of private vehicles.

As a more long-term solution to decentralise the vehicular pollution near hospitals, the management can also employ alternate means of transport such as cable cars. These traditional systems, once only considered to be used for the purpose of tourism, are coming up as viable solutions for urban mass transit, as it not only offers little environmental disturbance in its construction and operation but is also significantly cheaper than other modes in terms of capital and maintenance cost (Kumar, 2016). Hospitals must thus constantly strive to adopt a greener infrastructure while not compromising on the health of the patient.

PHASE 2

Green Procurement

Round-the-clock operation has turned the healthcare sector into a major hotspot for greenhouse emissions. While patient care is a priority, initiatives in the administration of hospitals can be taken to effectively reduce its carbon footprint.

Hospitals must implement a green procurement policy comprehensively entailing all criteria required to be complied with prior to purchasing, such that the products and services acquired have minimal impact on the environment. This should include green air conditioning systems that are either five-star rated by the Bureau of Energy Efficiency (BEE), or inverter technology ACs that self-regulate depending on the temperature of the incoming air and the level set by the thermostat. Both systems not only save energy costs but also use natural refrigerants like R290 that have zero ozone depletion potential and minimal global warming potential. As an added incentive, the capital cost of these systems has been substantially reduced with the implementation of the EESL five-star AC Scheme, 2017 whereby Energy Efficiency Services Ltd. (EESL), a joint venture company of PSUs of Ministry of Power and the Government of India, sells “super-efficient” ACs to institutional buyers like hospitals at a subsidised rate (Dutta, 2017).

Hospitals must also opt to collaborate with sellers who embody the principle of Extended Producer Responsibility (EPR), as conceptualised under the E-Waste Management and Handling Rules 2011, whereby the responsibility of the manufacturer extends not only to the aspect of production but also with regard to the management at the post-consumer stage. EPR is usually illustrated through the incorporation of take-back provisions within the purchase agreement, where the manufacturer subsequently recycles the end product. Companies that practice Green Supply Chain Management through methods such as sustainable sourcing, pull-back of unused products and remanufacturing processes, among others, must be prioritised in the tendering process (Liu and Chang, 2017).

Other suggestions include the purchase of occupancy sensing lights and LED lights as opposed to traditional fluorescent and incandescent lights, reducing product packaging, switching to safer cleaning products, and purchasing products that are free of latex, polyvinyl chloride, and diethylhexylphthalate (Kwakye, Brat and Makary, 2011).

Another aspect of product management is the issue of reprocessing single-use devices (SUDs). While a few countries like the US, Australia and Saudi Arabia have legalised and regulated this process, India continues to practice the reprocessing of SUDs without a legislative framework in place (Costa, 2016). The framework adopted by the US’s Food and Drug Administration (FDA) has carefully categorised the products based on the risk of harm

to the patients, and subjects each reprocessing manufacturer to the submission of an application for pre-market approval (Food and Drug Administration, 2011). Validation data includes cleaning, sterilisation, and functional performance data, which confirms that each SUD will remain substantially equivalent to a predicate device after the maximum number of times the device is reprocessed (Noble, 2013). Reprocessed SUDs are not only 50% cheaper, but also have a lower adverse impact on the environment. India ought also to have a uniform regulatory framework in place for the reprocessing of SUDs.

Inventory Management

Hospitals must adopt an effective inventory management system through centralised purchasing and storage control to secure investments and reduce the waste generated. The system must track the course of purchased drugs, starting from the date of manufacture to the date of expiry. A clear idea of the life period of each product will enable the pharmacist to rotate the stock such that the earliest labelled stock is utilised first, following the principle of "first in, first out". This mechanism will not only help avoid incidents involving the administration of expired products, but will also assist the purchaser in making more informed decisions based on the actual consumption of the product. The purchaser will be able to efficiently rely on the "Just in time" policy, where he waits to order materials until they have almost run out, thus preventing overstocking and wastage.

Medical Records

With over 88% of the households in India having a mobile phone (Bhattacharya, 2017), it is imperative to ask why healthcare facilities still rely on traditional paper based data recording. Consistent with Prime Minister Narendra Modi's Digital India initiative, all hospitals must endeavour to make the shift towards the adoption of electronic health records, which will include all information beginning from the patient's basic health record and diagnosis history to the doctor's prescription and the data relied on for such a clinical decision (Sharma and Aggarwal, 2016). Drug prescriptions can be sent to the patient via SMS to save costs on the purchase of paper and simultaneously minimise the waste generated by hospitals. It is pertinent to mention that the information system becomes more efficient once it is electronic, as it eases the process of quick searches for diagnostic history based consultations. However, if certain operations mandate the requirement of hardcopies, then it is recommended that hospitals invest in chlorine-free paper made of more sustainable substances like hemp or bamboo.

The Role of Healthcare Professionals

Doctors can serve as a powerful voice for public awareness in transforming information and research into common knowledge. People instinctively take the opinion of doctors with an added seriousness, as doctors are pioneers for health. It is therefore important to involve health professionals in the battle against climate change through collaboration with environmental groups, local governments, NGOs and other community organisations, which educate people about the reality of a dying planet and its impact on human health. An illustration of this may be seen in the women's health department. With an estimated potential of 9000 tonnes of sanitary waste (from 432 million pads) generated annually (Clean India Journal, 2016), gynaecologists can advise their patients to opt for the alternative of silicone menstrual cups, which are more environment friendly, thus reducing the hazardous chemicals utilised in the production of sanitary napkins and minimising the quantity of waste generated.

Furthermore, healthcare professionals can also interact and work closely with experts from the engineering field to devise new or alternate medical technologies that have a lesser adverse impact on the environment.

PHASE 3

For a successful working model of a Green Hospital, output management including the generation, segregation, storage, transport and treatment of waste must be efficiently addressed. WHO classifies healthcare waste into eight distinct categories: general, pathological, radioactive, chemical, infectious, sharps, pharmaceuticals and pressurised containers. Although nearly 75%–90% of healthcare waste is general waste, the concern actually relates to a small portion which comprises the other seven categories, as there is a lack of effective legislation being implemented or of solutions to tackle this output effectively.

The Indian Perspective

The impact of healthcare waste was first recognised in the late 90s through the introduction of the Biomedical (Management and Handling) Rules 1998, which acted as the legislative tool and guide for output management in the healthcare sector (World Bank, 2012). According to the Rules, biomedical waste refers to any waste generated during the diagnosis, treatment or immunisation of human beings or animals or research activities pertaining thereto or in the production or testing of biological or in health camps (India, 2016). These Rules prescribe that every occupier must take all necessary steps to ensure that waste is (i) handled in a manner not causing any adverse effect to human health and environment, (ii) segregated in containers at point of generation, and (iii) handled and disposed of in accordance with prescribed environmental standards. All covered institutions are mandated to either set up treatment facilities like incinerators, autoclaves or microwave systems, or to ensure that all biomedical waste is treated at a common waste treatment facility.

While the Rules permit the incineration of waste without any specified penalties, the 2016 Amendment addresses the plan to phase out the use of chlorinated plastic bags, gloves and blood bags within two years. Pre-treatment of laboratory waste, microbiological waste and blood samples and blood bags through disinfection or sterilisation on-site in the manner prescribed by WHO.

Awareness and Practices

A study conducted in the State of Jammu and Kashmir concluded that average solid waste generated per bed per day was 632.04g, and that even though nearly 61.28 g was biodegradable, the waste was disposed collectively without any segregation (Choudhary and Slathia, 2014). With nearly 85% of primary, 60% of secondary and 54% of tertiary healthcare institutions falling under the Red category of INCLEN (INCLEN Programme Evaluation Network [IPEN] Study Group, 2014), and almost 55% of hospital employees being completely unaware of adequate collection and disposal mechanisms (60% of them did not consider it a major issue), there is a need to tackle output management immediately and raise the awareness of the healthcare professionals (Acharya, Gokhale and Joshi, 2014).

Output Management

As discussed above, the output generated by the healthcare sector can be broadly classified into general waste and biomedical waste.

Biomedical Waste

Categorisation into Internal practices and External practices is necessary for the effective and systematic management of waste. The major internal practices that need to be looked at include Segregation, Storage and Transportation.

The most basic form of segregation is the separation into hazardous and non-hazardous wastes, based on a colour coding system prescribed under the Biomedical Rules 2016. However, colour coding based on highly infectious wastes, other infectious waste, pathological and anatomical waste, sharps, chemical and pharmaceutical waste, radioactive

wastes and general healthcare waste as recommended by WHO continues to be the most effective mechanism. Investment in central storage areas for large hospitals and separate storage areas for infectious, pharmaceutical, chemical and radioactive waste must be made. Even though the Biomedical Rules require facilities to have adequate interim storage areas, the lack of enforcement of penalties has made this provision ineffective (Facility Guidelines Institute, 2010).

Lastly, with regard to the transportation of these wastes, the staff involved must be adequately trained and aware of all hazards, there should be proper labelling indicating the transportation of biomedical waste, and designated safe routes must be devised prior to commencing transportation (United Nations, 2009).

Sustainable Disposal and Treatment Mechanisms

Even though incineration is the easiest and the most widely practiced treatment mechanism, it is not a sustainable solution as it creates a threat to the general public through the emission of mercury and other heavy metals, dioxins and furans by the combustion of plastics such as PVC. The ash generated from incineration is also tainted with heavy metals and other toxic residues. Since the Biomedical Rules have no provisions to prevent the use of incinerators, we must recommend alternatives for a green hospital.

A steam-based treatment called Autoclaving, which has already been used for sterilising medical equipment, is a very effective solution capable of treating infectious waste, sharps, isolation and surgery waste, blood-contaminated materials, etc. with minimal adverse impact on the environment.

Another effective and sustainable technology, microwaving, kills infectious agents through heat and pressure. This has also been prescribed in the Biomedical Waste Management Rules, but the cost associated with implementing this solution is extremely high and it may not be possible to implement it in the public healthcare sector. However, other ancillary solutions of shredding and chemical disinfectants can be used internally by healthcare set-ups.

The Rules provide for the disposal of treated waste through burial pits constructed on the premises. These healthcare pits can be an effective solution when there are only small amounts of waste, but issues arise when hospitals generate larger quantities and there is a lack of land to dispose of the output. Land disposal is usually done in two distinct ways: uncontrolled and controlled disposal. Uncontrolled disposal without any segregation can cause various hazards to human health and the environment. Controlled landfilling systems are to be adopted, whereby a systematic segregation and burial mechanism of waste can be created.

Water Treatment

Wastewater is usually treated externally by the municipal sewage treatment. Larger healthcare set-ups can treat water on site in three stages. The primary stage includes filtering the water to remove large objects; the second stage removes carbon and nitrogen components dissolved in water by microbial digestion; and the last stage is the polishing stage, whereby the water is made ready to be discharged into the environment. The cost associated with this three-tier process is a major hindrance, but new technologies such as disinfectants and membrane biological reactors are reducing the cost associated with this to make it a sustainable solution.

Phase 3 of the green hospital model must include an awareness drive to educate all the stakeholders of this industry regarding the need for sustainable practices of medical waste and methods that can be adopted to reduce generated waste. A focus on segregating waste and adequate investment in environmentally sustainable technologies are also crucial to the effectiveness of this model.

RECOMMENDATIONS

A system through which most of these sustainable solutions can be implemented effectively can result in a substantial difference in the carbon footprint left by any healthcare set-up. Collaboration between the government and private players to create a level of awareness among the people in general would contribute immensely towards better sanitation and human health and would provide a protected environment to live in. Judicial use of all input-related resources and sustainable management of output in a healthcare set-up through the methods highlighted above would ensure better living conditions for all environment stakeholders without compromising on the services provided to patients.

CONCLUSION

With the reality of climate change becoming clearer every day, it is time to mobilise and form a united front for sustainable development. The Indian health sector can start by pledging to pursue initiatives like the 2020 Healthcare Climate Challenge, launched at COP21 Paris, with the aim of creating green and healthy hospitals. It is the duty of all the people of a country, including the government, to bring about sustainable solutions devoted to maintaining the health of our planet by in no way compromising the quality of services provided to its citizens.

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THE RISE OF ECONOMIC PATRIOTISM AND ITS IMPACT ON CROSS-BORDER MERGERS AND ACQUISITIONS: REDEFINING THE HORIZONS OF GOVERNMENT INTERVENTION

SANJANA CHOWDHRY[1]

ABSTRACT

Globalisation is approaching its pinnacle by steadily blurring national boundaries and integrating national economies to create an inevitably interdependent world economy. The UK has always been conscious of such interdependence while formulating its business regulations. A prime example of such conscious policy-making is the UK's open FDI policy, which fosters acquisition of UK based companies by foreign bidders with almost no restrictions. Lately, this ease of acquisition has led to the loss of vital UK companies to foreign competitors. Further, the global has witnessed drastic changes that present unseen challenges to national security not accounted for in UK's existing takeover regime. The complexities of this external change are intensified by the domestic uncertainties of Brexit and UK's newly assumed nationalist disposition. The fundamental question germinated by these circumstances and concerns is whether the UK government should have greater powers to intervene in the acquisition of a UK based company by a foreign bidder. This paper thus seeks to address this very question; although this debate has been alive in speculation and political commentary, it has yet to produce any substantial results or firm commitments.

Key Words: cross-border acquisition, foreign bidder, government intervention, national security

INTRODUCTION

On 17 February 2017, Kraft-Heinz launched an unsolicited bid for Unilever PLC and sent United Kingdom's (UK) political and business community into a frenzy (Clements, 2017). Kraft-Heinz, an American company backed by 3G Capital and Warren Buffet's Berkshire Hathaway Inc., can be best described as the meanest shark in the ocean of capitalism (Berman and Kenwell, 2017). Ironically, one of the milestones that earned it this reputation was its takeover of Cadbury, another iconic British company, in 2010 (Business Innovations and Skills Committee, 2009, p. 5). Unilever on the other hand is a thriving Anglo-Dutch consumer goods mammoth respected for its commitment to long-term sustainability. Over the three days of hostilities that ensued, Unilever employed every trick in the book to thwart the bid until Kraft-Heinz amicably backed off, stating it was not interested in a hostile takeover (Boland, 2017, p. 7). The bid was a rude awakening for both Unilever and the UK government. The government, although publicly opposed to the takeover, was absolutely powerless to control the bid's outcome. This situation reopened old wounds inflicted during the controversial Cadbury takeover, which had resulted in losses of every variety for the UK and its citizens (Patrone, 2011, pp. 64-66). Once again, the UK government and a vital British company, along with its employees, assets, innovations and industry domination, were in a sinking boat in the foreign ocean of capitalism, with no lifejackets capable of rescuing them. This seemingly distressing situation gives rise to many question of excruciating importance. What if Kraft had relentlessly pursued Unilever, raising its offer price until it drew blood? Could the UK government have taken any action except to clench its teeth in anger while

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sitting with folded hands? Should the UK government make provisions for lifejackets in the form of government intervention for the next time this turbulent ocean approaches its shores?

In this paper, I aim to answer the above questions and suggest a way forward. Section 2 explores the factors prevailing domestically in the UK and in the global marketplace that favour government intervention, and it finds appreciable evidence in support of greater intervention. Section 3 conducts a comparative evaluation of the power of intervention wielded by the governments of other similarly placed and respected jurisdictions. This part alarmingly concludes that other jurisdictions have raced past the UK to ensure the protection of their "national interests", and urges for the introduction of measures to help the UK keep pace. I then conclude in Section 4 by advocating a calculated increase in the powers of intervention without losing sight of the valid purpose of such a power and the need to balance it with other objectives. Thus, this paper aims to add to a very recent and crucial debate, especially in the UK, and endeavours despite the limited literature to assert its standpoint forcefully.

A CASE FOR GOVERNMENT INTERVENTION IN UK: NEW CHALLENGES AND OPPORTUNITIES

The UK's present politico-economic environment has shown a nationalist inclination and is constituted of various intertwined factors fuelling a debate on economic patriotism. This section of the paper attempts to analyse the most pivotal of these factors respecting takeovers by foreign bidders.

1. The fall in the number of "National Champions"

Since the Brexit vote, UK has lost heavyweights like ARM Holdings, WS Atkins and (most recently) Worldpay to foreign acquisition (Massoudi, 2016, p. 3; Burton, 2016, p. 12; Pooler, 2016, p. 5). Additionally, there have been several failed bids to acquire high-profile companies, such as Pfizer's bid for AstraZeneca (the UK's largest pharmaceutical company) and Kraft-Heinz's bid to acquire Unilever. These companies are at the forefront of vital industrial sectors critical to British prosperity, making their acquisition a national loss. Declining numbers of such "national champions" has profound implications for the UK's employment opportunities, innovation, infrastructure, industry dominance, long-term economic supremacy, etc. (Kastrati, 2013, p. 31-33). This situation is worsened by the acquirer, which in most cases are tax-dodging and profit-seeking corporations, capitalists and private equity firms (Pwc, 2017, p. 18-24). For instance, Pfizer itself confessed to tax avoidance as one of its objectives for acquiring AstraZeneca. Such acquisitions are made easier by the recently depressed value of sterling in the midst of Brexit uncertainties, which is expected to continue at it lowest in the near future (Martin, 2017). Such a predatory pattern elicits the demand for protectionist measures to shield UK's companies from foreign siege at a time when they are most vulnerable.

2. The Conservative government's standpoint

During her electoral campaign in 2016, Theresa May, Prime Minister of the UK, reflected upon AstraZeneca's potential takeover and suggested that the government should have the power to intervene in such bids (Parker, 2016, p. 6). The Conservative government has continued to hold this opinion and has time and again given statements about its intention to undertake a complete review of the takeover regulations (Lascelles and Luque, 2016).

Recently, the government's willingness to intervene in cross-border deals was demonstrated by its decision to delay approval of Hinkley Point C, a project to develop a nuclear power station in Somerset led by EDF, a French state-owned corporation and state-backed China General Nuclear Power Corporation (Ruddick, 2016, p. 7). It was speculated

that the delay resulted from national security fears due to Chinese involvement in the project (Ruddick, 2016, p. 7).

The above statements evidently highlight the government's hypersensitivity to foreign takeovers and its growing protectionist sentiment. However, being aware that any such policy change will imply a monumental shift from the present laissez-faire approach, the government is carefully reviewing its options while waiting for the opportune moment. Thus, with a government more supportive of calculated protectionism than any of its predecessors, the UK's departure from a historically open economy might be on the horizon.

3. Disguised opportunities presented by Brexit

As a member of the European Union (EU), the UK is bound by the European Union Merger Regulation (EUMR) to regulate all takeovers that fall within its scope. Article 21(3) of this regulation prevents national legislation from interfering with its operation. Resultantly, the government is incapable of blocking any deal once the European Commission (EC) has approved it largely on competition grounds. Although Article 21(4) provides certain exemptions allowing member states to protect their legitimate interests, these exemptions are rarely granted. On being asked to comment upon the expected changes to the takeover regime post Pfizer's bid for AstraZeneca, the Secretary of State rightly noted that the UK operates "within serious European legal constraints" in considering any extension to its public interest powers (*HC Deb*, 2014-15).

Brexit presents the government with unprecedented opportunities in this regard. Giving credence to informed opinions and well-supported speculation, it is likely the UK will exit the EEA post a hard Brexit, thus rendering the EUMR inapplicable (Edwards, 2017; Clifford Chance, 2016). This will finally bestow the government with the freedom to draft a tailored takeover policy with its chosen measure of protectionism.

4. The rise of State Wealth Funds (SWFs) and State-Owned Entities (SOEs) in the MandA landscape

The continuous ascent of SWFs and SOEs as major players in the global market has been the axis of worldwide media attention and government scrutiny. In 2015, SWFs alone owned assets worth USD 11.3 trillion, projected to reach USD 15.3 trillion in 2020 (Pwc, 2016). The fear surrounding the expanded role assumed by governments in global market deals is primarily based on national security concerns (Mation, 2016, pp. 494-496). In particular, the Chinese SOEs find their motives questioned routinely by national governments and media alike.

To effectively address these legitimate security concerns, national governments have already amended – or are in the process of amending – their takeover policies. The US Congress passed the Foreign Investment and National Security Act 2007 (FINSA) requiring the Committee on Foreign Investment (CFIUS) to compulsorily review foreign investments by sovereign acquirers. Similarly, in 2009, the German Foreign Trade and Payments Act was amended to allow the German Federal Ministry of Economics and Technology to prohibit non-EU investors from acquiring German enterprises on security or public policy grounds. This has been further amended in 2017 and will be discussed later. The Australian Foreign Investment Review Board (FIRB) has also advanced in this direction by publishing a detailed policy requiring direct investments by foreign governments and their related entities to be treated differently from other acquisitions in terms of substance and applicable procedures.

In the light of these developments, the UK's inaction is not only surprising but also potentially incautious. According to the World Investment Report 2017, the UK is the second most targeted nation for government-led acquisitions worldwide, while the US is the prime target (United Nations Conference on Trade and Development, 2017, p. 8). The US, however,

addressed these concerns in a timely manner by undertaking legislative action, and even European nations (which famously advocate the free-market principle) have recognised the need for differential treatment of sovereign acquirers. Thus, I believe the question should no longer be whether the UK needs to implement policy changes to tackle government-led takeovers, but when such inevitable changes will be implemented.

5. Socioeconomic concerns

A takeover activity is never purely economic, since its effects are borne by various socioeconomic factors (Kastrati, 2013, p. 31-33). The free market approach to takeovers surrenders these socioeconomic factors to the self-regulating international markets, frequently leading to unintended consequences. The British government has faced such consequences on several occasions and is yet again helpless in the face of the deal between General Motors (GM) and PSA Group to sell GM's loss-making Opel and Vauxhall subsidiary to PSA (Kable, 2017). Vauxhall has two factories in UK, directly employing 4,500 workers and engaging another 27,000 people in UK's retail and supply network; all of these jobs are now at stake (Wearden, 2017, p. 5). The failed Kraft-Heinz bid for Unilever would have presented a much greater threat to the 7,500 Unilever employees in the UK, especially given its ruthless cost-cutting reputation (Whipp, 2017, p. 9). Such a loss of jobs at the hands of a foreign acquirer will not be new for British citizens who have been left unemployed on earlier occasions, for example, as a result of the Cadbury, Jaguar and Land Rover, and BBA takeovers.

In a time when the Brexit vote has patently demonstrated the people's predilection for protecting their jobs, losing jobs to increase a foreign acquirer's profit margins will be vehemently unacceptable to British citizens. Thus, at this juncture of Brexit with the UK's strong nationalism, the public will expect the government to defend them from predatory capitalists who seek profits at the expense of the UK's society, economy and long-term prosperity.

Historically, the UK has been an exemplary free-market economy that proudly boasts of the world's most open takeover regime (Deresky, 2015). Any shift from this widely-advocated stance by UK must therefore be grounded in well-founded and economically sound reasoning. It is argued that the above-assessed grounds possess the combined potency to justify government intervention. The UK government must acknowledge that this is the golden age of shareholder-first capitalism wherein the interests of "here today, gone tomorrow" shareholders can no longer be allowed to dictate the long-term interests of the society, the economy and the nation. Thus, it is contended that the UK government should no longer hold onto past notions of an idealistic takeover policy and initiate necessary reform.

THE SCOPE OF GOVERNMENT INTERVENTION IN SELECTED JURISDICTIONS

This section seeks to provide an overview of the policy changes respecting takeovers by foreign acquirers implemented or considered by certain economic superpowers, namely the US, Australia and the EU, with a focus on the reasons that have prompted their policy changes. This analysis will help draw comparisons with the UK's current situation and provide a catalogue of the various approaches adopted by similarly-placed economies.

1. The US: a takeover regime revolving around "national security"

The US is a longstanding champion of an open FDI policy and attracts the highest inward foreign investment year after year (United Nations Conference on Trade and Development, 2017). In 1988, due to circumstantial necessity, the US amended section 721 of the Defense Production Act 1950 to enact the "Exon-Florio Amendment". This amendment authorised the President to block foreign investments presenting a threat to US national security. CFIUS is

the primary vehicle for executing Exon-Florio and is responsible for conducting a national security review of transactions by foreign acquirers. Recently, two particularly controversial takeover attempts caused a furore in the Congress, which attacked the CFIUS review process as inadequate and lax. First, in 2005, CNOOC – an oil company with a 70% Chinese government stake – sought to acquire UNOCAL, an American oil company (Nanto and Jackson, 2006). Second, in 2006, Dubai Ports World, a Dubai state-owned company, gained requisite regulatory approval to purchase the management rights of terminals at five American ports (Malwaki, 2011, pp. 170-174). Both these transactions crumbled under the immense political pressure exerted by Congress, with CNOOC forced to withdraw its bid and DPW forced to sell the rights to a US entity (Mamounas, 2007, pp. 416-419). This congressional thrust triggered the further amendment of Section 721 of FINSA with an aim of formalising the review process to enhance the protection of national security.

CFIUS may review "covered transactions", either on voluntary notification by the parties or unilaterally. FINSA defines a "covered transaction" as "a transaction by or with a foreign person that could result in control of a US business by a foreign person." Investigation is mandatory where a transaction (1) would result in foreign control over critical infrastructure and (2) could impair national security. On completing the investigation, a recommendation is made to the President, who exercises the ultimate authority to either approve or prohibit the transaction.

The new formalised review process has faced several criticisms, the key concerns being the expansive scope of "national security" and the alarming influence of Congress. FINSA purposefully omitted to define the term "national security", although a subsequent guidance was published by the Treasury Department, which instead provides the factors considered by CFIUS in determining national security threats (United States of America, Department of the Treasury, 2008). These factors (such as potential national security-related effects on US critical infrastructure, international technological leadership in areas affecting US national security, etc.) are themselves open to unbounded interpretations. Thus, a potential foreign acquirer is left vulnerable to uncertainty and excessive costs (United States of America, Department of the Treasury, 2008). The second concern regarding increased congressional influence stems from the easy access afforded to several members of Congress (including their staff) to confidential information relating to reviewed transaction (Stagg, 2007, p. 360). Increased congressional influence opens the door for factors such as lobbying, pressure tactics by special-interest groups, public appeasement and political agenda in a room reserved for objective decisions on national security. Apart from the above, other concerns (such as the uncertainty injected by authorising CFIUS to review a closed transaction at any time, the secrecy of CFIUS's internal process and the dangers of reciprocal retaliation towards US investment from countries like China) have raised doubts as to the motivations and merits of enacting FINSA (Li, 2017).

Although any comment on the comprehensive impact of this enactment will be premature, it is believed that the true value of this regime lies in its function as a deterrent to ill-motivated takeovers and its potency as a weapon against national security threats (Tipler, 2014).

2. Australia: a fearless approach towards the protection of "national interest"

Despite being rated by the OECD as a country that maintains a restrictive foreign investment regime, Australia is a significant beneficiary of foreign investment in the global acquisition landscape (Organisation for Economic Cooperation and Development, 2016). Recently, the Australian takeover regime has received considerable scrutiny following a decision to block two foreign bids by China's State Grid Corporation and the Hong Kong-based Cheung Kong

Infrastructure for acquiring Ausgrid, an Australian electricity company (Smyth, 2016, p. 4). Displaying a rising sensitivity to Chinese investments, especially after a transaction wherein China's Landbridge Group acquired the lease to Darwin port (a strategically important area), the government in January 2017 ordered a full-scale review of its critical infrastructure and the development of a register of key infrastructure ownership to strengthen the review of bids relating to critical infrastructure (Attorney-General for Australia, 2017). Earlier, Australia also updated their Foreign Investment Policy to include additional regulatory requirements for "foreign government investors". In response to accusations of protectionism, the Head of Australian Strategic Policy Institute commented, "I don't think Australia should be embarrassed to say that we will have at least a strong protection of our national security interests around critical infrastructure, as the Chinese do around their critical infrastructure" (Iggulden, 2016).

Australia's takeover regime is governed by the Foreign Acquisitions and Takeovers Act 1975 (FATA), which stipulates a case by case review of proposals and a mandatory review of proposals by a foreign government or a related entity, introduced in 2015. The treasurer must determine whether the proposed acquisition is contrary to "national interests". Although FATA does not prescribe a definition of "national interest", the Foreign Investment Policy of Australia as updated in January 2016 provides the factors considered by the treasurer in making such a determination, such as national security, competition, impact on the economy, analysis of Australian participation and the interests of employees, creditors and other stakeholders, the character of the investor, etc. Resultantly, the acquisition is approved, rejected or approved with conditions, which is more usual than rejection.

The "national interest" test is criticised for being a flexible ploy of expansive scope creating room for political influence and occasional strong-arming (Bath, 2012, p. 16). The case-by-case review mechanism also lacks predictability, evoking mistrust in the review process. However, past experience contains little evidence of arbitrary determinations by the treasurer, with rare instances of rejection (Bath, 2012, p. 17). The Australian model advocates that an open investment policy does not necessitate the limiting of national interest to purely defence considerations; an expansive interpretation is in fact suitable and acceptable in light of the challenges presented by takeover bids, particularly by governments-controlled acquirers.

3. The EU: navigating the concept of protectionism

The EUMR, as discussed earlier, regulates all takeover activity that exceeds the required revenue threshold through the EC. The EC reviews the proposed takeover bid on competition grounds, and if a takeover is considered "incompatible with the common market" it is either prohibited or approved with mitigating conditions. Under Article 21(4), the member states are permitted to intervene with the EC's determination only for the protection of their legitimate public interest, and consideration of any other interest is dependent upon its compatibility with EU principles. However, if the threshold is not met, the individual member states are authorised to regulate the takeover in accordance with their domestic law.

In the last decade, the EU has witnessed a surge of protectionist sentiment evoked by various factors and particularly orchestrated by France, Germany, Italy and Belgium. The recently-elected French president has publicly supported the protection of "national security" through the EU mechanism (Beesley, 2017, p. 12). In Germany, the government adopted a directive in 2017 expanding its current power to block the acquisition of a German entity in excess of 25% by a non-EU acquirer if the takeover threatens public order or national security, to include companies providing critical infrastructure.

At the EU level, however, there is an absence of any power to prohibit transactions on national security or interest grounds. This handicaps all the member states and has thus

catapulted this concern to EU's immediate agenda. A paramount concern for the EU is the wave of acquisitions by Chinese firm in strategic sectors, particularly advanced technology, while China continues to place numerous restrictions on inward investment by member states (Hanemann and Huotari, 2016). Consequent to these concerns and developments, on 13 September, the EC president announced measures to tackle this apparent lacuna in the EU regime (Lakhdir and Cristie, 2017). The EC has proposed a framework that authorises the member states to screen FDI on security grounds while simultaneously authorising the EC to screen such FDI, which can potentially affect projects of Union interest (such as projects involving critical infrastructure or technology) on security grounds. Pending the formalisation and adoption of the draft regulation, the proposal is being lauded as a brave and unexpected step capable of addressing the concerns and fears of the EU member states.

In conclusion, this section emphasises the overriding common threads between each jurisdiction's developments, namely heightened sensitivity in respect of critical infrastructure and hyper-cautiousness towards government-controlled acquirers. As discussed above, the UK is equally vexed by these concerns, the only difference being that other jurisdictions have already ushered in reforms despite criticism and allegations. The above-discussed jurisdictions continue to remain proponents of an open FDI policy, since the strength of their policies lie in deterrence rather than application. However, each jurisdiction is struggling to ensure the separation of decision-making power and political influence, both in substance and in appearance.

CONCLUSION

The takeover regime in the UK is a unique union of different legislations and rules that seamlessly integrate and purposefully overlap to produce a swift, certain and flexible regulatory mechanism. The principal legislations and rules that together constitute the takeover regime are the City Code on Takeovers and Mergers, the EUMR, the Enterprise Act 2002 (EA) and the Companies Act 2006. The EA affords the UK government the power to intervene in a takeover bid in very limited circumstances, but even this power is curtailed by the EUMR. Interventions within the EUMR's narrow exceptions are further subject to EC review and can be overturned by an ECJ infringement ruling.

In cases of mergers outside the scope of EUMR, Section 58 of the EA empowers the Secretary of State to issue a Public Interest Notice (PIN) if they are satisfied that any public interest consideration (which under the EA is limited to national security, plurality of the media, and stability of the UK financial system) is threatened by the given takeover transaction. Once issued, the PIN transfers the decision-making power to the Secretary of State, who has the discretion to either remedy the adverse effects by exercising enforcement powers or prohibit the acquisition. Even this authority is rarely exercised. predominantly due to the limited legitimate interests protected by the act. The exemption of "national security" as defined under the EA is robbed of its inherently wide scope, since its definition is based on the narrow definition of "public security" under Article 21(4) of the EUMR. Thus, the UK government is often said to have the most hands-off approach to takeover control as compared to any other jurisdiction.

I believe this regime has remained stagnant in the face of challenges that have demanded acknowledgment through realignment of its objectives. The role of the key market-players, particularly the government, must adapt to face the challenges discussed in the preceding section in a way that best serves the interest of UK's economy. It is suggested that the revised framework should refrain from introducing radical changes to the present takeover policy and regime such as the introduction of a separate statutory review body similar to CFIUS. Primarily, this is to avoid differing compliance regimes within the UK and EU post-Brexit leading to onerous and lengthy investigations and opposing outcomes. Such

inconvenient policy divergences between the former member states can induce hostility and possible retaliation from the EU (Buckle et al., 2015, p. 60-66). Further, I believe that, with the suggested amendments, the existing EA framework is highly capable of achieving the said objectives. Therefore, the UK should not overplay its likely freedom from the EUMR to its own detriment, but should only utilise it to the extent necessary while striving to promote cooperation with the EU. In respect of SWFs and SOEs, it is suggested that, unlike many other jurisdictions, they should not be discriminated against by subjecting their takeover proposals to compulsory scrutiny. The reason supporting uniformity of treatment is that the takeover regime should be grounded in commercial and rational considerations instead of the acquirer's identity in the absence of any reliable data warranting such discrimination. In fact, one study concluded that the determinants influencing the takeover decision of a government-controlled acquirer and a commercial acquirer vary >1%, thus eliminating political motivations (Karolyi and Liao, 2010, pp. 20-23).

In conclusion, the UK government must undertake measures to protect critical infrastructure and national security by appropriately amending the EA, expanding the use of golden shares to prevent takeovers provided UK leaves the EEA or/and introducing various sectorial restrictions on foreign investment to protect strategic sectors can restrict their acquisition by sovereign acquirers. However, any increase in the powers of intervention must be carefully calculated and appropriately restrained to ensure the UK's openness to FDI and commercially motivated foreign acquisitions.

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5.26-AV47-5667

ELECTRONIC MONITORING AS AN ALTERNATIVE FORM OF PUNISHMENT: AN EXPLORATORY STUDY BASED ON EUROPEAN EVIDENCE

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ABSTRACT

Electronic monitoring is a relatively new tool in the field of criminal justice, invented in the late 1960s. Due to overcrowding of prisons and the expense of the daily maintenance per inmate, its use and implementation is growing worldwide. To date, academia and practice lack data to quite a significant extent, interdisciplinary approach and more robust information and experience related with the implementation and exploitation of electronic monitoring across European countries.

The scientific objective of the paper is to analyse and evaluate an approach towards electronic monitoring in European countries as an alternative form of punishment based on evidence drawn from a holistic interdisciplinary approach.

Based on this European evidence, and by using several mathematical and statistical methods (descriptive statistics and linear regression), this paper produces original research results. This exploratory study results in several practical implication and policy recommendations, and opens enormous scope for further research.

Key Words: Electronic European Evidence, Alternative Form of Punishment. Monitoring.

INTRODUCTION

Academic interest in electronic monitoring (EM) originated at Harvard University in the 1960s with an early emphasis on positive reinforcement regarding juvenile and young adult offenders, i.e. with the aim of eliminating recidivism (Gable, 2011). The work carried out by a small group of researchers in the field of psychology led to the granting of the first patent for an EM system in 1969. This was based on very heavy (*circa* 1 kg) devices attached to the waist (Gable, 2015, p. 4). The first practical applications in penal law were implemented using much smaller devices attached to offenders' ankles in the US state of New Mexico in 1983, and in Florida in 1984 (*Ibid*., p. 5-6). The first massive application of EM took place in the US, and a little later in the United Kingdom in the late 1980s, with the aim of responding to growing problems arising from prison overcrowding and the escalating costs of incarceration (DeMichele and Payne, 2009; Paterson, 2007; Renzema and Mayo-Wilson, 2005).The discussions held in the UK in the late 1980s concluded with a presumption that the primary goal of EM implementation should be to reduce the prison population, and that the EM scheme should be cost effective (Ardley, 2005). The aims of EM implementation in the UK were set out clearly. "Firstly, to reduce the use of custody without increasing the risk to the public. Secondly, to avoid the 'contamination factor' in imprisonment, when first offenders mix with more experienced offenders and learn the 'tricks of the trade'. And

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finally, to avoid the stigma of prison and the dislocation of family ties" (Whitfield, 1997, p.18). "In 1987, with the Conservative Government under considerable pressure about the prison population, the Commons Home Affairs Committee recommended that the use of EM on offenders in the US should be examined to see if it had any possible application in the UK" (Lockhart-Mirams, Pickles and Crowhurst, 2015, p. 17). In this context, it was taken into account that "fear has been expressed in the US about using EM as an extra punishment rather than an alternative to custody" (Berry, 1985, p. 42, In: Ardley, 2005, p. 6). Despite this, "reducing the prison population was considered to be the main benefit [of introducing EM in the UK]; therefore [it was envisaged that EM] would be used as an alternative to custody" (Mair and Nee, 1990, p. 8, cited in Ardley, 2005, p. 5).

The above very briefly outlines the historical context influencing scientific discourse on EM, whichbecame narrowly focused on the effectiveness of EM programmes in reducing recidivism, the cost-effectiveness of EM programmes (in comparison with imprisonment), and the impact of EM on prison overcrowding. The effect of increasing the number of individuals controlled by the criminal justice system in consequence of developing and applying EM and other alternatives to incarceration is so-called widening effect of EM. Within the context of the research project entitled 'Interdisciplinary approach to the EM of accused and convicted persons in Slovakia', the authors of this paper sought to determine whether a more holistic interdisciplinary approach to EM could be applied in the scientific discourse on EM(see, *inter alia,* Renzema and Mayo Wilson, 2005; Henneguelle, Monnery and Kensey, 2016).

THEORETICAL BACKGROUND OF EM

EM was designed to prevent the need for offenders to remain in custody, whether in pre-trial detention or during their entire sentence length, thereby allowing governments to reduce costs. The main benefits of EM are often mentioned as reducing costs for prison functioning, reducing reoffending through increased deterrence, acting as a rehabilitative tool by providing structure to offenders' lives and giving them the opportunity to work, and even sometimes as a form of punishment in community sentences (Belur et al., 2017; Garland, 2002; Hucklesby and Holdsworth, 2016).

EM, known also as offender tagging, typically refers to a device attached to an offender's ankle or wrist to track his or her whereabouts, which can be monitored remotely to establish whether the individual is violating a set of pre-established conditions determined by the courts (Di Tella and Schargrodsky, 2009, cited in Nellis, Beyens and Kaminski, 2013). "Unlike probation and community service, EM is used for adults or juveniles at three stages of the criminal justice process: as a condition for bail, as part of a community sentence or suspended sentence order (curfew orders), or to allow for the early release of prisoners (home detention curfews)" (Hucklesby, 2008). Curfew orders vary, but they generally require offenders to be present at a curfew address for a fixed number of hours per day for a pre-determined period. The decision to recommend monitoring usually depends on a competent authority's assessment of offender suitability for EM (Nellis, Beyens and Kaminski, 2013).

"Electronic monitoring might be used at all stages of the criminal justice process; as a pre-trial, as a sentence, as early release from prison and on completion of a prison sentence, potentially providing the only universal mechanism for reducing prison populations. Furthermore, electronic monitoring is a flexible tool, which may be used in many ways in the criminal or civil justice context. For example, it can be used as a standalone measure or alongside other requirements or conditions and EM regimes are infinitely flexible so monitoring periods may be tailored to the intensity required and changed during the lifetime of orders" (Hucklesby et al., 2016, p.8).Besides the above-mentioned utilisation, EM has been extended to cover adult and juvenile offenders, terror suspects, persons suspected of

breaching immigration laws, alcohol and drug abstinence maintenance requirements, and potentially monitoring those refusing to pay child support (Paterson, 2007), as well as monitoring prolific offenders on a voluntary basis (Hucklesby and Holdsworth, 2016). A large number of jurisdictions all over the world, including Europe (see *inter alia* Boone, van der Kooij and Rap, 2016; Hucklesby and Holdsworth, 2016; Marklund and Holmberg, 2009), Argentina (Di Tella and Schargrodsky, 2013), Australia and New Zealand (Black and Smith, 2003; Gibbs and King, 2003) and the US (Jones and Ross, 1997; Lipner, 1993) use EM. In the next part of our paper, we focus on European countries only.

DATA AND METHODOLOGY

The scientific objective of this paper is to analyse and evaluate an approach towards EM in European countries as an alternative form of punishment by applying a holistic interdisciplinary approach. A broad comparative and exploratory study of this issue would need consistent information. There is not much of a system behind the definition and collection of relevant data, leave aside in the form of quantitative data related with EM across Europe. Data inspection and mining for this particular paper has been undertaken through Eurostat and various reports (for example from project SPACE; reports on EM implementation in the Netherlands, Germany, England and Wales, and Sweden; a survey of EM in Europe; data from the Ministry of Justice in the Slovak Republic; etc.). For more detail, see the overview presented in Table 1. In bold letters, we highlight the countries that have implemented EM as a pre-trial sentence, as an alternative to imprisonment or as supervision after sentencing. The data and results differ from country to country; while some countries implement the system of EM efficiently into their jurisdictions (for example France, Sweden or the UK), several countries are only at the very beginning of its implementation (e.g. Slovakia) or haven't yet started (for example Croatia). Huge differences between European countries are reported on indicators related to the exploitation of prison capacity, the mortality rate of inmates and the daily expense of inmates.

In the attempt to apply as robust scientific methods as possible, the primary research presented in this paper has been carried out using regression analysis of the 'hard data' available from Eurostat. Secondary research focusing on the historical and theoretical background of EM has been carried out to ensure that the results of the primary research are correctly contextualised and interpreted. The objective of linear regression is to model a relationship between a dependent variable y and one or more independent variables x by linear function (e.g. Sachs, 1984). In case of one independent variable, it is called simple linear regression. For two and more independent variables, it is called multiple linear regression.

Table 1: Comparison of indicators related toclassical and alternative forms of punishment

	Indicators of classical form of punishment				Pre-trial detention or forms of probation/supervision before the sentence				Forms of probation/supervision after the sentence			
European countries	Number of persons held in prison in 2014	Exploitation of prison capacity	Mortality rate per 10,000 inmates (2014)	Average daily expense per inmate (in €) (2014)	Alternatives to pre-trial detention with supervision by probation agencies	Custodial suspension of criminal proceedings	EM	Home Arrest	Fully suspended custodial sentence with probation	Partially suspended custodial sentence with probation	EM	Home Arrest
Austria	8 692	100,3%	23,70	112,97 €	203	4,078			4,587	1,279	277	
Belgium	NA	NA	23,90	137,28 €	2,556		62		13,508		1,674	
Bulgaria	7 870	100,0%	36,80	13,68 €							183	
Croatia	3 763	93,6%	42,50	7,29 €	0	15	0	0	274		0	0
Cyprus	532	N/A	44,10	75,00 €	192						NA	NA
Czech Republic	18 658	93,2%	15,50	45,00 €	836	131			11,552		0	176
Denmark	3 583	N/A	11,20	191,00 €					1,611	273	301	
Estonia	3 034	102,4%	27,00	39,36 €	9		9		2,613	295	0	
Finland	3 148	N/A	29,10	175,00 €							51	
France	66 270	114,6%	17,00	102,67 €	3,619	1,644		234	123,803		9,429	NA
Germany	63 228	N/A	23,10	129,35 €							26	
Greece	11 798	119,3%	24,20	28,16 €	4,430	715	2	2	2,947		0	22
Hungary	17 890	139,0%	36,70	26,57 €		3,836			6,138		NA	
Ireland	3 777	91,1%	20,90	189,00 €					1,055	884		
Italy	54 745	108,5%	17,00	141,76 €		6,557			6,165		NA	9,491
Latvia	4 745	81,1%	58,20	22,58 €					2,927		27	
Lithuania	8 636	91,9%	47,90	16,05 €				1113	2,845		70	2,939
Luxembourg	626	44,0%	15,20	206,52 €	18				349		24	
Malta	581	93,4%	NA	NA					114		NA	NA
Netherlands	11 934	81,4%	25,40	273,00 €			1,402				NA	NA
Poland	78 358	88,3%	NA	NA								
Portugal	14 198	111,0%	52,10	41,22 €	874	6,599	299	348	13,574		187	81
Romania	30 156	104,3%	38,60	19,79 €					30,575			
Slovakia	10 020	84,7%	17,70	39,39 €	278				129		15	9
Slovenia	1 522	112,7%	39,40	60,00 €								3
Spain	65 017	N/A	23,80	59,72 €					11,256	1	1,829	NA
Sweden	5 702	88,1%	27,30	354,00 €			3,087		42,225		786	
UK:England and Wales	83 678	93,3%	28,40	115,75 €			5,917				5,825	
UK: Northern Ireland	7 731	N/A	5,40	112,20 €								
UK: Scotland	1 709	89,3%	30,50	125,00 €							600	

Sources: Aebi and Chopin (2016), Beumer and Øster (2016), Hucklesby and Holdsworth (2016),Statistical Yearbook of the Slovak Ministry of Justice (2016)

Let us suppose we are given data of *n* statistical cases, then the model of simple linear regression is:

$y_i = b_0 + b_1.x_{i1} + e_i$,

where b_0 is the intercept,

b_1 is the linear regression coefficient for independent variable x1,

and e_i is an error (residual) of the model, it is the difference between the real and predicted value of y_i.

We use two simple linear regressions for the dependence of mortality rates and suicide rates (per 10,000 inmates; these are dependent variables *y*) on the average daily expense per inmate (independent variable *x*). All statistical reports and graphs were made by statistical software IBM SPSS, version 19. The next part of the paper summarises and discusses the most important research results.

RESEARCH RESULTS AND DISCUSSION

The available evidence suggests that EM could be an effective deterrent to crime and could have enormous social and economic benefits, especially if applied early, saving what might otherwise be habitual offenders from a life of crime (DeLisi and Gatling, 2003). In the first two sections of the paper, we presented the results of the secondary research on the historical background (Introduction) and the theoretical background of EM. In the following sections, we combine the results of both primary and secondary research in a common structure used in interdisciplinary studies, based on a division of results into three core aspects of EM: legal aspects, economic aspects and social aspects.

Economic Aspects of EM

From the economic point of view, one of the main reasons for initial implementation of EM is the need to decrease the cost of the prison system. In an era of austerity, cost cutting in public spending and ensuring value for money assume greater importance. There are several studies assessing the cost effectiveness of EM (National Audit Office, 2006; Dodgson et al., 2001; Mair, 2005; Mair and Nee, 1990; Mair and Mortimer, 1996; Shute, 2007; Sugg, Moore and Howard, 1991). A National Audit Office (2006) study showed that a 90-day curfew period with a tagged offender is around £5,300 cheaper than a custodial sentence of the same length. As can be seen in Table 1, many countries in Europe have enormous daily costs per inmate, and the annual costs of the prison system can therefore reach dizzying numbers. EM, including home arrest and home detention, could be very effective in terms of cost reduction (see Krištofík et al., 2017) and in ending the criminal career of individuals who would otherwise settle into a pattern of habitual offending. In terms of cost efficiency, EM produces positive externalities that influence the cost efficiency of the whole jurisdiction system. EM decreases the following:

- the cost to society arising from rehabilitation counselling and the treatment services required when convicts exit prison;
- the excess cost to society of the personnel, resources and facilities required to arrest, detain, try, convict, and supervise offenders, beyond the cost of incarcerating convicted offenders for the terms of their sentences; and
- costs relating to the intergenerational transfer of crime, due to the fact that children whose parents are career criminals are likely to be at high risk of becoming criminals themselves (Cohen and Piquero, 2009).

Besides the above-mentioned costs, it needs to be taken into consideration that electronically monitored person are usually allowed to work. This means that they pay taxes,

health and social insurance and enjoy the usual consumption of goods and services that favour the local economy. In several countries (for example Slovakia), electronically monitored person are obliged to contribute to costs of their EM from their own resources. All these savings and cost related externalities have to be considered by evaluation of EM cost-efficiency. Based on European evidence, our research results show that the daily costs of EM are approximately 75% lower than daily expenses per inmate (for more information, see Kristofik et al., 2017). A more robust and interdisciplinary approach is needed in this area.

Legal Aspects of EM

In terms of law, crime and justice, different approaches have been taken in Europe and different aspects can thus be observed. At a general level, EM has been used for offenders committing a range of crime types, mostly less serious ones. However, specific attention has been paid to research on, legislation regarding and the application of sentences in relation to domestic violence offenders, other violent offenders and sex offenders (Erez et al., 2012; Finn and Muirhead-Steves, 2002; Payne and DeMichele, 2011).There is some evidence that drug and/or sex offenders on EM are more likely to complete treatment programmes than other (non-tagged) offenders, which might be related to better re-offending outcomes of programmes based on EM (DeMichele and Payne, 2009; Crowe et al., 2002).

Sentences concerning the application of EM can be made in several different legal forms and contexts. "An important policy debate has been taken place about its use as a stand-alone punishment (commonplace in England and Wales, but less so elsewhere in Europe) versus its use as a component in intensive supervision and treatment programmes, although even in regard to the latter there have been arguments as to whether it is included simply as a punitive element in the package, or whether it serves to support other, more rehabilitative components" (Nellis, Beyens and Kaminski, 2013, p. 2). Since 2016, EM can also be applied as an autonomous standalone sentence in Belgium (Beyens and Roosen, 2016, p. 2). It can be applied for long period sentences; the longest sentence under EM applied so far in Belgium was approximately 3.5 years (Ibid., p. 25).

A different approach from that taken in Belgium (and England and Wales) has been taken by the authorities in the Netherlands, perceiving the key value of EM "in terms of rehabilitation, provided that EM would be combined with an intensive support program and meaningful activities' such as schooling or work" (Boone, Van der Kooij and Rap, 2016, p. 1). EM has been applied in the Netherlands for only very short, unconditional prison sentences up to 90 days in length, and for offenders without a 'security risk' who report themselves to the prison without coercion (the so-called 'self-reporters': *Ibid*., p. 2). In the Netherlands, EM is considered a proper alternative to incarceration for short prison sentences. In France, "under EM, offenders are compelled to respect strict home curfews for long hours, with permission to leave only for work or other rehabilitative activities" (Henneguelle, Monnery and Kensey, 2016, p. 30). In Norway, EM can be applied to any short-term sentence, with the exception of sentences imposed in default of paying a fine (EM also cannot be used to monitor persons under preventive detention in Norway).[6]The first Eastern European country to apply EM home arrests as an alternative to imprisonment was Poland (in 2007). Originally, persons sentenced to imprisonment not exceeding one year were eligible, but there were several legal changes adopted in 2015 and 2016, some of which were considered "the result of the resignation from EM as a one of the forms of the penalty of restriction of liberty. After these changes, there has been significant reduction in the number of judgements regarding the electronic monitoring" (Jaskóła and Szewczyk, 2017, p. 11).

[6] See *Execution of sentence with electronic monitoring* [Online]. Available from: http://www.kriminalomsorgen.no/getfile.php/3934108.823.qnwb7zwjuzaai7/Electronic+Monitoring+%28EM%29+-+information+to+the+offender.pdf [Accessed 19 October 2017], p. 2.

In contrast to all the above-mentioned European countries (especially Norway), legislation and practice at the federal level in Germany does not allow application of EM as an alternative to imprisonment. After a long period of reluctance, federal German authorities allowed EM to be used only as a result of the decision of the European Court of Human Rights no. 19359/04, which abolished 24-hour police surveillance of the most dangerous offenders after their release from prison. EM has been introduced as an alternative (Dünkel, Thiele and Treig, 2016).

Another important advantage of EM can be seen in its preventative role. According to Padgett *et al*. (2006), a key result of EM is in preventing offenders from committing new offenses while they are monitored. Monitored offenders are94.7% less likely to commit new offence then offenders who were not monitored. Marklund and Holmberg (2009) conducted an extensive comparative study on the recidivism of groups of prisoners and group of convicted persons using EM. They found that 26% of offenders in the EM group were convicted of new offenses during the three-year follow-up period, while the corresponding proportion of the group of prisoners was 38%. The EM group relapsed into serious crime at a lower rate of 14% (compared to 26% of the second group). This suggests that EM has a significant effect in reducing criminality during the three-year period after monitoring ends, in addition to the substantial effect found by Padgett *et al*. (2006) and during the period of monitoring (Yeh, 2010).

Social Aspects of EM

According to Yeh (2010), EM and home detention could be effective to reduce crime and produce large-scale social benefits.

EM may impact on the mortality and suicide rates of persons entering the penal system. Below, we present the results of the regression analysis of the mortality rate and the suicide rate (per 10,000 inmates) and the average daily expenses per inmate.

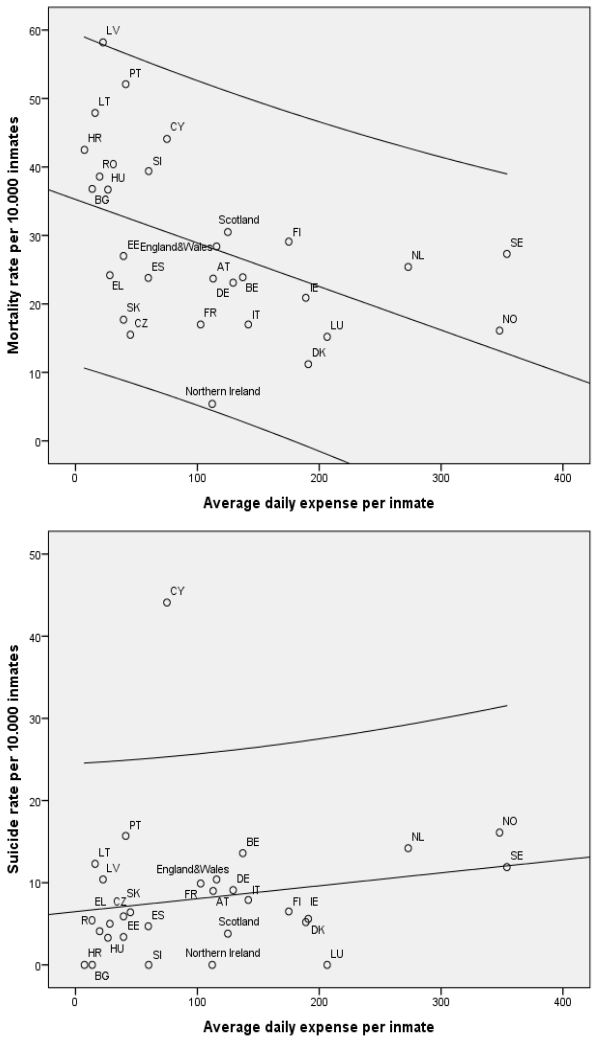


Fig. 1: Dependence of the mortality rate (per 10,000) and the suicide rate (per 10,000) on the average daily expense per inmate in 2014

Figure 1 illustrates a scatter plot of the empiric dependence of the mortality rate on the average daily expense per inmate. The research results shows that the mortality rate decreases with a higher daily expense per inmate. The dependence is significant according to a linear regression model (linear regression coefficient = -0.064 (p = 0.009), coefficient of determination = 0.200). The regression equation is: Mortality rate = 35.3 – 0.064*average daily expense.

If the average daily expense increases by one Euro, then the mortality rate decreases on average by 0.064 per 10,000 inmates. In other words, if the average daily expense is larger than 100 Euros, the mortality rate is smaller on average by 6.4 per 10,000 inmates.

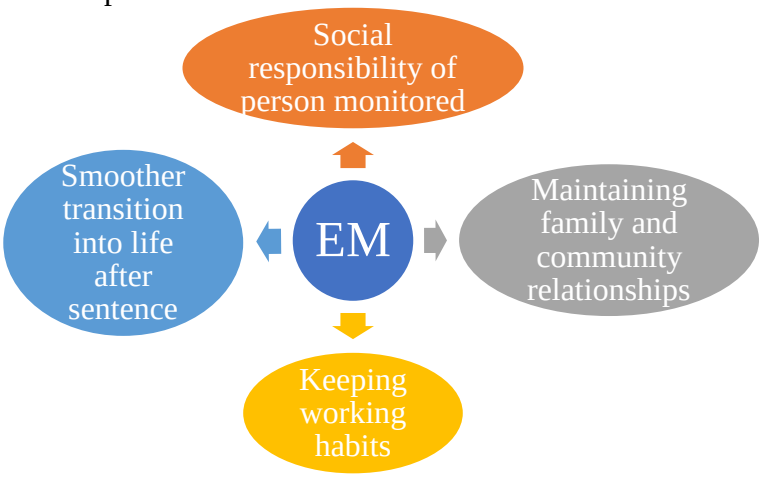
In the case of the suicide rate, the dependence on the average daily expense is not significant (linear regression coefficient = 0.016 (p = 0.355) (see Figure 2). This means that the suicide rate is not dependent on the average daily expense. This is surprising, but the lack of dependence between the suicide rate and the average daily expense may be meaningful. It tells us more about the qualitative viewpoint of inmate life, e.g. human relations between inmates and/or between inmates and custodians.

We lack similar data for EM completely. We may expect that the mortality rate and the suicide rate of electronically monitored persons will be very low, if it exists at all. As EM is based on approval and cooperation of person monitored and is performed in the domestic environment, by respecting all family and community relationships, there is a low assumption of mortality due to performance of EM. We would in any case recommend national

jurisdictions start collecting data on the mortality rates associated with EM with the aim of verifying this assumption.

EM shows the potential to achieve the difficult balance between punishments and therefore meet the public desire for a just punishment. (Gainey and Payne, 2000; Gainey et al., 2000, White et al., 2000). Martinovic (2002) provides further targets for EM programmes, such as the reduction of the tax burden to the public by removing the high costs associated with traditional performance penalties and the protection of the offender in terms of corruption or the stigmatic effects of institutional origin (as well as the need to maintain family and community ties). Finally, all EM programs are aimed at suppressing crime through increased accountability and monitoring. This increases public safety by using more traditional approaches or community supervision, based on probation supervision, parole and the hope that this approach will reduce the number of repeat offenders in the long term (Renzema and Mayo-Wilson, 2005). The following figure illustrates the possible social benefits of EM.

Fig. 2Social aspects of EM



Electronically monitored persons do not rely on the state, but take responsibility for their actions and participate personally in the costs related to the execution of the sentence. Usually, electronically monitored persons are allowed to work. We can assume that these individuals will not lose the habit of working during their sentence, and the transition back to a normal life should therefore be relatively smooth. Electronically monitored employed persons pay mandatory contributions to the social system. We can assume that this situation also raises consumption, creating additional revenue for the state budget. Maintaining social and family ties, reducing the risk of imprisonment and forming undesirable new ties, and keeping working habits are the main positive effects at the social level.

CONLUSIONS, POLICY IMPLICATIONS AND FUTURE RESEARCH PERSPECTIVES

Based on the example of our primary research on mortality and suicide rates in prisons, we have shown how an interdisciplinary approach to scientific research related to the EM of offenders could better incorporate the social aspects of punishment. By means of integrating the results of our own research in this field into the secondary research results (i.e. work by other authors), we outline how a more holistic approach could be applied in this field.

The results of our secondary research suggest that national programmes of offender EM in Europe resemble ‘live organisms’ in that they adjust their aims, intentions and methods to respond to a changing ‘social climate’. For example, in Poland, the researchers asked whether the national legislation had already been “given the final shape of electronic

monitoring, or should we expect further legislative changes" (Jaskóła and Szewczyk, 2017, p. 12). Fromour research, we observe that Poland is one of the very few countries for which data on mortality and suicide rates was unavailable in the Eurostat Crime and Criminal Justice Database, and we consider this an impetus for both policy implications and further research.

The results of our research have to be perceived in the context of the first decade of the 21stcentury. The key research question dealt with by academics was whether EM has a future in Europe or not. The researchers responded to this question in an "affirmative way: EM has had a future in Europe, both West and East, and seems likely to continue to have one" (Nellis et al., 2013, p. 2). Thus, the question of whether EM has a future in Europe has been replaced by the question of how EM will be used in future (Nellis et al., 2013, p. 2; Beyens and Rosen, 2013). More knowledge on the relationship between mortality and suicide rates in prisons and the approaches towards EM in different European countries could also have some influence on how both the scientific discourse and the political agenda on the future of EM should be shaped.

Drawing from the results of our secondary research, the key question for future discussion is whether EM should be primarily perceived as a standalone instrument of punishment as an alternative to incarceration (primarily to deal with prison overcrowding and/or to save public funds), or whether EM should be perceived primarily as a technical instrument supplementing various other non-technical instruments in national programmes of probation, custody, surveillance of dangerous offenders released from prison, etc. As we have outlined, there are different approaches taken in this regard by different European countries, and no generalisations can yet be made.

Nellis et al. (2013, p. 2) state that "once EM has been adopted, its use in each country tends to increase". As we have outlined in the section devoted to the legal aspects of EM, this is not the case in Poland, where a decline in EM was reported in consequence of legal amendments made in 2015.

As is evident from the data in Table 1, every European country is able to implement or expand the utilisation of EM. As advocated and discussed throughout the paper, implementation of EM may have several significant benefits at the economic and social level, as well as for crime and justice. Implementation of EM, its efficiency and interdisciplinary scope open enormous scope for future research. Each of the aspects discussed in the paper (economic, legal and social) creates space for future research projects and studies. From our point view, an interdisciplinary approach considering the different aspects of EM would be a significant contribution to this research area. On the other hand, we lack a significant amount of data necessary for thorough research. The available data often does not have sufficient scope and/or quality. We would recommend that national jurisdictions collect and store data on EM, including home arrest, which might be made available as a result of penal and civil process and through probation and mediation officers. It would be very helpful if data relating to the cost ratio of EM, the data on recidivism during and after EM, and the reporting of incidents during EM, were to be included. EM produces a significant amount of data. GPS technologies collect considerably more detailed data on individuals' movements,24/7. In case of optimal settings of collection and exploitation of data reached during implementation of EM and by respecting the privacy of the persons monitored, it creates scope for further research, analysis and the evaluation of EM systems. We would recommend that the EU, especially Eurostat, should compile data from member countries to assure its comparability and availability for research. This could significantly help national jurisdictions evaluate the implementation and functioning of EM.

Acknowledgements
This paper is an output of Research Project APVV 15-0437: Interdisciplinary Approach to the EM of Accused and Convicted Persons in Slovakia.

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6.28-AV51-5406

CONTINUITY AND TRANSFORMATION OF THE EU POLICY TOWARDS THE KURDISH ISSUE IN TURKEY AND IRAQ

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ABSTRACT

The article is devoted to the analysis of the evolution of the EU's approach towards the Kurdish issue in Turkey and Iraq. The authors identify the basic trends and patterns of the EU's foreign policy towards the Turkish and Iraqi Kurds. The current political dynamics in the Middle East allows the authors to draw a conclusion about the shift in the EU foreign policy paradigm towards those countries, where the Kurdish minority resides, and towards the Kurds themselves.

Key Words: the Kurdish issue, the EU documents, Middle East.

INTRODUCTION

The relations of the European Union with the Middle East are characterised primarily by instability resulting from tensions there. The region is commonly regarded as a centre of Islamic extremism. The terrorist threat from organisations based in the countries of the region, as well as increasing Muslim migration to Europe, contribute to the EU's intensifying engagement in the area. The Kurdish issue, which is taken here in its more general meaning as a fragmentation of the Kurdish nation into four regions, plays a significant role in shaping EU policy towards the Middle East region.

In the light of these observations, this article examines the complex issues in the EU–Turkey–Kurds and EU–Iraq–Kurds triangles and provides answers to the following questions: (1) How important is the Kurdish issue in EU rhetoric? (2) Does the EU perceive the Kurdish issue in Turkey and the Kurdish issue in Iraq differently? (3) What are the preconditions that led to a tectonic shift in the EU approach towards the Turkish and Iraqi Kurds at the beginning of the 21st century?

The objective of this paper is a comprehensive study and analysis of the evolution of EU policy towards the Kurdish minority in Turkey and Iraq. With respect to the primary case-study of this article (the Kurdish issue in Turkey and Iraq), we are interested in the difference in the EU approach towards Turkey and Iraq's Kurds. The starting point for our research is the statement that the EU demonstrates a large degree of continuity through the export of its norms in the relations with Turkey and security-building measures in the relations with Iraq. This article aims to assess this statement and questions current accounts of continuity in the EU's approach.

Another point, addressed in the article, argues with the statement that the EU foreign policy is shaped by a set of common norms and values. Despite the normative rhetoric deeply embedded in EU discourse, the EU does not always act as an international normative actor. We show that EU foreign policy takes different forms and pursues different approaches at the same time point (but in different geographical locations).

The significance of this research lies in its implications for both the EU and other non-member states. A thorough understanding of the EU's foreign policy strategy towards Iraqi and Turkish Kurdistan will allow Brussels to select the most appropriate modalities of

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engagement, as well as to develop the most efficient mechanisms for conflict prevention and resolution at the regional and interregional levels.

METHODOLOGY

The methodology used in this article is a discursive analytical approach, which requires a thorough examination of the official declarations, statements and resolutions adopted by the EU. These documents allowed us not only to examine the EU engagement in the Kurdish issue but also to observe key patterns, trends and changes in the EU official position towards the Kurds in Turkey and Iraq. Based on a qualitative content analysis of discursive practices, the Kurdish issue in Turkey and Iraq is thoroughly examined in the EU documents reflecting the EU official position. Official articulation serves as "the sole source of analysis where non-formal and personal exchanges are not taken into account" (Kapidžić, 2011, p. 6). According to Sedelmeier (2003), the importance of actual policy practice, including discursive practices, such as declarations or other documents, should be taken into account as they give norm-based justifications for common actions. Therefore, by applying a discursive analytical approach, it is possible to draw conclusions on the continuity or changes in the foreign policy, as well as to cover a broad spectrum of interests and preferences in EU policy-making.

The documents' selection is presented in the article according to the date of their adoption, which allows readers to follow a changing dynamics in the EU approach towards Kurdish minority in Turkey and Iraq. Documents of the most influential European institutions are selected: the European Council, the European Parliament, the European Commission and the Council of the European Union.

The authors have identified the same timeframe – the 1980s to the present day – for both cases (Turkish and Iraqi Kurds) for purposes of comparison.

LITERATURE REVIEW

The issues this paper addresses belong to the broader debate of the role of the EU as a policy-shaper in international relations. Bretherton and Vogler (2012) suggest that, since 1992, the EU has been perceived as a strong actor with a consistent and coherent external policy as well as the potential to exert influence over other states. According to Manners (2002), due to the wide-ranging global involvement of the EU, the EU has its own effective foreign policy as well as an ability (through exporting its values) to influence the behaviour of other states, regardless of whether they are listed for accession or do not have any European aspirations. In this regard, both Turkey and Iraq with the largest Kurdish populations can be treated as perfectly comparable.

The academic literature does not devote attention to the EU approach towards Kurds evenly, focusing primarily on the issues around the Kurds in Turkey and the EU–Turkey–Kurds triangle. Cengiz and Hoffman (2013) suggest assessing the EU approach towards the Turkish Kurds through the concept of Europeanisation, specifically the external incentive model. According to Güney (2015), the EU considers the Kurdish issue in Turkey as a sensitive one as it has a potential to create the potential negative externalities for the EU such as illegal migration and loss of influence.

The EU approach towards Iraqi Kurds is examined within the context of conflict dynamics in Iraq and the potential of the EU for peace-building. Some researchers do not consider the EU as a significant actor in Bagdad–Erbil relations, emphasising the crucial role of the US (Shifrinson, 2006; Charountaki, 2014). Others focus mainly on the EU democracy-building and state-building strategy for Iraq, ignoring any engagement with the Iraqi Kurds (Youngs, 2004; Spyer, 2007).

The literature review allows us to draw a conclusion that, despite the growing interest in EU-Kurdish studies, there is still a considerable disproportionality in the literature devoted to EU–Turkish Kurd relations and EU–Iraqi Kurd relations.

THE EU AND TURKISH KURDS

The EU interest is concentrated on the Kurdish issue in Turkey and affords relatively little attention to the Kurdish minority in other states. The EU's concern over the questions of human rights and rights of minorities in Turkey has repeatedly been a theme of resolutions adopted by the European Parliament.

When in 1987 Turkey applied for membership in the European Economic Community, the European Parliament adopted a resolution expressing deep concern over "the issue of minorities" (European Parliament, 1987). Denial of the very existence of a Kurdish issue has been identified by Europe as one of the obstacles to Turkey's accession into the EEC and continues so today.

In the period between 1984 and 1989, the European Parliament adopted 12 resolutions on human rights in Turkey, but none of them was devoted exclusively to the Kurdish issue. Significant changes in the rhetoric of the Member States of the European Parliament were noted when the Kurdish question in southeast Turkey escalated in 1990. Thus, in March 1992, the European Parliament condemned Turkey for the use of disproportionate force during clashes while the Kurdish minority was celebrating their national holiday, Nowruz. Furthermore, while criticising violence by the PKK, the European Parliament appealed to the European Council and the European Commission to take all necessary measures for the speedy resolution of the Kurdish issue (European Parliament, 1992).

On 19 September 1996, the European Parliament passed a resolution calling on the Turkish government to attempt a peaceful solution to the Kurdish question (European Parliament, 1996). In the same document, the European Parliament appealed to the European Commission to stop funding projects in Turkey in the framework of MEDA, pointing out serious problems of human rights in Turkey. It is worth noting that this document of the European Parliament was highly motivated by the human rights situation in Turkey, pointing to the numerous violations of human rights in the southeast regions of Turkey with a dense population of ethnic Kurds.

The European Parliament also expressed concern regarding the arrest of several members of the Democratic Party of Turkey, particularly that of Leyla Zana, the first Kurdish woman to be elected to the Turkish Parliament in 1991 (European Parliament, 1997). She was sentenced to 15 years in prison for her political speeches and the decision to take her oath in Parliament in the Kurdish language. The message from the European Parliament was clear and precise. The Joint EU–Turkey parliamentary committee was discontinued and the European Parliament decided to award Leyla the Sakharov Prize. Additionally, the European Parliament adopted a resolution urging the release of Leyla Zana, who was convicted of human rights activities.

Human rights and the rights of national minorities in Turkey were crucial factors in shaping EU policy towards Turkey at the summit held in Luxembourg in 1997. That year, the Member States decided not to grant Turkey "candidate status" for EU membership. This issue continues to rankle in Turkey–EU relations and serves as a major obstacle to further cooperation between the parties.

The Helsinki summit, held two years later, was a turning point in relations between the EU and Ankara. In December 1999, the European Council gave Turkey candidate status for EU membership. The prospect of membership has become the principal incentive for Turkey to conduct the necessary reforms on the one hand, aimed at implementing the Copenhagen criteria, while on the other hand providing the necessary leverage on the part of

the EU to require institutional and political transformation for continued admissions candidacy.

In 1999, the stated EU conditions had not yet had a significant impact on Turkey, which had openly expressed reluctance to comply with the requirements of the European institutions on the issue of reforms in terms of minority rights. Ankara viewed this point as a serious threat to its national sovereignty. The granting of candidate status to Turkey signalled a willingness of the EU Member States, not only to accept Ankara into their club, but also to take on the burden of its problems – including those addressing the Kurdish minority. The Helsinki Summit contributed to the eradication of the Sevres syndrome, named after the Sèvres Treaty, which gave the Kurds the opportunity to create their own state and undermined the territorial integrity of Turkey.

Thus, the resolution of the European Parliament, adopted on 15 November 2000, stated that the solution to the Kurdish issue should be based on respect for the territorial integrity of Turkey (European Parliament, 2000). A few years later, another resolution of the European Parliament on the progress of Turkey's negotiation process marked a positive shift in Ankara's policy, particularly the decision to permit the public broadcasting in the Kurdish language. The European Parliament also strongly condemned the PKK terrorist activities (European Parliament, 2006).

It is worth noting that, since granting candidate status to Turkey, the European Parliament has become more focused on the cultural rights of the Kurds. The recognition of the Kurdish language turned into the main stumbling block, used by the EU to leverage Turkey towards a change in its policy. The requirement to amend the law and introduce classes in the Kurdish language was repeatedly mentioned in various EU reports (European Commission, 2005; 2006).

A complete change of emphasis from politically sensitive issues to cultural rights of minorities became part and parcel of the conditionality mechanism. The so-called "carrot and stick" policy pursued by the European institutions was supposed to be the core of the EU's potential in Turkey to provide for a more flexible attitude of Ankara towards the Brussels requirements.

However, the latest trends in the EU Middle East policy showed evidence of a gradual transformation of the EU approach towards the Kurdish issue. The lack of real progress in the negotiations between the EU and Turkey and the further gradual Islamisation of the latter drummed up pro-Kurdish sentiment among the European public. Recently, the European Parliament has stepped up criticism of Ankara, noting serious setbacks in some key areas such as freedom of expression, extended incarceration without trial, long jail sentences, lack of effective legal representation in criminal trials, denial of political rights, etc. The EU Parliament's resolution, adopted on 14 April 2016 on the 2015 report on Turkey, stressed that "there is no violent solution to the Kurdish question" (European Parliament, 2016). The resolution also urged the Turkish Government to take its responsibility to resume negotiations with a view to achieving a comprehensive and sustainable solution to the Kurdish issue.

The Kurdish issue has become an integral and inseparable part of EU rhetoric during the accession negotiations with Turkey. The European Union engagement in the Kurdish issue is clear and justified by the very fact of Turkey's European aspirations. Since 1999, the Kurdish issue has made Turkish candidacy for the EU membership highly vulnerable, souring relations with Brussels. The human rights situation in the Kurdish regions of Turkey has turned into a leverage, successfully used by the EU in pursuit of changes from Ankara. The further dynamics in EU–Turkish Kurds relations depends, on the one hand, on what measures Ankara will take to address the human rights abuses against the Kurdish minority and, on the other, on how much attention the EU will devote to the Kurdish issue.

EU AND THE IRAQI KURDS

Contrary to EU engagement with the Turkish Kurds, Brussels initially kept a low profile in Iraqi Kurdistan. The political cooperation with Iraqi Kurds, who have been solidly within the orbit of the US geopolitical interests for a number of decades, does not have a long history.

During the 24 years of Saddam Hussein being in power in Iraq, the EU did not support political or contractual relations with Baghdad. With its significant potential in the humanitarian field, the EU played an important role in creating a "security zone" in Iraqi Kurdistan in 1991. At the Luxembourg summit of European Communities on 8 April 1991, the Member States also added the issue of providing humanitarian assistance to assist the Iraqi Kurds. After 1992, the EU took second place after the United Nations in terms of humanitarian assistance to the Iraqi Kurds.

It was in the 1990s that Washington kept on playing a decisive role in shaping Iraqi Kurdistan. However, in the late 1990s, the situation gradually started to change. The Iraqi Kurds stepped up their diplomatic activity in Europe. In 1999, they opened the Kurdistan Regional Government Mission to the EU, based in Brussels, which also represented Iraqi Kurdistan in the Benelux countries. Such representation provided direct contact between the Kurdish leaders and European elites as well as contributing to diversifying the relations of the Iraqi Kurds with other states and weakening the US monopoly in relating to the Kurds. Since the beginning of the 2000s, the leaders of Iraqi Kurdistan have been actively involved in the process of lobbying the Kurdish issue at the EU level. In 2000, Prime Minister of the Kurdistan Regional Government, Nechirvan Barzani, twice participated in the meetings of the European Parliament and ably led the delegation representing Kurdish interests.

In April 2002, the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy released a report on the situation in Iraq 11 years after the First Gulf War, which recognised the progress made by Iraqi Kurdistan in the democratisation process. The document also condemned massive human rights violations in Iraq, as well as Iraq's non-compliance with its obligations to respect the rights of ethnic and religious groups. To prevent human rights violations in Iraq, the report called on the Council and the Commission to "put maximum pressure at all occasions on the Iraqi regime to reduce its repression towards its own population, at first by stopping the massive executions, arbitrary arrests, internal displacement campaigns and ethnic cleansing in the Kurdish region; ensure the long-term, unceasing protection of the Iraqi population in particular the Kurdish and Shiite populations" (Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, 2002).

The Iraqi crisis became a challenge for the EU Common Foreign and Security Policy. In February 2003, in Brussels, the Council held an extraordinary meeting to discuss the Iraqi crisis. During the lengthy negotiations, European leaders managed to find a common approach to the crisis. The Conclusions of the Extraordinary European Council (European Council, 2003) defined the basic principles of the EU policy towards Iraq and created the necessary conditions for more active EU engagement in the settlement of the Iraqi crisis. The spring session of the European Council, which coincided with the beginning of the military operation in Iraq, emphasised the growing interest of the EU to take part in the post-crisis stage. Despite the fact that the text of the joint document, which was prepared in May 2003, does not mention Kurds, Paragraph 67 states that the EU "is committed to the territorial integrity policy, the political stability and the full and effective disarmament of Iraq on its territory, as well as to the respect for the rights of the Iraqi people, including all persons belonging to minorities" (European Council, 2003a). The EU also expressed its desire to participate more actively in the post-conflict phase, particularly in Iraqi reconstruction.

After the overthrow of the Ba'ath regime, the EU kept on maintaining the relations exclusively with Baghdad, moving away from the Iraqi Kurds. This position was reflected in

the Council Decision dated 7 March 2005 to launch the EU integrated rule of law mission for Iraq (Council of The European Union, 2005). Baghdad was chosen as the place where the headquarters of the Mission would be located, despite the Iraqi Kurds' proposal to open the Mission in Erbil.

On 7 June 2006, the Member States adopted the Communication from the Commission to the Council and the European Parliament (recommendations for renewed European Union engagement with Iraq), with a particular emphasis on the territorial integrity of Iraq. There is no mention of the Kurds at all, while the ethnic minorities are referred to only once with regard to "the considerable scope for Iraq and international efforts … to promote human rights and fundamental freedoms, including rights of … ethnic minorities" (Commission of the European Communities, 2006).

However, since the beginning of the second decade of the 21st century, European interest in Iraqi Kurdistan has increased sharply, and the EU's policy towards the Iraqi Kurds has been transformed. The main reason behind the change of the EU approach towards the Iraqi Kurds lies mainly in pragmatism. During the first decade of the 21st century, the Kurdish Regional Government was obliged to cooperate with Baghdad on the issue of energy exports from Iraqi Kurdistan. However, in 2011, Iraqi Kurdistan announced the suspension of energy supplies to Baghdad because of the debt to the Erbil energy companies. This decision fuelled European interest in Iraqi Kurdistan. The following years have been marked by the rapid growth of Iraqi Kurdistan due to the development of the oil and gas sector. Thanks to the regulatory framework that provides most favoured status to foreign investments, Iraqi Kurdistan has become attractive for European investors. In contrast to the central Iraqi government, which offers energy companies only service contracts, the Kurdish Regional Government is willing to agree on the distribution of products, which certainly seems more attractive for oil companies. Since 2011, Erbil has signed over 50 production-sharing contracts with 29 energy companies from 17 countries, the vast majority of which are European countries, despite objections from Baghdad. These companies have already drilled more than 40 extension wells and made numerous oil and gas discoveries.

A new stage in relations between the EU and Iraqi Kurdistan has already been reflected in numerous resolutions of the European Parliament. While the preservation of the territorial integrity of Iraq was a keynote in EU resolutions by 2010, in 2014 the European Parliament adopted a resolution on the situation in Iraq acknowledging the burden placed on the Kurdistan region and the Kurdistan Regional Government, which are hosting a large number of Internally Displaced Persons. According to the Resolution, the EU "takes note of the announcement by the Kurdistan Regional Government of a referendum for independence" (European Parliament, 2014). At the same time, the European Parliament called on the President of Iraqi Kurdistan, Massoud Barzani, to uphold an inclusive process respecting all non-Kurdish persons living in the province.

On 15 August 2014, the Council of the European Union welcomed "the decision by individual Member States to respond positively to the call by the Kurdish regional authorities to provide urgently military material" (Council of the European Union, 2014).

Following the referendum held on 25 September 2017, the EU responded with rhetoric support for the constructive dialogue between Erbil and Baghdad. Surprisingly, neither the Council of the EU nor the EU Parliament has so far adopted an official document that would declare the referendum invalid or confirm its non-recognition, in contradistinction to the referendum in Crimea in 2014.

CONCLUSION

The discursive analytical approach used in this article allows us to draw conclusions about the major shifts in EU foreign policy. Portraying itself as an actor of changes and a normative

power, the EU changes its own policy towards the Turkish Kurds depending on Ankara's success in democratic reforms. Moreover, the EU's support for the Iraqi Kurds has led to a clash of interests between Brussels and Ankara. The latter considers that the independence of Iraqi Kurdistan would give a message to Kurdish minorities living in Turkey. The threat of territorial integrity, which is now hanging over one of the candidate countries for EU membership, is pushing Ankara for rapprochement with Russia, weakening the EU's influence in Turkey and thus questioning the success of its normative potential.

The EU pursues another approach towards the Iraqi Kurds. Portraying itself as a mediator in the Iraqi crisis, the EU has changed its own policy towards the Iraqi Kurds depending on its own interests. By developing strong cooperation with Iraqi Kurdistan in the field of energy resources as well as by welcoming the supply of weapons to the Iraqi Kurds, the EU has explicitly legitimised Iraqi Kurdistan as a regional power.

The selection of different approaches (normative and *realpolitik*) towards the same national minority in Turkey and Iraq not only undermines the EU's capacity to put forward a unified image towards the Middle East in general, and towards the Kurdish issue in particular; it also demonstrates the crisis in the EU's foreign policy coherence and continuity. It might also have serious implications for EU internal policy, as the aggravation of the Kurdish issue could potentially destabilise Iraq, which will lead to a new wave of refugees and another migration crisis.

This strategy serves the EU's interests but does not provide a solution to the Kurdish conundrum. The EU uses the Kurdish issue in Turkey and Iraq to promote its own interests but remains ambivalent about its willingness to try and solve it.

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7.CD03-1240

CANNABIS FROM THE USERS' POINT OF VIEW IN TURKEY

RUKEN MACIT[1]

ABSTRACT

Cannabis is the most common and the most used drug substance in Turkey and in the world. In general, cannabis is not considered as much as other narcotics, and is even regarded as harmless due to its vegetative nature. However, cannabis is dangerous enough that it cannot be ignored: it acts as a first step in the transition to the use of other narcotics and damages brain functions. In this research, in-depth interviews were conducted with 20 cannabis users living in Istanbul, Mersin and Diyarbakır in Turkey. In this context, issues such as how cannabis users experience cannabis for the first time, their opinions about cannabis, their reasons for using drugs and how they deal with the fact that they are acting contrary to social rules by using cannabis in a conservative country like Turkey are discussed. The findings are interpreted with Akers' Social Learning Theory. Understanding how cannabis users are starting to use cannabis and in-depth analysis of this process provides important information on drug use. This information is thought to be effective in fighting drug abuse.

Keywords: Cannabis, Cannabis users, Social Learning Theory.

INTRODUCTION

Cannabis, produced from the cannabis sativa plant, is used in three forms: herbal cannabis, the dried leaves and flowering tops, also known as "cannabis," "ganja," or "weed"; cannabis resin, the pressed secretions of the plant, known as "hashish" or "charash"; and cannabis oil, a mixture resulting from distillation or extraction of active ingredients of the plant (UNODC, 2012, p. 2). The cannabis plant (cannabis sativa) originated in Central Asia, and has been cultivated for thousands of years because of its versatile properties and because it is an economical plant. Due to these characteristics, it has spread widely throughout the world.

Cannabis is thought to be less harmful than other drugs due to its vegetative nature. However, contrary to the general belief, cannabis use can lead to tolerance development and dependence after a certain period of time. Wagner and Anthony (2002) claim that long-term use of cannabis may lead to tolerance to the effects of delta-9-tetrahydrocannabinol (THC) as well as addiction. The active ingredient in cannabis, THC, is only found in small portions of the cannabis plant, in the flowering tops and in some of the leaves. THC stimulates cannabinoid receptors (CBRs), located on the surface of neurons, to produce psychoactive effects. CBRs are part of the endocannabinoid system, a communication network in the brain that plays a role in neural development and function (UNODC, 2012, p. 3). Cannabis dependence in and of itself is not the only problem for heavy users. By increasing the duration of regular use, dependence may also increase the risk of any long-term health risks of cannabis that may occur after decades of use, such as cardiovascular and respiratory diseases, and possibly cancers (Hall, Renström and Poznyak, 2016, p. 24). In addition, investigations show that cognitive functions, mental disorders, suicide risk, ideation and attempts are the main results of long-term cannabis use. A 15-year follow-up study of schizophrenia among 50 Swedish male conscripts found that those conscripts who had tried cannabis by the age of 18 years were 2.4 times more likely to be diagnosed with

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schizophrenia over the next 15 years than those who had not (Andreasson et al., 1987). Also, some research (Timberlake, 2009; NIDA, 2017) emphasises that cannabis is a gateway to other drug substances in transit. Therefore, cannabis has an important relationship with other narcotic substances.

Cannabis is among the most widely used of all psychoactive drugs. Despite the fact that its possession and use is illegal in most countries, cannabis is used regularly by as many as 20 million people in the United States and Europe, and by millions more in other parts of the world (Iversen, 2000, p. 2). It is the most commonly seized drug, accounting for about eight out of ten seizures in Europe, and reflecting its relatively high prevalence of use (EMCDDA, 2015, p. 20). The area of our research is Turkey has a long history of cannabis use, dating back thousands of years. There is even a saying in Turkish, "It is herbal and has no sin", which is often used for cannabis. As this statement implies, there is a more tolerant point of view in Turkish society.

However, the laws do not agree; especially following recent changes, the penalties for using and selling cannabis have been aggravated. The Turkish Penal Code, which was updated in 2014 with further adjustments in 2015, specifies prison sentences of two to five years for those who use drugs or buy, receive or possess drugs for personal use (EMCDDA, 2017). Despite these heavy penalties, cannabis is the most common illicit drug used by adults aged 15-64 in Turkey, followed by amphetamines and MDMA/ecstasy (EMCDDA, 2017; TUBIM, 2013). This study, conducted by qualitative research method, examines issues such as how cannabis users experience cannabis for the first time, their opinions about cannabis, their reasons for using drugs and how they deal with the fact that they are acting contrary to social rules by using cannabis in a conservative country like Turkey. The theoretical framework of the research is based on Akers' Social Learning Theory. The social learning theory developed by Akers sheds light on these users' cannabis stories.

CANNABIS IN LITERATURE

In the literature of crime, there is countless research on cannabis and cannabis users. These surveys, which have a broad perspective, shed light on the different aspects of the cannabis phenomenon. Research topics in the sociological approach to cannabis can be categorised as follows: becoming a drug user (Becker, 1963; Berke and Hernton, 1977; Chatwin and Porteous, 2013); the roles of family, peers and school in cannabis use (Sheppard, Goodstadt and Willett, 1987; Hamilton, Danielson, Mann and Paglia-Boak, 2012; Liebregts et al., 2013); cannabis and alcohol (Smart and Ogborne, 2000; Hyggen and Hammer, 2015); cannabis and other drugs (Murray, 1984; Smart and Ogborne, 2000); cannabis culture (Pedersen, 2009; Sandberg, 2012); cannabis and stigma (Goffman, 1963; Neale, Nettleton and Pickering, 2011; Hathaway, Comeau and Erickson, 2011); and cannabis dependence (Liebregts et al., 2011).

In the framework of our research, Becker's (1963) study and Chatwin and Porteous's (2013) study are important for focusing on why people start to use drugs. Becker (1963) claims that the drug is used occasionally for the pleasure the user finds in it, a relatively casual kind of behaviour in comparison with that connected with the use of addicting drugs. The term "use for pleasure" is meant to emphasise the non-compulsive and casual character of the behaviour. According to Becker (1963), no one becomes a user without (1) learning to smoke the drug in a way that will produce real effects; (2) learning to recognise the effects and connect them with drug use (learning, in other words, to get high); and (3) learning to enjoy the sensations they perceive. On completion of this process they are willing and able to use cannabis for pleasure. Chatwin and Porteous's study (2013, p. 251) points out that the most prevalent motivations for long-term use surround the enhancement of pleasure and general enjoyment of life, the sociability of use with friends and the boost to creativity in

both social and employment arenas. Berke and Hernton (1977) undertook a questionnaire survey of 522 British cannabis users in the 1970s. The main reasons they gave for starting to use cannabis were curiosity and social pressure. When asked why they continued to use cannabis, the most common reasons given were social uplift (pleasure, enjoyment, relaxation, increased sociability) (306 responses), a cheap and harmless alternative to alcohol and other drugs (167 responses), increased awareness and understanding (131 responses) and some said quite simply that they liked it (128 responses).

Despite the diversity of all these studies, we know very little about issues such as how cannabis users experience cannabis for the first time, their opinions about cannabis, their reasons for using drugs and how they deal with the fact that they are acting contrary to social rules by using cannabis. This research also aims to shed light on views of cannabis use and any ill-effects associated with cannabis. It is important for individuals to know their thoughts about cannabis and how they are beginning to have been exposed to cannabis to take important steps in the fight against drugs.

SOCIAL LEARNING AND AKERS

Tarde's (1903) belief that crime is a behaviour learned by imitating has been proved by many studies showing that the social environment of the individual is effective in informing the process of guilt. The most important contribution to social learning theory was made by Sutherland from the Chicago School. According to the Differential Association Theory, developed by Sutherland (1978), crime is a learned behaviour just like any other normal behaviour, and this learning takes place as a result of interaction with people who are important to the individual. Sutherland proposed nine points to highlight his theory of differential association: (1) criminal behaviour is learned; (2) criminal behaviour is learned in interaction with other persons in a process of communication; (3) the principal part of learning criminal behaviour occurs within intimate personal groups; (4) when criminal behaviour is learned, the learning includes (a) the techniques of committing a crime, which are sometimes very complicated and sometimes very simple, and (b) the specific direction of motives and drives, rationalisations, and attitudes; (5) the specific direction of motives and drives is learned from definitions of the legal codes as favourable or unfavourable; (6) a person becomes delinquent because of an excess of definitions favourable to violation of law over definitions unfavourable to violation of the law; (7) differential association may vary in frequency, duration, priority and intensity; (8) the process of learning criminal behaviour by association with criminal and anti-criminal patterns involves all the mechanisms that are involved in any other learning; and (9) although criminal behaviour is an expression of general needs and values, it is not explained by those general needs and values, because noncriminal behaviour is an expression of the same needs and values (Sutherland, 1947, pp. 6-7).

The social learning theory developed by Akers is a continuation of Sutherland's Differential Association Theory, as well as a restructured and improved version. While adopting the theoretical approach of Sutherland, Akers also reveals what Sutherland left unanswered: what kinds of mechanisms the crime has been learned and sustained through (Cullen and Agnes, 2003, p. 142). In doing so, Akers adds differential reinforcement by making use of behaviour theories and other social learning theories.

Akers builds his theory based on four components: (1) differential association; (2) definitions; (3) differential reinforcement; and (4) imitation. Akers (2003) describes the concept of differential association as "the process of being exposed to positive or negative

normative definitions of a person's illegal or lawful behaviour" (p. 144). Akers' differential association refers to the primary reference groups such as the family, friend groups and the secondary reference groups such as authority figures, schools and teachers with whom the individual has a close relationship. Definitions are rationalisations, ethical values and trends that explain the attitudes and behaviours of individuals and explain the reasons for these attitudes and behaviours, and what is right and wrong. With differential reinforcement Akers refers to empowering reinforcements to encourage or abandon that behaviour once again as a result of punishment or rewards. By imitation, crime is learned from other people through observation.

Akers briefly describes his theory as: "The probability that persons will engage uncriminal and deviant behaviours is increased and the probability of conforming to the norm is decreased when they differentially associate with others who commit criminal behaviour and espouse definitions favourable to it, are relatively more exposed in-person or symbolically to salient criminal/deviant models, define it as desirable or justified in a situation discriminative for the behaviour, and have received in the past and anticipate in the current or future situation relatively greater reward than punishment for the behaviour" (Akers, 2009, p. 50). Becker (1963) argues that continued drug use is typically the result of social learning. Some deviant behaviours that Akers focused and did test on included those of smoking among adolescents, drinking behaviour, and drug use. The findings of our research confirm the findings of Akers' social learning theory when cannabis users start using cannabis.

METHOD

This study is based on a field survey with face-to-face in-depth interviews with a total of 20 cannabis users (7 living in Istanbul, 7 in Mersin and 6 in Diyarbakır). The reason for selecting Istanbul, Mersin and Diyarbakır is because they are the cities where cannabis use is very prevalent, and they have different socioeconomic and cultural structures. The users were reached using the snowball technique. This research was conducted through qualitative research methods between the years 2016-2017. Qualitative research is a way to reveal what people do, know, think and feel through interview and document analysis, observing, interviewing and documenting analysis (Patton, 2002; 145). A qualitative research methodology has been used because it allows us to explain the thoughts of cannabis users and the process of starting cannabis use in the survey.

The participants were 17 men and 3 women. The reason why the female participants were fewer in number than the male participants can be interpreted as the reflection of the male dominant structure to cannabis use in Turkey. In a male dominant society, the influence of social pressure on women can cause women to have less access to the drug market than men. The average age of participants sampled was 29; 33.3% were 18-25, 50% were 26-35 and 17.7% were 35 or older. 33.3% of participants have used cannabis for 1-9 years, 50% for 10-19 years and 17.7% for 20 years and over. In the interviews, we tried to evaluate how cannabis users experience cannabis for the first time, their opinions about cannabis, their reasons for using drugs and how they deal with the fact that they are acting contrary to social rules by using cannabis from a broad point of view.

FIRST TIME EXPERIENCING CANNABIS

One of the most important points in the lives of users is, undoubtedly, the moment when they first experience cannabis. As emphasised by many researchers (Becker, 1963; Akers, 1985), users are acquainted with cannabis through friends, peers and their social environments. In the Differential Association, the main concepts of social learning theory, Akers (1985) considered the intimate personal group vital due to their role in the individual's life being most significant. These are most importantly the primary groups of friends and family.

> "I was about 20 years old. We were in our summer house. I was so curious about cannabis. They (friends) told that I would feel very happy and my surroundings would be more colourful. I said okay, I would go. I was not involved in buying or providing parts at the beginning; my friends did all that. ... They made it in the bucket. It seemed strange to me. Honestly, the smell was awful. After that everyone took turns. I was a little nervous at first. I said I would smoke less. I wanted to be a little sober (Psychologist, İstanbul, 24 years old)."

> **"**My first use was with my childhood friends. They are trustworthy people who I spent a long time with. My boyfriend smoked, too. I wanted to taste and try (Biologist, İstanbul, 25 years old)."

The participants' initial experiences of using cannabis are reminiscent of the concept of imitation, which is one of the main concepts of social learning theory (Akers inspired from Tarde). Tarde (1903) replied to the question, "What is society?" with "Society is imitation". Akers explains that imitation is the duplication of a particular behaviour by an individual after viewing another individual who has performed the same behaviour. Two explanations have been offered to explain why imitation occurs. First, an individual who imitates does so because he or she has been vicariously reinforced after viewing another individual being rewarded for a particular behaviour. Second, an individual who imitates does so because of operant conditioning. That is to say, the imitated behaviour occurs because it has been directly reinforced (Akers, 1973).

The four modalities from Sutherland's (1947) differential association theory remain in social learning theory. These involve the variation in frequency duration, priority and intensity. Frequency involves those associations that occur most often. Priority refers to those which occur earlier. Furthermore, Akers believes that duration can be broken into two parts, including the length of time and relative amount of time spent with differential associates. Basically, the greater the amount of time and percentage of all time that is spent with certain people, the greater influence they will have on an individual's behaviour (Nicholson and Higgins, 2017, p. 13). It is clear that the participants began to use cannabis by being influenced by their social environment and particularly by their friends and imitating them. People who learn to use cannabis are often friends or lovers of intensive social interaction. As Akers noted, reinforcement and operant conditioning are necessary for the imitation behaviour of cannabis users. Frequently seeing friend circles using cannabis, and seeing it endorsed by those whom they respect will reinforce the behaviour of a person and is influential in operant conditioning.

> "I had a close friend. He brought it, we smoked. We had nice time. …We started. …My friend provided it, but he never pushed me. After that, he told me not to take it from anyone. He said "Smoke consciously, according to the place. ... Smoke according to the dose." So we started (Technician, Mersin, 36 years old)."

> "I knew cannabis from my friends before. Then my friend asked me to smoke cannabis. … It was my first use. … At the beginning, it was for pleasure, then I became addicted (Self Employment, Diyarbakır, 40 years old)."

Evaluating the findings, almost all of the users stated that their friends bought the cannabis; the users did not meet the drug dealer and did not pay any fee for their first use. The friends learned to use cannabis, and played a teaching role in this matter. New users learn how to get the cannabis, who to get it from and how to treat it. As time goes by, they also start to play a teaching role.

OPINIONS ABOUT CANNABIS

Understanding drug users' thoughts about cannabis and what attracts them to cannabis is important to understand the drug abuse. Akers (2003) explains the definitions, one of the main concepts in social learning, as "one's own attitudes or meaning that one attaches to given behaviour … that define the commission of an act as right or wrong, good or bad, desirable or undesirable, justified or unjustified. Differential association with others shapes the individual's definitions of one's own attitudes or meanings that one attaches to given behaviour" (Pratt, 2012, p. 767).

> "Cannabis makes you relax when you compare it with alcohol. It has an antidepressant effect. …It doesn't have so many chemical ingredients so I think it is better than chemical drugs. I don't know the medical details (Tourism Professional, İstanbul, 25 years old)."

> "Cannabis is less harmful than other chemical drugs (Self Employment, Mersin, 41 years old)."

> "Cannabis has the ability to reduce blood sugar. Doctors should give cannabis instead of antidepressants; it makes people comfortable, and feels good (Biologist, İstanbul, 25 years old)."

"Cognitively, definitions favourable to deviance provide a mindset that makes one more willing to commit the act when the opportunity occurs or is created. Behaviourally, they affect the commission of deviant behaviour by acting as internal discriminative stimuli" (Akers and Silverman, 2004: 20). According to findings, a large part of cannabis users has very positive opinions about cannabis. Cannabis is considered to be less harmful than other drugs because it is herbal; it is seen as cheaper and having fewer side effects than alcohol. In recent years, taxes on alcohol products have increased with the government getting more conservative in Turkey. However, one of the unplanned consequences of this is that young people have moved away from alcohol because it is expensive, and tend towards cannabis. But not all users are so positive about cannabis. Heavy users and those who use cannabis for a long time complain about the negative effects of cannabis on their memory:

> "For example, I was able to keep 30-40 words in my mind and write them in advance. I came from the Erasmus Exchange Programme (from Poland) and it became 5-10 words. The long-term effect is certainly permanent and seriously damaging. =I feel sorry for people who do not know their limit (Student, İstanbul, 22 years old)."

> "It is all bad (drugs)! Because after a certain time, forgetfulness, fatigue and some symptoms come out, but the other drugs are worse and cannabis is the good of the bad. ... I do not want to be the reason for anyone to become a user, because it affects a person's life (Self Employment, Diyarbakır, 43 years old)."

THE REASONS TO SMOKE CANNABIS

Discriminating reinforcements refer to following a behaviour, empowering reinforcements to encourage or abandon that behaviour in the event of awards or penalties the person will be awarded. Therefore, according to the award/punishment situation after the behaviour, it was awarded to ensure that the behaviour is not repeated again (Akers, 2003, p. 145). If the pleasure, enjoyment and achievement one acquires dominate the penalty one will face, one prefers to commit the crime. When we look at the causes of smoking cannabis in users, we see the differential reinforcement supports cannabis smoking behaviour:

> "I like being numb [laughs]. I live in a metropolitan city. There are so many kinds of people. You can get mad at some of them … you feel bad for some of them …

> your feelings change every moment, even walking on the street. I think I am a sensitive person. I smoke it to suppress my feelings. I want to minimise my feelings because I hurt myself. I don't damage anyone. I damage myself. If you ask what my goal is, that is my goal (Student, İstanbul, 22 years old)."
>
> "My goal is pleasure in general, but sometimes I get really angry and I need cannabis (Psychologist, İstanbul, 24 years old)."
>
> "Relaxation. Totally for relaxation (Cafe Owner, Mersin, 37 years old)."

Based on findings from the participants, it is clear that users smoke cannabis to relax. Even for a few hours, their aim is to get away from their stressful lives and have fun. While users can choose many actions to relax and have fun in their lives, choosing to use cannabis is due to the environment and social environment they are in. They are taught to use cannabis by their friends, their peers or their families to relax. It is generally understood, under the theory of differential association, that the timing, length, frequency and nature of contact are important determinants of behaviour; that is, the greatest effect on a person's behaviour occurs the earlier the association is made, the longer the duration of the association, the more frequently the association occurs and the closer the association is (Akers and Sellers, 2004). One of the important reasons why users tend to use cannabis is the economic dimension. Cannabis is the cheapest drug in other narcotics and alcohol. For example, in Turkey, with the increase of the taxes that the state applies to alcoholic beverages, young people can tend to use cannabis instead of alcohol.

> "First, it is neutral. For example, when I wake up after cannabis, I don't have a headache. When I drink beer, my life is ruined the next morning. … Second, the economic dimension is already very important. All the users are not rich or wealthy people. It is not a problem for me. I drink only two beers, but some friends drink seven or eight. That has a huge impact economically (PhD Student, Mersin, 27 years old)."
>
> "Do I tell you something? To get rid of my routine life, I need a difference. …It is like driving your car away to a different place, it [cannabis] is a getaway in your mind (PhD Student, İstanbul, 25 years old)."
>
> "It is something ambient. If somebody offers cannabis, I can't say 'No' because I enjoy it a lot. I smoke if someone says 'Let's smoke' (Academician, Diyarbakır, 39 years old)."

CONTRARY TO SOCIAL RULES

Definitions, as they are to be understood under social learning theory, are an individual's own values and attitudes about what is and is not acceptable behaviour. That is, "they are orientations, rationalisations, definitions of the situation, and other evaluative and moral attitudes that define the commission of an act as right or wrong, good or bad, desirable or undesirable, justified or unjustified" (Akers and Sellers, 2004: 86). In this section participants were asked what they think about contravening social rules by using cannabis.

> "I think I don't harm anyone. I am generally alone when I smoke. I don't like smoking in a group. I close myself for any social interactions. I think it is not a problem as long as I don't harm anyone (Engineer, İstanbul, 34 years old)".
>
> "In Turkey, even drinking alcohol is a big problem or if a woman goes outside at 2 a.m., it can be shown as a complete downgrade of the social rules. … Whoever

> made the rules, he made them wrong [laughs]. This is my opinion (Officer, İstanbul, 32 years old)."
>
> "Like chewing tobacco, after so many people tried it the taboos about it were broken; or a housewife smoking for the first time in her life. Just like that. … Everyone has tried or will try one day."

According to our findings, participants are able to cope with the following core beliefs about behaving contrary to social rules by using cannabis: (1) they think they are not harming anyone other than themselves; (2) they think society has a hypocritical and irrational moral sentiment; and (3) they think society needs to get used to cannabis as time goes by, like other new things. The vast majority of participants keep their cannabis smoking behaviour secret. Users think they do not bother other people because they smoke cannabis alone or in closed groups. Under the influence of recent conservatism in Turkey, the pressure on women and certain social groups can undermine the belief in social norms. With the decrease of belief in social rules, social control of the community also decreases. Finally, another core belief is that society needs to get used to using cannabis as it gets used to everything new in time. In this regard, users see themselves more progressive than the society.

CONCLUSION

It is very important to understand the points of view of the users to understand cannabis, which is the most used drug substance in Turkey and in the world. In this study, a total of 20 cannabis users (7 living in Istanbul, 7 in Mersin and 6 in Diyarbakır) were interviewed and the authors tried to analyse the issue of the drug abuse in Turkey and in the world using the thoughts of cannabis users.

In this study, the first important point to focus on is that there is only one common point among these users (who otherwise come from different cities, different occupational groups and different age groups): the reasons for using cannabis. No matter what their lives are like, these people have chosen to use cannabis to relax and get away from the struggle in their lives. Second, almost all of them imitate their friends and peer groups to learn how to use cannabis. The importance of social environment cannot be denied when users start using cannabis. Third, the vast majority of users have very positive opinions about cannabis. They especially think it is herbal, less harmful than alcohol and other drugs, and even has some benefits (reducing blood sugar, relaxing, etc.). They know very little about cannabis addiction and the negative health effects of cannabis. Fourth, users do not think they act contrary to social rules by using cannabis. The main reason for this is that they do not believe or trust in the predominant social rules. Conservative social rules, which are not meaningful to users, have especially distracted people from the social rules that provide social order.

Consequently, this research shows that many social, economic and political precautions need to be taken to solve the problem of using cannabis, which is seen as a transition to other drugs. At the beginning of these precautions, parents should be careful about their children's social environment. The vast majority of users have started using cannabis in adolescence. Therefore, from adolescence, there should be studies informing about cannabis and especially the negative effects of it in schools and various institutions. In the future, I would recommend people should study in this field, reviewing the literature on cannabis and finding a subject that has not been studied before. Otherwise, there are a lot of similar studies in this regard.

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APRIL 2018

International Journal of Law and Interdisciplinary Legal Studies

VOLUME 4 ISSUE 1 ISSN: 2397-6942 (Online)

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