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Impact on Commercial Banks' Liquidity Risks caused by ECB's Negative Interest Rate Policy

Summary

ECB's negative interest rate policy leads to more and more higher liquidity in banks. Higher risks for commercial banks are suspected from this. The article researches the effects on liquidity risk controlling, supervision and the indeed risk development in banks. Direct effects on commercial banks liquidity risks based on risk models cannot be proven by quantitative research. Qualitative evaluation on the other hand shows increasing risks as a follow of extended maturity transformation and increasing stocks of high risk government bonds. Commercial banks try to buffer those risks by increasing liquidity stocks and emissions of long-term-bonds. Floating above is the threat of the fact that high market liquidity is depended on ECBs low interest policy.

Key words: Banks risks, liquidity risk, Financial Risk and Risk Management, negative interest rate policy.

JEL classification: G32

INTRODUCTION

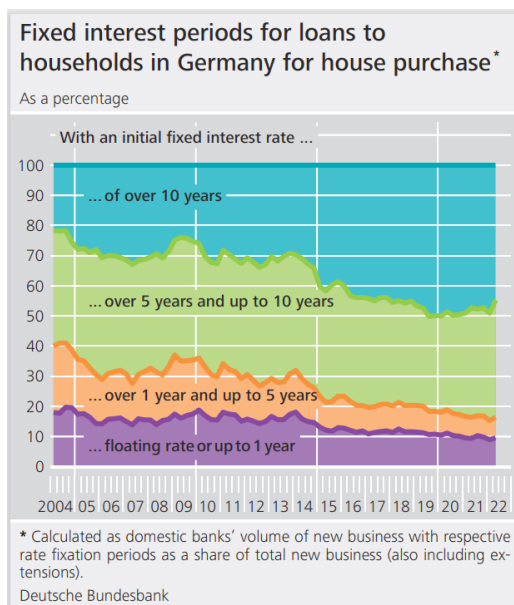
ECBs primary goal is price stability in the euro area. To this end, a number of monetary policy measures are carried out, which have a direct influence on market interest rates and indirect influence on the banks' investment and lending rates. In 2014, a negative interest rate was charged for the first time on the deposit facility. So far, there have never been negative interest rates in either the euro area or any of the member states. Therefore, historical or empirical knowledge is also lacking. The European economy becomes more and more dependent on cheap money. Commercial Banks eased up their guidelines for customer loans, to counteract

downcreasing profits. This could have an impact on banks main risk types. This article focuses on liquidity risk, cause Negative interest rate policy leads to the fact, that commercial banks are inundated with liquidity. The aim of the contribution is to evaluate, if ECB's negative interest rate policy (NIRP) leads significantly to increasing liquidity risks in commercial banks.

1. LIQUIDITY RISK FRAMEWORK

The liquidity risk harbors the risk of own payment obligations at the time not being able to meet the due date (risk of insolvency). The liquidity risks can be divided into deadline and call risks, structural liquidity risk (follow-up financing risks) and market liquidity risk. An unscheduled extension of the capital commitment period for lending transactions is referred to as a deadline risk. The call risk describes the risk that credit commitments will be unexpectedly drawn down or deposits will be withdrawn. This results in the risk that a bank can no longer fully meet its payment obligations. The structural liquidity risk consists in the fact that necessary follow-up financing cannot be carried out or can only be carried out at less favorable conditions. The market liquidity risk arises when an immediate sale of positions is only possible by accepting a discount. (European Central Bank (ECB), 2009) (European Banking Authority (EBA), 2021) (Hellwig, 1994)

In addition to the increase in interest rate risk, the expansion of maturity transformation as a result of the low interest rate level also harbors an increased liquidity risk. An increased call risk may arise with the European commercial banks. Due to the ever lower interest rates, customers have shifted time deposits into sight deposits. This means that the majority of customer deposits can be withdrawn within three months. On the other hand, a large part of the fixed-interest periods of loans is extended in order to obtain a higher interest margin. (European Central Bank (ECB), 2021a)



Source: <https://www.bundesbank.de/en/statistics/sets-of-indicators/fixed-interest-periods-for-loans-to-households-in-germany-for-house-purchase-622706>

Due to the higher elasticity of deposits, an increase in interest rates or the possible passing on of negative deposit interest to customers can result in an increased and uncalculated withdrawal of deposits. However, since these deposits were given out as long-term loans, European commercial banks cannot repay the deposits. As a result, there is an increased liquidity risk for European commercial banks from maturity transformation, which requires assessment and control at all times. This increased liquidity risk contrasts with the positive impact of the low-interest phase. For European commercial banks there is the possibility of cheap liquidity procurement. This can be done through main refinancing operations (maturity: one week, interest rate: 0 percent) through marginal lending facilities (maturity: one day, interest rate: 0.25 percent) or through longer-term refinancing operations (maturity: up to four years, interest rate at the base rate), offered by the ECB. (European Central Bank (ECB), 2021b)

The interest level of the money and interbank market adapts to the general interest rate level. As a result, commercial banks have the opportunity, in addition to the open market transactions at the ECB, to obtain short-term and cheap liquidity on the interbank market. The example of the German commercial banks shows that they operate a long-term liquidity protection in the context of the low-interest phase. In addition to obtaining liquidity from participants in the banking system, German commercial banks have increased the issuance of bank bonds to secure long-term liquidity. The figure shows the average remaining term of existing bank bonds. Since 2013, there has been a significant increase in transit times. For institutions in the German commercial banking sector, this is the highest at around three and a half years. (Guerra, et al., 2022)

2. Liquidity risk management

The German commercial banks are therefore reacting to a possible liquidity risk by granting medium-term deposits at favorable conditions and thus increasing the planning reliability of liquidity.

The liquidity risk for European commercial banks is essentially measured using three indicators: LCR, NSFR and survival period.

Liquidity Coverage Requirement, LCR

The LCR defines the minimum stock of highly liquid assets that the credit institution defines as a liquid assets reserve to meet net payment obligations over a 30-day period in the event of a severe stress scenario to be able to come. In the Delegated Regulation (EU) 2018/1620 revised with the Delegated Regulation (EU) 2015/61 on the LCR are the underlying stress scenario and the assets to be retained and retained derived from it clearly presented to the payment streams. (European Banking Authority (EBA), 2021)

Compliance is regularly checked by the banks and, in many cases, simulated in advance if necessary. Some banks even add additional stress tests to the LCR indicator. According to the current prevailing opinion, this is not necessary. (Guerra, et al., 2022)

The inclusion of highly liquid assets is often criticized. A distinction is made between 'Level 1 assets' (risk weight of zero percent), which are included in an unlimited amount and scope, and 'Level 2 assets' (risk weight of 20 percent), which may make up a maximum of 40 percent of the liquidity buffer. In addition to cash, 100 percent eligible assets include EU government bonds, federal state bonds and government bonds from third countries with the best credit ratings. The criticism is particularly directed at the fact that all EU government bonds are counted at 100%. So also those from countries with a weaker credit rating, such as Greece, Spain or Portugal. However, with higher returns comes higher risk. Furthermore, even negative yields are possible in the case of strong credit ratings with shorter maturities (e.g. German government bonds). The following figure shows that the states mentioned also have very high levels of national debt measured in terms of gross domestic product. For some commercial banks, in order to have sufficient highly liquid assets, this means that they have to invest in higher-risk government bonds while considering a reasonable yield. As a result, the procedure for minimum liquidity standards is disrupted by the low interest rate phase. The metrics were designed to make the banking sector more resilient. In the low phase, however, banks are forced to invest in government bonds with a higher risk so that they can also generate returns in addition to crediting their assets. As the sovereign debt crisis has shown, there is a risk of the sovereign crisis being transmitted to the banking system due to the sovereign bonds on the banks' balance sheets. (Galletta & Mazzù, 2019) (Saleh & Afifa, 2020)

Net Stable Funding Ratio, NSFR

The LCR defines the minimum stock of highly liquid assets, the credit institute as a liquid di-tty reserve to meet net payment obligations over a 30-day period in the event of a severe stress scenario to be able to come. In the Delegated Regulation (EU) 2018/1620 revised with the Delegated Regulation (EU) 2015/61 on the LCR are the underlying stress scenario and the assets to be retained and retained derived from it clearly presented to the payment streams. (European Banking Authority (EBA), 2021)

Survival Period

With the help of a stress test, the survival period is used to measure the period during which commercial banks remain solvent without being able to obtain liquidity. By comparing the liquidity requirements from stress scenarios with the realizable funding potential, a survival horizon in the event of stress is determined and prepared in the form of a liquidity risk report. Here a new perspective is implemented in the consideration of liquidity risks. In concrete terms, the period means how long the bank can still survive after the occurrence of a stress scenario in relation to the liquidity situation. The horizon should be specified in days or months. The survival horizon can therefore be seen as a supplementary statement to other stress tests. However, it is questionable whether these stress tests for credit institutions in liquidity groups can also plausibly represent a corresponding extremity. These liquidity groups, in Germany, for example, cooperative banks on the one hand and savings banks on the other, support each other with liquidity. This is therefore infinite, assuming that the banking system does not collapse. In these cases, the determination of the survival period is of a more theoretical nature. (European Central Bank (ECB), 2021b) (Guerra, et al., 2022)

3. EVALUATION OF NIRPS' NEGATIVE IMPACT ON LIQUIDITY RISK

3.1. Qualitative Research of Liquidity Risk

The first negative impact is that the extension of maturity transformation leads to higher liquidity risk. The standing facilities in the euro area have increased on average over the period 2008 to date. The deposit facility and current accounts of commercial banks show an uptrend from 2008 to 2013, then a decline and since 2015 an exponential increase. In the years from 2020 in particular, the curve will be steeper than ever before. As a result, the banks have massive excess liquidity. (Galletta & Mazzù, 2019)

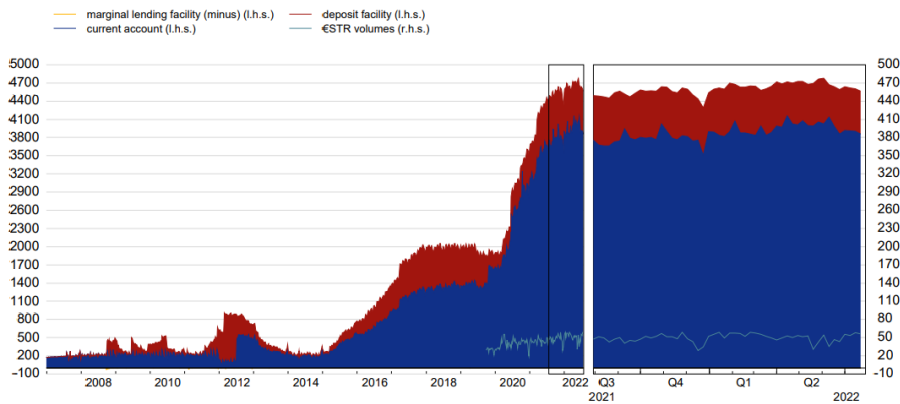


Figure 1. Money Markets and the Eurosystem standing facilities (ECB Statistical Data Warehouse, 2021)
(euro area; EUR billions; last observation: 1 Sep. 2022)

Source: <https://sdw.ecb.europa.eu/servlet/desis?node=1000003327>

A look at the customer deposits to total liabilities over the same period, you can also see a steady increase. What's interesting is that it grew exponentially over the 12-month period between mid-2014 and mid-2015. The reason is obviously the drop in the deposit facility rate into negative territory. The banks were initially unable to accommodate the excess liquidity in the market as loans, and then also in the long term. While we are seeing nominal credit growth, deposits continue to grow at a faster pace. This is consistent with the chart above showing that the standing facilities have been growing steadily. The result is an income problem that can only be alleviated by expanding maturity transformation. (Jakovicka, 2018).

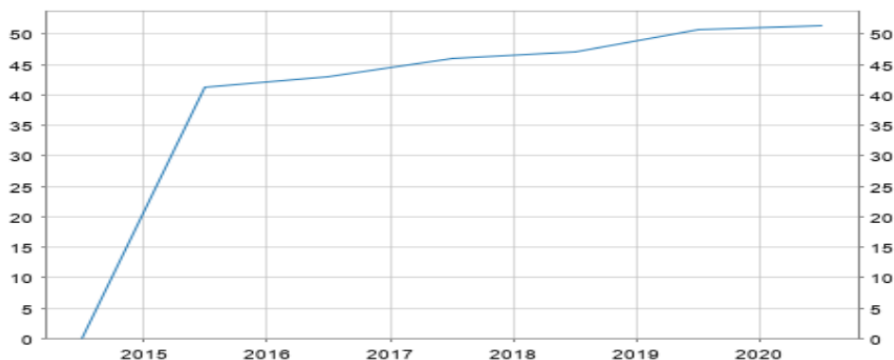


Figure 2. Customer deposits to total liabilities (ECB Statistical Data Warehouse, 2021)

The maturity profile of the banks in the European Union shows a clear reduction in short-term maturity transformation. The maturity gaps between 1 and 5 years have been steadily decreasing since the financial crisis in 2008. With the drop in the deposit facility rate into negative territory, it is the maturity transformations of up to two years in particular that are once again significantly and significantly reduced. The volume of the two to five-year maturity transformation has remained largely constant in the period between 2014 and today. Since then, however, there has been an increase in maturity transformation in the long-term maturities of 5 to ten years, but above all and significantly over ten years. The banks are therefore prepared to build up maturity transformation risks in this business environment. The reason, as described, is the decline in yields. An attempt is made to stabilize interest income via the longer maturity transformation. This is very risky, since loans are no longer refinanced with matching maturities. If you move in short maturity transformation areas, this is less critical because the interest rate difference is small. With longer maturities, however, the risk increases significantly with a normal steep yield curve. The ECB's NIRP therefore creates significant maturity transformation risks. These will come into play when market interest rates rise. Because then the bank pays a higher interest rate for the short-term procurement of funds than the calculated interest without generating higher income from the loan at the same time, provided that it has issued fixed loan terms. However, the share of variable loans has also decreased in these years, which further increases the risks. This is a problem in Germany in particular, because the proportion of loans with a fixed term is above average here. (Galletta & Mazzù, 2019) (Drehmann & Nikolaou, 2013) (d'Avernas, et al., 2019).

The second negative impact on the banks' liquidity risks results from the restructuring of the proprietary trading portfolio. An increase in government bonds from Greece, Italy, Portugal and Spain can be observed here. The reason is the overvaluation of these bonds in the calculation of the LCR and NSFR. EU bonds, regardless of their creditworthiness, can be counted 100% for the source of funds. This fuels a negative effect: Risk of the national economic crisis being passed on to the EU banks. (d'Avernas, et al., 2019) (Demiralp, et al., 2017).

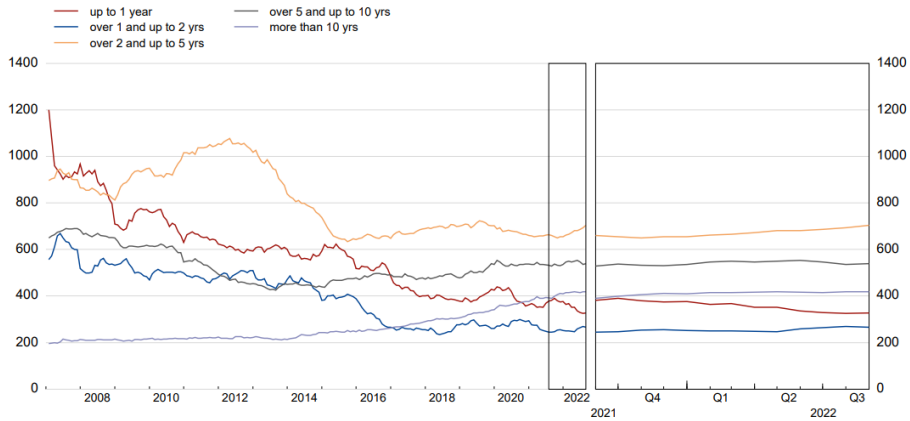


Figure 3. Maturity profile of Banks' outstanding debt securities (ECB Statistical Data Warehouse, 2021)

Maturity profile of Banks' outstanding debt securities (EU27 fixed composition; EUR billions; last observation: Aug. 2022)

Source: <https://sdw.ecb.europa.eu/reports.do?node=1000003328>

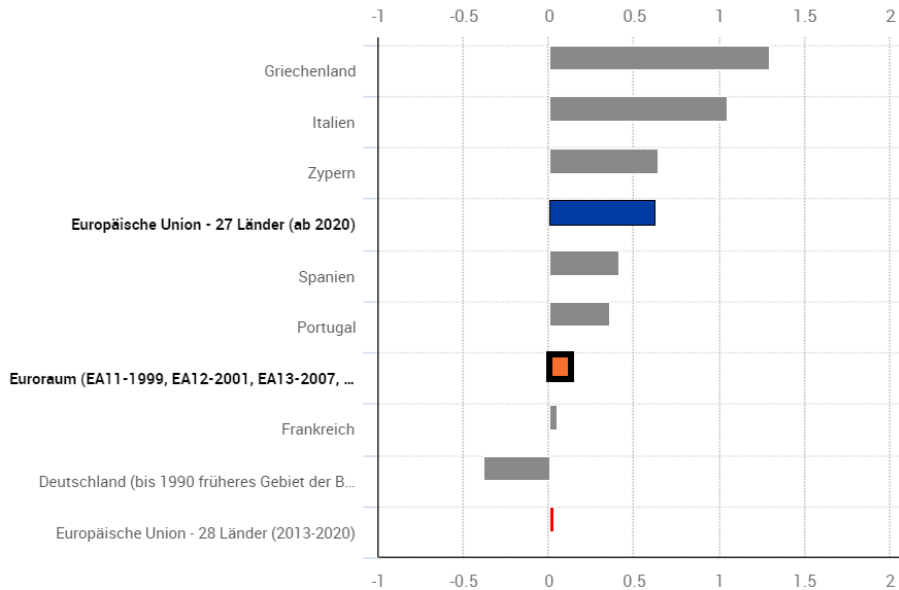


Figure 4. Long-term yield on selected public bonds; December 2021 (ECB Statistical Data Warehouse, 2021)

Source: <https://ec.europa.eu/eurostat/databrowser/view/teimf050/default/bar>

The LCR has been increasing consistently since 2020. This would actually indicate reduced liquidity risks. In fact, however, it is apparent that banks overweight bonds with poor credit ratings in their portfolios for controlling reasons. They build up risks instead of reducing them. (Chen, et al., 2021)



Figure 5. LCR in EU-27 banks

Source: https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Reports/2021/1025522/EBA%20Report%20on%20Liquidity%20Measures%20under%20Article%20509%281%29%20of%20the%20CRR.pdf

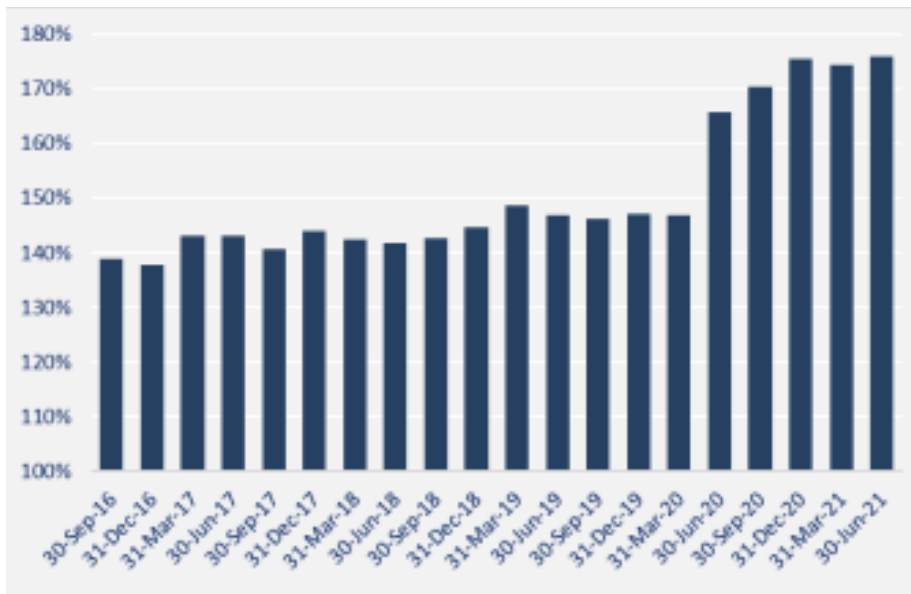
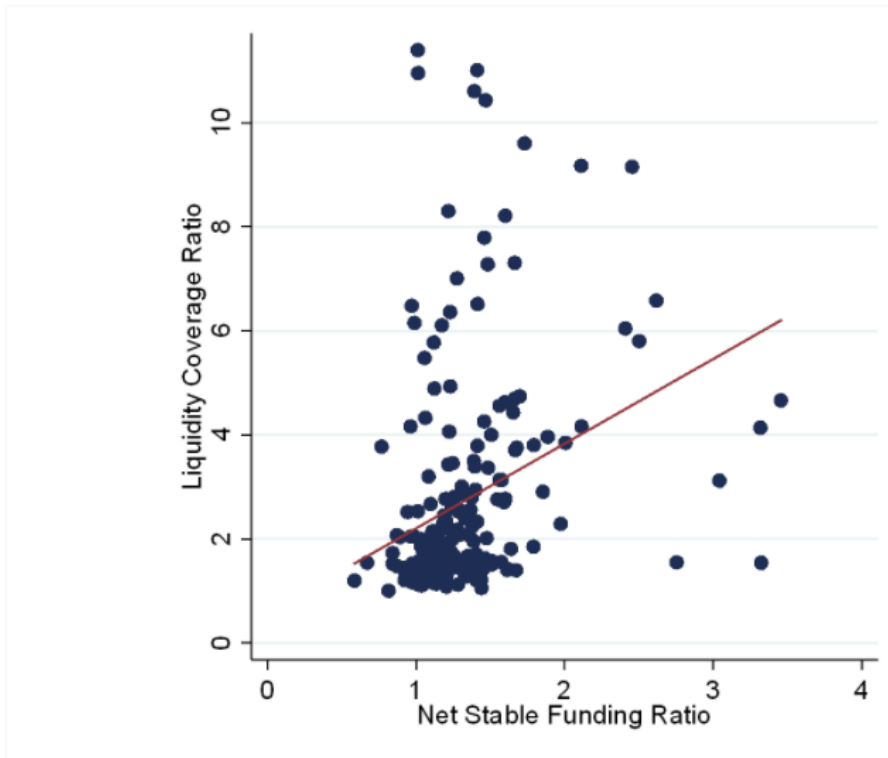


Figure 6. LCR evolution (weighted average)

Source: https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Reports/2021/1025522/EBA%20Report%20on%20Liquidity%20Measures%20under%20Article%20509%281%29%20of%20the%20CRR.pdf

The NSFR ratio also rises, although banks with high LCR does not conclusively have high NSFR ratio. This can be taken as proof that liquidity risks have in fact not been reduced. If this were the case, the banks with high LCR would also have to show a significantly increasing NSFR as they would have to be more resilient to liquidity risk on average. But this is not the case. (Chen, et al., 2021)

(x-axis: NSFR ratio; y-axis: LCR ratio)



Sources: COREP and authors' calculations.

Note: This chart is based on information for the fourth quarter of 2017.

Figure 7. LCR and NSFR for the sample of banks

If we look at the survival period at high level in the EU, it shows that 90% of banks report a survival period longer than 2 months, even under the extreme shock scenario.

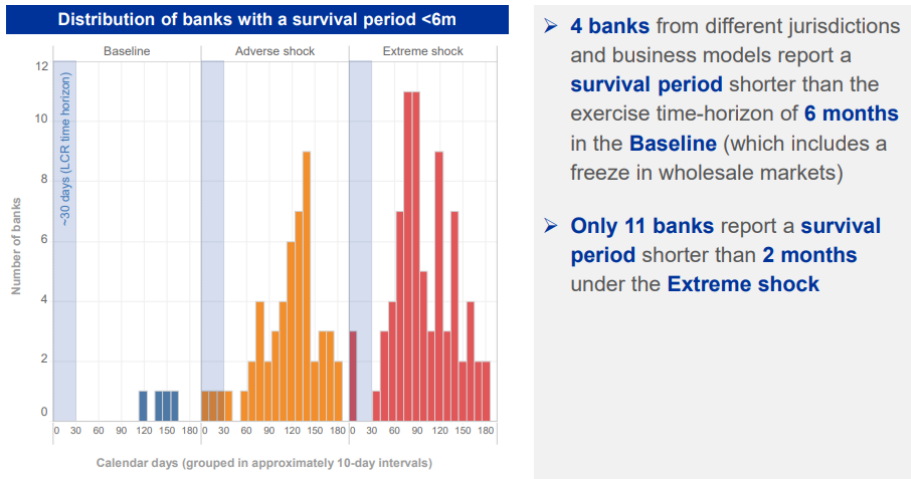


Figure 8. Distribution of EU-27-banks with a survival period <6 months

Source: https://www.bankingsupervision.europa.eu/press/pr/date/2019/html/ssm.pr191007_annex~537c259b6d.en.pdf

Negative effect number three for liquidity risks is the increasing risk of bank run (cash withdrawal), if customers do not longer accept negative interest rates on their bank accounts. This can be buffered by easy and cheap liquidity procurement by ECB, Interbank Market and Customer Market, as well as by increasing emissions of banks' bonds. However, this risk appears to be more of an additional marginal phenomenon. Such bank runs have not occurred in Europe in the past. They are more of a phenomenon in weak economies. (Drehmann & Nikolaou, 2013)

3.2.Data analysis for liquidity risk

The author made a measurement of the significance of NIRP on liquidity risk. The correlation of the deposit facility rate, which is becoming increasingly negative, with the indicators LCR, excess liquidity and net liquidity of the commercial banks was tested. Significant results were obtained here.

The following results are shown for the tested variables: The following results are shown for the tested variables:

		deposit_facility	net_liquidity_lowrisk	net_liquidity_medhighrisk	excess_liquidity	lcr_lowrisk	lcr_medhighrisk
deposit_facility	Pearson-Korrelation	1	-,656**	-,864**	-,656**	-,758**	-,778**
	Sig. (2-seitig)						
	N	23	23	23	23	23	23

***. The correlation is significant at the 0.01 (2-tailed) level.*

Liquidity Coverage Requirement, LCR

The LCR of banks with low risk as well as banks with medium and high risk is significantly negatively correlated with the deposit facility rate. This means that the lower the deposit facility rate, the higher the LCR for banks in all risk groups. This is statistical evidence that banks' liquidity is increasing in times of ever lower deposit facility rates. The reason has been described previously: Banks are being inundated with liquidity that they cannot fully lend out. This is a significant problem because while they build liquidity, it is unprofitable. The result is a build-up of maturity transformation and bond buying. The latter is increasingly taking place in poorer credit ratings, also with the intention of increasing overall profitability.

excess liquidity

The test for the correlation between deposit facility rate and excess liquidity also shows a significant negative relationship. The interpretation is the same as for the LCR. The increasing reduction in the deposit facility rate leads to a steady build-up of excess liquidity, which cannot be accommodated on the market and therefore accumulates on the bank's ECB account.

net liquidity

As the third key figure analyzed, net liquidity also correlates significantly negatively with the deposit facility rate. And this at all banks, both with low, medium and high risks. It is worth noting that the negative

correlation is more pronounced for medium-risk and high-risk banks. The reason is the fact that these banks are finding it more difficult to build up further disproportionate risks. As a result, they find it even more difficult than their colleagues from banks with low risks to place liquidity on the credit market. As a result, their net liquidity increases disproportionately.

Overall, banks are increasingly shorting liquidity. This is positive for the liquidity ratios LCR, NSFR and survival period. Initially, more liquid funds also means lower liquidity risks. However, two clearly negative developments can be observed as a result of this shorting of liquidity: The maturity transformation is significantly increased in the long maturity range. In addition, a mismanagement of the inclusion of the European liquidity ratios in combination with the weak earnings of the banks leads to a disproportionate investment by the banks in high-risk bonds from the EU and thus actually to a further build-up of liquidity risks, which are not perceived in a structured manner by the banking supervisory authority. Both do not directly affect the liquidity risks. However, the increased maturity transformation harbors an earnings risk in the event of rising interest rates. And shrinking earnings lead to falling liquidity again. In addition, credit risks are built up as a result of banks investing disproportionately in high-risk bonds. Their potential default thus also indirectly leads to liquidity risks.

CONCLUSION

The hypothesis as to whether the ECB's NIRP leads to significantly higher liquidity risks cannot therefore be confirmed using statistical measurement methods. The liquidity of the banks has increased with the increasingly negative deposit facility rate and is evidently showing us increasingly decreasing liquidity risks.

However, it must be stated that the liquidity risks are actually increasing far beyond the measurement by the banking supervisory authority. This fact cannot be ignored and should question the effectiveness of the control of the current measurement methods.

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A Humanização em Saúde pela Solidariedade Eleética / *The Health humanization according to the Eleetic solidarity*

Summary

Health humanization, through the hermeneutic reading of the Good Samaritan, is a poietic solidarity that is open to all from the least favored (disabled on the way): sick, marginal, poor, etc., to affirm the ideal of the “commotion of the viscera” among all people, having *in solidum* the condition of asymmetry in which disadvantaged individuals and groups find themselves. As the parable reads, solidarity is not defined so much by its universal relationship as by its commitment, relatively threatened, not defined by impartiality, but by partiality to the weak and oppressed, pursuing impartiality – equality – through “partiality” by the eleetic position.

Key words: Health humanization, mercy, poietic solidarity and ethics.

INTRODUÇÃO

A ética do contribucionismo fundamenta-se no princípio orgânico da “simpatia” ou do amor universal ao próximo. Há uma “participação esplancofânica” do Samaritano para com o *Homo Viator*. A categoria da humanização, segundo o “contribucionismo”, será dada numa solidariedade compassiva. De facto, o contribucionismo determina uma participação poética do “Self” ao “Other”.

A humanização “participa” de um “contribucionismo poético”, que leva o médico a participar com o seu doente, permitindo uma “actuação esplancofânica”.¹

A humanização em saúde concretiza-se por este sentido do *socius*, que é uma relação

¹ Cf. BORGES DE MENESES, R. D., “Do Desvalido ao Samaritano: paradigma de humanização hospitalar”, in: *Enfermagem Oncológica*, 33 (Porto, 2005) 29–32.

ético-hermenêutica, com origem no dar prioridade ao Outro, como participação ética e forma nova de expressar a vivência plesiológica que experimenta o Samaritano, vindo do Desvalido no Caminho (Jesus Cristo). A humanização veicula uma *passionis memoria* pela rememoração activa e passiva. Esta recordação plesiológica é uma anamnese poiética, enquanto veicula a força do anúncio da redenção do Desvalido no Caminho (doente, marginal, etc.) pelo Samaritano. A “anamnése” soteriológica do Desvalido favorece e engrandece, pela humanização em saúde, a solidariedade compassiva (Lc 10, 33). É esta anamnese aretológica que vamos decifrar na humanização através de uma solidariedade compassiva, que afectou o Samaritano num “fazer esplancofânico” em benefício de certo homem no Caminho da doença ou do sofrimento. Será este o nosso estudo soteriológico da humanização.²

A SOLIDARIEDADE E AS SOLIDARIEDADES

Na humanização, existem dois graus de solidariedade e, naturalmente, três respostas diferentes sobre as implicações poiéticas da mesma. Assim, surgem diferentes respostas, desde uma forma *in solidum* simétrica à assimétrica, passando pela forma racémica.

A parábola do Bom Samaritano aponta para um caminho de solidariedade de solidariedade, em virtude das prestações de cuidados ao Desvalido. Como parábola do caminho define o caminho da solidariedade compassiva de estrangeiro perante um “semimorto” no caminho da vida, que necessita da solidariedade plesiológica do Samaritano, que está no caminho da ajuda ou do auxílio esplancofânica. Esta é a verdadeira solidariedade. Esta atrai para o “dia-lógos” sujeitos iguais, competentes e livres. Este é um elemento fundamental da humanização. Naturalmente que a realidade é outra, sendo essas condições ideais, anteriores ao próprio facto da “fala”. Pela humanização, em saúde, falamos para nos entendermos, quer dizer, para nos fazermos compreender e chegarmos a um acolhimento na relação médico-doente. São como que as condições, quase transcendentais, que tornam possível levar o debate pelo caminho poiético do “consenso”. O incompetente, o desigual e o menos livre é um pré-sujeito do “diálogo”, isto é, alguém sem o qual o consenso não será tão ideal como seria de desejar, e que, como tal, não tem lugar nele.

Percebe-se a inter-subjectividade simétrica metaforicamente dada no Sacerdote ou no Levita perante o Desvalido no Caminho, que na parábola se refere em Jesus Cristo. Certo é que o *nomikós* surge como expressão inter-subjectiva simétrica, de igual para igual, nas perguntas que faz para experimentar o “Mestre”. A desumanização traduz naturalmente a igualdade e nivelamento dos sujeitos, onde o consenso é a marca do “nivelamento axiológico”.

Remete para uma relação entre sujeitos desiguais. Um modelo desta assimetria será a dialéctica hegeliana, em sentido filosófico, do patrão-escravo.

Para Hegel, o êxito de um momento emancipado verifica-se sempre que um sujeito é reconhecido pelo Outro e este, por sua vez, é reconhecido por aquele como elemento

2 Cf *Idem*, “Do Desvalido ao Samaritano: a humanização em saúde”, in: *EBORENSIA*, 15 (36) (Évora, 2005) 87–96.

necessário da sua própria identidade. Segundo a fenomenologia do espírito, uma pessoa começa o processo com uma consciência egoísta *per se*, consciência que tem que se sacrificar, se quisermos reconhecer o outro como consciência igual à nossa.

O processo humanizador afecta a consciência sofredora do Outro. Alcança-se a própria consciência, mediante a própria morte e a do outro. Assim, aparece simbolizada nos salteadores, que alcançam a própria consciência, mediante a própria morte e a do outro, segundo o espírito hegeliano. Enquanto não se produzir esta “reflexão na unidade” do reconhecimento recíproco, ambas as consciências serão diferentes. Se uma autoconsciência é o patrão, a outra será o escravo, segundo Hegel, tal como se revela nos salteadores da parábola do Bom Samaritano (Lc 10, 25-37).³

A solidariedade que se gera tem características originais, simultaneamente simétrica e assimétrica. Segundo a humanização não se trata de repartir entre os menos-iguais o excedente dos mais-iguais, mas organizar o todo a partir dos direitos dos menos iguais. Não se trata de questionar a legitimidade desde a não funcionalidade, mas a funcionalidade desde o défice da legitimação. Temos, portanto, dois modelos de solidariedade – por consenso ou “descendente” e por reconhecimento ou “ascendente” – que correspondem às duas versões da inter-subjectividade referidas: simétrica e assimétrica. As ações do Bom Samaritano possuem tanto de simétrico, quanto de “assimétrico”, dado que o “fazer” foi activo e passivo, respectivamente. Está dado na “voz média” pela esplancnofania, que vem de Deus-Pai, o “Pai da Misericórdias”.

No Samaritano, a solidariedade da razão comunicativa representa uma acção inter-subjectiva simétrica, deve explicar o passado desde esse princípio inter-subjectivo e dedica-se activamente à construção do futuro. Há o ver e o acolher do Samaritano que é a solidariedade descendente. Mas, nele surge a “solidariedade ascendente”, que se justifica pelo reconhecimento, que vem do Desvalido no Caminho.

A partir do *Homo Viator*, outra coisa será a solidariedade entendida de acordo com uma experiência histórica primária, como inter-subjectividade assimétrica, quer dizer, como relação entre sujeitos que lutam pelo seu reconhecimento.

Na humanização, poderá surgir que uns carecem de reconhecimento da sua dignidade, porque são “des-validos” e lutam por ela; outros têm-na formalmente, mas ao defrontar-se com aqueles que a não têm, comportam-se como dominadores e isto está presente na relação médico-doente.⁴ Tal como na humanização, a solidariedade é a necessidade de “reconhecimento mútuo” e isto manifesta-se na parábola do Bom Samaritano. Será a compaixão que marcará esse reconhecimento e define uma “solidariedade ascendente”. Serão, na humanização, os “des-validos” os sujeitos axiológicos que constituem o princípio da solidariedade.

Necessário será dizer que a humanização, em saúde, é uma inter-subjectividade simétrica e assimétrica, simultaneamente, *non sub eodem aspectu*. Aqui temos uma inter-subjectividade “racémica” revelada numa “solidariedade anamnésica”, que

3 Cf. *Idem* – “Na parábola do Bom Samaritano: o sentido da fruição pela humanização”, in: *Acção Médica*, LXIX, 4 (Porto, 2005) 22–33.

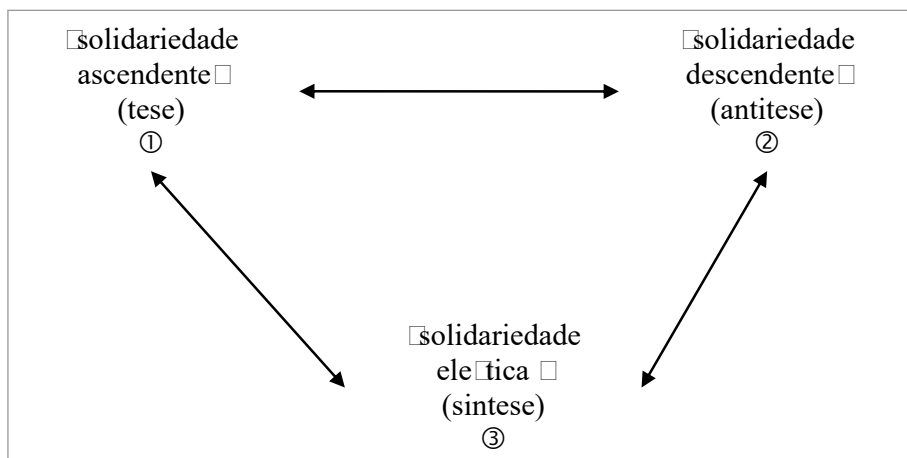
4 Cf. OSSWALD, W. – “Humanização, ética, solidariedade”, in: *Cadernos de Bioética*, 12, 29 (Coimbra, 2002) 16–17.

informa e dá vida à humanização. Partindo da inter-subjectividade assimétrica, será possível de facto, uma solidariedade com o passado como – *Leidensgeschichte* –, na medida em que hoje assumimos esses direitos não satisfeitos, teremos acesso à dignidade de homens (doentes, etc.) e passaremos de “Desvalidos” a serem dignos.

A parábola do Bom Samaritano é uma “anamnése solidária” da – *Leidensgeschichte* – como – *Leidensevangelium* –, na leitura da *Salvifici Doloris*, porque narrativa da dor e do sofrimento. A humanização, em saúde, é uma “*Leidensgeschichte*”, que vai do doente e poderá atingir o médico, que tem um imperativo poético: vai e faz misericórdia ao Desvalido. A “inter-subjectividade racémica” implicará quer a solidariedade *ascendente*, quer a solidariedade *descendente*, que é visível no Samaritano, ora para com o Desvalido (ascendente), ora no Sacerdote e no Levita, para com o “meio morto” (descendente).⁵

A solidariedade racémica é a solidariedade entre desiguais (Samaritano e Desvalido) e ela “faz-se” (poésis) mediante a opção preferencial do pobre. Como se encontra na humanização, esta opção introduz uma parcialidade ou assimetria no discurso e no compromisso (responsabilidade), a fim de compensar e solucionar a “assimetria”, que existe na realidade histórica do Desvalido do Caminho.

Dialecticamente diremos que, na humanização, surgem os seguintes elementos:



A humanização, em saúde, está definida nesta forma elética e dual de solidariedades.⁶

Assim entendida, a solidariedade não se opõe ao dinamismo da justiça, antes o reforça. Será uma solidariedade que propõe transformações estruturais, a fim de corrigir as assimetrias da realidade comportamental entre o Bom Samaritano e o “Desvalido do Caminho”. A solidariedade anárquica tem a sua metáfora dialecticamente no Desvalido no Caminho, porque expressão soteriológica de Deus-

5 Cf. BEORLEGUI, C., “La intersubjetividad asimétrica, clave de la responsabilidad ética”, in: *Revista Castellana de Teología*, 19 (Madrid, 1994) 309–319.

6 Cf. IZQUIETA, J. L.; GARCIA RIOBO, M. A., “Altruismo y solidaridad. Apuntes antropológicos”, in: *Estudios filosóficos*, 36 (Madrid, 1987) 439–478.

Pai das Misericórdias. Esta forma de solidariedade é um dom, que vem de fora, do Pai das Misericórdias. Poderemos dizer que é uma solidariedade “eleética”, porque simultaneamente simétrica e assimétrica. É uma solidariedade que tem tanto de dom (*solidariedade poética*), quanto de norma (*solidariedade prática*), sendo esta expressa na *Torah*.

Contudo, a “solidariedade descendente” expressa-se simbolicamente nos comportamentos normativos do Sacerdote e do Levita, porque preocupados unicamente pelo sentido prático da Lei e dos Profetas. Com efeito, a “solidariedade ascendente” tem um nome, uma conduta e um chamamento no Bom Samaritano. A primeira forma de solidariedade caracteriza-se pela justiça e o cumprimento dos Mandamentos (Decálogo), afirmando-se a segunda pela misericórdia. A metáfora da “solidariedade ascendente” revela-se na “deliberação esplacnofânica” do Samaritano. Será de baixo para cima a “comoção das vísceras” (*rahamim*) na conduta poética do Samaritano, que se define como “solidariedade poética e ascendente”, porque afirmação vivencial da “solidariedade anárquica”, que vem do Pai das Misericórdias e passa para o Desvalido no Caminho (Jesus Cristo). Uma não existe sem a outra.

A SOLIDARIEDADE NA HUMANIZAÇÃO DOS CUIDADOS

Deus oferece-se como *Supremus Socius* ou Próximo e é co-sofredor, no doente, com humanidade, tal como se representa metaforicamente pelo Pai das Misericórdias, segundo a narrativa do *Homo Viator* (Lc.10,25-37). Assim, o Samaritano é uma contribuição plesiológica, que vem do *Socius* supremo, que é Deus-Pai. O Samaritano é metáfora da “ética do contribucionismo”. A humanização, em saúde, participa desta solidariedade contribucionista, que induz uma nova ética do “*socius*”.⁷

A partir desta “metaética”, surge a participação da criatividade universal e interrelacionamento, que determina uma ética do “contribucionismo” e fundamenta-se no princípio da simpatia orgânica ou do “amor universal”. Assim já vem expresso na parábola do Bom Samaritano. Disse-lhe Jesus: Que está escrito na Lei? Como lês? O outro (*nomikós*) respondeu: Amarás o Senhor, teu Deus, com todo o teu coração, com toda a tua alma, com todas as tuas forças e com todo o teu entendimento, e ao teu próximo como a ti mesmo. Disse-lhe Jesus: Respondeste bem, faz isso e viverás (Lc 10, 26-28).

Em Lucas é o “doutor da lei” que responde com o *Shemá*, enquanto em Mt 22, 37 e Mc 12, 29 será Jesus Cristo quem o faz, daqui que S. Lucas mostra que a mensagem de Jesus tinha sido preparada pelo Antigo Testamento (Lc 19,18; Nm 15, 37). Segundo a humanização, poderemos dizer: “the ethical ideal is for every present-self to be a living and lasting contribution to the Divine Creativity, to the future generations and to the unfolding of the vast potential of life as such”. Assim, na humanização, tal como no contribucionismo há uma relação entre o “*anthropós*”, *ethos* e “*kosmos*”. O *Anthropos* está representado por – certo homem –, que é “Desvalido no Caminho”, segundo o conto do *HOMO VIATOR*, para a Teoria da

⁷ Cf. RORTY, R., *Contigencia, ironia y solidaridad*, tradução do inglês, Barcelona, Paidós, 1991, 18.

Literatura Bíblica, sendo pois uma parábola segundo a alegoriase.

Entretanto, o *ethos* será apresentado metaforicamente no estrangeiro – Samaritano –, que se refere como “conduta esplancnofânica”. Esta induz-se como uma “ética contribucionista”, que vai do Samaritano ao Desvalido no Caminho.⁸

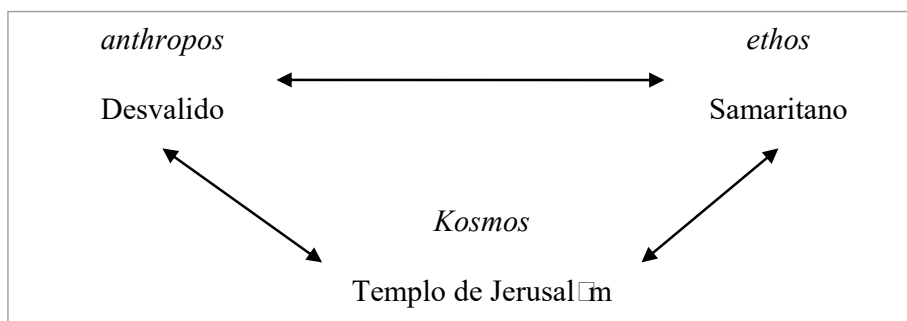
O Samaritano dá uma contribuição ao Desvalido pela ajuda desinteressada, como “vivência agápica” e, por sua vez, o Desvalido (Jesus Cristo) “contribui” para a “vivência esplancnofânica” do Samaritano, sendo este o mais beneficiado por tal contribuição *ad extra* do Desvalido no Caminho.

A humanização em saúde é um contribucionismo entre o “self” (médico) e o “other” (doente). Estes dois elementos contribucionistas satisfazem o *ethos* do *socius*, que se traduz numa característica fundamental da humanização.

O contribucionismo solidário dá uma nova forma de vivência na humanização em Saúde, porque esta implica a partilha *in solidum* do Samaritano ao Desvalido como uma contribuição plesiológica. Na verdade, o contribucionismo plesiológico marca o *elan* da humanização, de forma que a participação do Samaritano é “deliberativa esplancnofânica”.

O “contribucionismo esplancnofânico” aparece como uma forma de partilha plesiológica, a qual possui um “imperativo poiético” que advém da “comoção das vísceras” e tem uma afirmação poiética: vai e faz o mesmo!... Sem o contribucionismo, conduz-se a humanização para o elemento do *kosmos*, porque salienta o ambiente da parábola, que nos norteia no Templo de Jerusalém, porque é o *Kosmos* de toda a vivência do judaísmo, na época de Cristo, como forma de narrar o sentido e evoluir nesse mundo litúrgico, do culto à *Torah*, que têm como metáfora o Sacerdote e o Levita. Estes afirmam o culto do Templo como mundividência religiosa da época. Podem manifestar-se estas formas, na humanização, como a amplitude crescente na prestação de cuidados pelo Samaritano nos dias de hoje. A humanização em Saúde necessita de um *Kosmos*, que já não é o Templo de Jerusalém, mas a existência de um hospital.⁹

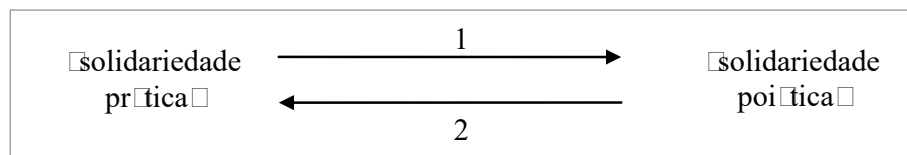
Dialecticamente, a humanização em saúde revela-se na presença dos três momentos:



8 Cf. MARTÍNEZ GORDO, J., *Dios, amor asimétrico. Propuesta de teología fundamental praxica*, Bilbao, 1993, 16–30.

9 Cf. MAGNANI, G., “Le nuove vie della solidarietà”, in: *Aggiornamenti Sociali*, 39 (Milano, 1988) 511–520.

A humanização possui um domínio plesiológico com nova capacidade “esplancnofânica”. Assim, na humanização em saúde, o “contribucionismo plesiológico”, perante os “desvalidos” (doentes, marginais, etc.), vivencia-se sob duas formas de “solidariedade”, de forma esquemática:

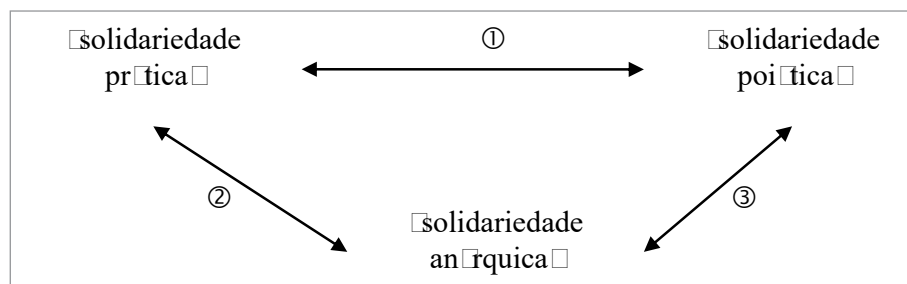


Segundo uma leitura hermenêutica da parábola do Bom Samaritano, há uma partilha de bens internos (solidariedade prática), que se situam na “audição e vocação esplancnofânicas”, que é *ad extra* a partir do Pai da Misericórdias.¹⁰

A humanização em saúde sente *de facto* a necessidade e a contingência da “solidariedade poética”, porque é o seu fundamento e *aliquid cordis*.

Segundo as referências ao “fazer misericordioso”, na parábola, surge uma nova forma de solidariedade denominada “poética”. Segundo esta, encontramos os bens externos, que o Samaritano partilhou com o Desvalido, ao aplicar-Lhe azeite e vinho e utilizando “ligaduras”. Os fazeres esplancnofânicos do Samaritano são expressão da “solidária poética”.¹¹

Dialeticamente, a humanização vive e vocaciona-se nestas duas de solidariedade (práticas e poéticas), que se apela e se caracteriza, plesiológicamente, na solidariedade anárquica, que é antes de todos os bens partilhados, quer externos, quer internos do Samaritano ao Desvalido, segundo a perspectiva de Levinas. A solidariedade anárquica é antes de mim, da consciência e da “razão poética”.¹² Assim esquematicamente será:



A solidariedade anárquica, como fundamento da solidariedade humanizadora, em saúde, seria Deus-Pai, que escolheu ser solidário com todos e cada um. Segundo a solidariedade anárquica, será, em Jesus Cristo, como Desvalido no Caminho, onde se vive na “relação poética” com o Outro (Desvalido), como lógica do coração e lógica

10 Cf. A.A. V.V., “Hacia una cultura de la solidaridad”, in: *Corintios*, XIII, 75 (Madrid, 1995) 15–26.

11 Cf. CORTINA, A., *La moral del camaleón*, Madrid, Espasa-Calpe, 1991, 53–55.

12 Cf. BORGES DE MENESES, R. D., “Na parábola do Bom Samaritano: o sentido da fruição pela humanização”, in: *Ação Médica*, LXIX, 4 (Porto, 2005) 22–25.

do dom, ultrapassando a ordem da justiça, que determina a solidariedade (prática ou poética). A vida da humanização faz uma redução da solidariedade anárquica.¹³

No seu sentido atual, carregado de valor moral, a solidariedade remete sobretudo ao que implicará no seu uso jurídico, mas supondo também a solidez da compaixão.

A partir da etimologia *in solidum*, sugere-se qual é a base da “solidariedade”, que reside na “empatia compassiva”, que poderá significar adquirir a misericórdia no sentido mais nobre e expresso pela “comoção das vísceras”. A “solidariedade esplancofânica” será uma manifestação da “vivência plesiológica” do Samaritano, porque por ele o Desvalido no Caminho sentiu o *solidus* da vida e da saúde. A humanização sugere qual é a “meta”: o compartilhar e participar nos bens práticos ou poéticos, ao pensar e viver no bem dos outros (desvalidos a vida; doentes, presos e marginais). A humanização é um *solidus* poético na relação médico/doente.¹⁴

Segundo a humanização em saúde, a solidariedade situa-se com espontaneidade na busca do Bem dos Outros, porque assim o médico considera o doente como um todo e como um em si mesmo. A humanização é solidariedade dirigida a todo o ser humano e a todos os seres, como um grupo de pertença, que engloba médicos e doentes, bem como os demais técnicos de saúde.

A solidariedade contribucionista expressa-se pela humanização em saúde, no marco do puro dom, isto é, naquela que assume e ultrapassa a justiça do Sacerdote e do Levita, como se refere pela *Torah* e a prática do Templo de Jerusalém. O Samaritano ultrapassa, segundo o contribucionismo, as solidariedades e fixa-se na “solidariedade esplancofânica”. A humanização em saúde é um “contributo plesiológico” *in solidum* na relação dual e assimétrica, dada médico-doente, que se vivencia numa “solidariedade anárquica”, porque vem de fora, do Pai das misericórdias, através do *in solidum in via Desvalidum patefactum erit*.¹⁵

A concretização desta “solidariedade eleética” tem o seu fruto no encontro de Jesus com Marta e Maria, em Betânia (Lc. 10, 38-42). Aqui Jesus é o *ethos* da hospitalidade. Aparece como Desejo do Outro. Esta entrega solidária desvanece-se, ora na solicitude de Marta (ação), ora na “contemplação” de Maria. Segundo a resposta de Jesus Cristo, Maria escolheu a “melhor parte”, (Lc. 10, 41-42): *et respondens dixit illi Dominus: Martha, Martha sollicita es et turbaris erga plurima, porro unum est necessarium; Maria enim optimam partem elegit, quae non auferetur ab ea*.

Jesus Cristo induz-nos numa nova forma de solidariedade, tal como a encontramos nos Exercícios Espirituais de S. Inácio de Loiola: *contemplativus in actione*. Nesta passagem, Jesus Cristo anuncia uma nova “axiologia poética da misericórdia”, que é aquela que vem do Pai das Misericórdias, segundo o Evangelho da Misericórdia, pela pena de S. Lucas.

13 Cf. PARENT, R., “Teologia de la praxis de solidaridad”, in: *Moralía*, 14 (Madrid, 1992) 324–326.

14 Cf. DU FRESNE, C., *Glossarium mediae et infimae latinitatis*, Paris, Hachete, 1938, VII, *solidare et in solidum*.

15 Cf. DUVIGNAUD, J., *La solidariedad. Vinculos de sangre y vinculos de afinidad*, México, Encuentro, 1990.

CONCLUSÃO

A humanização, pela leitura hermenêutica do Bom Samaritano, é “solidariedade poiética”, que se abra a todos, a partir dos menos favorecidos (desvalidos nos caminhos da vida): doentes, marginais, pobres, etc., para afirmar o ideal da “comoção das vísceras”, entre todas as pessoas, tendo *in solidum* a condição de assimetria, em que se encontram os indivíduos e os grupos desvalidos.¹⁶ Tal como se lê, pela parábola, a solidariedade não se define tanto pela sua relação universal, quanto pelo seu compromisso, relativamente ameaçado, não se definindo pela imparcialidade, mas pela parcialidade ao débil e oprimido, prosseguindo a imparcialidade por meio da “parcialidade”. Assim, o “olho solidário” supõe a justiça, mas ultrapassa a mesma e cai no âmbito da “esplancnofania” do Outro, que abre a justiça ao domínio da ação positiva, que vem de fora, havendo um impulso, que desenlça os esquemas de reciprocidade e da obrigatoriedade da justiça, para determinar a ética da “supr abundância do dom”, para usar a terminologia de Ricoeur.¹⁷

Na humanização em saúde, muitas vezes, falamos de solidariedade ao referirmos àquilo que realizam as pessoas por impulso próprio, dirigindo a sua ação para os necessitados (desvalidos), especialmente fora dos seus “grupos devida”, porque, pela leitura da parábola do Bom Samaritano, surge como “paradigma deliberativo esplancnofânico”, na humanização. Esta é solidariedade. E esta afirma-se em novo paradigma de “solidariedade esplancnofânica”.

Tal como o Samaritano viveu a “supra-abundância do dom”, a humanização em saúde é um “dom esplancnofânico” do médico ao doente (*desvalido*), pela leitura antropológica e bíblica da parábola do Bom Samaritano (Lc. 10,25–37). Naturalmente, na relação Desvalido no Caminho (doente) com o Bom Samaritano (médico exemplar) eleva-se a uma “solidariedade anamnésica”, por ser oriunda da “comoção das vísceras”.

A humanização em saúde implica todas as formas de solidariedade referidas em sentido dialéctico, tendo como forma mais visível a “solidariedade descendente”, representada nas atitudes práticas do Sacerdote e do Levita da parábola do Desvalido no Caminho (Lc 10,25–37). A forma mais rica, em sentido antropológico e bíblico, para a humanização em saúde cifra-se na “solidariedade ascendente”, porque revelada na “esplancnofania” do Samaritano. Definitivamente, a humanização em saúde vive na dualidade das solidariedades, que são dialeticamente complementares.

Assim, o fundamento último, em sentido fenomenológico, da humanização dos cuidados de saúde inspira-se na “solidariedade anárquica”, porque tem a sua fonte no dom do Pai das Misericórdias pelo Desvalido no Caminho, que é a verdadeira razão de ser da “solidariedade poiética”.

Na verdade, o *in solidum* da humanização em saúde reside na “revolução das vísceras” (comoção das entranhas) do Samaritano, que é de baixo para cima, como “esplancnofania poiética”, que se revela ascendentemente num “dar-se visceralmente

16 Cf. PECES-BARBA, G., *Ética, poder y derecho*, Madrid, Tecnos, 1995, 69–70.

17 Cf. RICOEUR, P., *L'unique et le singulier*, Paris, Alice Editions, 1999, 43–48.

ao Outro” (desvalido no caminho da dor e do sofrimento – Jesus Cristo). A solidariedade da solidariedade do Pai das Misericórdias reside na *Lectio Divina Viae Crucis* do Desvalido, que está no caminho da dor e do sofrimento e goza da solidariedade poética do Samaritano bom, que, pelo *in solidum Crucis*, se transformou em Bom Samaritano (Lc. 10,25–37). Em Betânia, (Lc. 10, 37–42), Jesus Cristo chama à atenção do amor a Deus, como “solidariedade contemplativa”, porque começou, no Caminho, segundo a parábola do Bom Samaritano, na “solidariedade poética” de um Samaritano, passando a um Samaritano ativo, nos cuidados ao Desvalido no Caminho (Jesus Cristo).



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The history of Anna German's ancestors – a contribution to the discussion on the identity of migrants. Socio-historical dimension

Summary

Since certain elements of the biography of Anna German (Anna Wiktoria German-Tucholska) – a singer, composer and geologist by education – and, more broadly, of her ancestral history can be seen as characteristic of millions of migrants, they can also be taken as contributing to the development of the current knowledge in the context of contemporary migration movements. They also give rise to the observation of some innovative value highlighting the particularity of the mobility of religious groups, for example, as in the case of Anna German, the Protestants. Nevertheless, the pronounced fame enjoyed by the artist not only in Poland, but in particular in the countries of the former Soviet Union, somehow overshadowed – for both various researchers and enthusiasts of her talent alike – the very aspects related to the subject of migration of people in the areas of Central and Eastern Europe as well as Central Asia.

Key words: Anna German, Protestants, Mennonites, Baptists, Russia, Uzbekistan, Kazakhstan, identity.

PATERNAL ANCESTORS

should begin my observations *ab ovo*, from family roots. Eugeniusz German, father of Anna German, came from a Baptist family and so he was a Protestant Christian. His ancestors were from Germany, although it is unclear how they converted. In the 17th and 18th century, Baptism was a relatively unknown, small religious movement and it was mainly linked to Protestant communities in England and

the Netherlands, but also selected areas in North America¹. Towards the end of the 18th century, the Hörmann family of Eugeniusz German took advantage of certain concessions offered by Empress Catherine II of Russia to settlers from Germany and countries of the present-day Benelux. It is important to notice that at that time, the northern shores of the Black Sea, the Crimea and the area around the Sea of Azov had already almost entirely passed under the rule of Russia at the expense of Turkey. It was there, on a vast land sometimes also referred to as the Wild Fields (although this term is broader and covers roughly the area of the present-day Ukraine), that the Russian authorities carried out a large-scale settlement campaign. Thousands of Protestants from Western Europe were offered tax benefits, promises of exemption from military service, guarantees of religious freedom as well as the legendary, fertile soils of the Dnieper region. The Hörmann family was among the new arrivals who made their way to this part of the Russian Empire. Polish sources indicate that the family of Anna German's father founded the settlement of *Hoffnung* in 1819, renamed *Ol'hynе* afterwards (*Ольгине*), that was located near the city of Berdyansk². However, I have not been able to confirm this finding neither in the Ukrainian nor in Russian archives. Today, there are at least two villages called *Ol'hynе*, one on the right and the other on the left bank of the Dnieper River (20 and 10 km upstream respectively). Both these villages were settled by Protestant Germans around 1850. Therefore, it is rather difficult to determine without further research where in the modern-day Ukraine was the ancestral hometown of the Hörmann family. What we know is that Friedrich, Anna German's grandfather, intended to train as a Baptist preacher and travelled from Ukraine to Łódź, where in 1907 he enrolled in a newly opened Prediger-Seminar (a Preacher Seminar that was later renamed the Baptist Theological Seminar). It was also in Łódź where he met Anna Balach whom he later married. In 1910, the couple had a son, Eugeniusz, Anna German's father. Before the outbreak of World War I, the family of Hörmann permanently returned to Ukraine. One can only fathom the fate that was awaiting a man with Western roots and a Baptist background in a Bolshevik-run state. Already in 1929, Friedrich Hörmann was arrested as part of the so-called German case (there were also Polish and Greek cases) and was sentenced to five years of labour in Arkhangelsk, where he was sent together with his family. Friedrich later died in the camp and his twenty-year-old son Eugeniusz must have escaped or left the exile by bribing the camp authorities. He then settled in Donbass where he might have changed his surname from Hörmann to German³. Soon after, he got married and found a job as an accountant in a local coal mine. However, according to Polish sources, since the mine was managed by a person who had no idea about management and, to make matters worse, was an alcoholic⁴, Eugeniusz soon found himself being blamed for the disastrous economic situation of the company. Although he could have tried to defend himself, he was worried that his true identity would be discovered during any possible trial. He thus decided to flee

1 It is assumed that the history of Polish Baptism begins in the second half of the 19th century, whereas its development in the 1930s resulted from contacts with Baptism communities from Germany.

2 Jakman A.: *80 lat temu urodziła się Anna German* [family genealogy], *More Maiorum – genealogy journal*, 2016-02-14, <https://moremaiorum.pl/80-lat-temu-urodzila-sie-anna-german-wywod-przodkow/> (accessed on 2023.01.25).

3 It can be suspected that "Hörmann" was originally spelled as "Chormann" (Хөрман or Хорман) and only after arriving in Donbass, Eugeniusz could adopt the spelling of "German" (Герман).

4 Jakman A.: *op. cit.*

the USSR and abandon his Donbas abode. Leaving his wife and a several-year-old son behind, he embarked on crossing Central Asia in order to get to Persia (Iran) from where he could travel to Western Europe. Around 1933/1934, he arrived in Fergana, an Uzbek city with a strong Protestant community, where he found a job for an oil company.

MATERNAL ANCESTORS

Just like Eugeniusz German, Anna German's mother, Irma German (later Berner), was also from a Protestant family. Her ancestors, the Martens, were Mennonites. They represented a religious movement related to Baptism and came from Frisia, a historical land with its own Frisian language covering the shores of the North Sea (an area encompassing the present-day Netherlands and some parts of Denmark and Germany)⁵. The Mennonites came to the Netherlands in the 16th century and for almost two hundred years their history was marked by a perpetual fight for religious devotion and safety from persecutions. It was not surprising, therefore, that the promise of vast expanses of the Russian Empire offered alongside many privileges by Empress Catherine II tempted the Mennonites to move away from Frisia. It is well known that freedom of religion and exemption from military and civil service was guaranteed to the settlers. Moreover, they received full exemption from taxes for the first 10 years after settlement. Each family also received 65 acres, or 25 hectares, of agricultural land. In return, the new arrivals were obliged to upkeep roads and bridges in their respective towns, and, in the event of war, they had to provide for the Russian army. The first 228 Mennonite families came to Russia from the Netherlands in 1789 and settled in the Yekaterinoslav Governorate in today's Donetsk Basin. Other families went to the Kuban region inhabiting the north-eastern shores of the Sea of Azov and the Black Sea. Moreover, in the 19th century, Mennonite families from Gdańsk and Elbląg communities also emigrated to Russia, this time moving further east to the Samara region on the Volga River as well as to the Altai Mountains, and even further establishing settlements throughout the area of Western Siberia. The new arrivals dealt mainly with agriculture, but they also established distilleries, cloth factories, brickyards, tile-workshops and mills. In 1874, however, the authorities in Russia revoked the exemption from military service for all colonists, including Protestants, and as many as 900 Mennonite families (at least 4,000 people) had to leave the country and emigrated mainly to the United States⁶. As regards Anna German's family, her maternal ancestors settled in Kuban in a settlement called *Wohldemfuerst*, which from German translates into "Glory to the Prince", a village located 50 km south of Stavropol that is now called *Vielikokniazheskoye*. *Wohldemfuerst* was inhabited by a multinational Protestant community, including Frisian, German and Polish Mennonites, but also Lutherans, Adventists as well as members of the Protestant community of Temple Members. On 6 January 1860, the Russian Mennonites met in Molochansk, a Ukrainian village halfway between

5 Frisian is close to Old English (including Modern English), Dutch and Lower German, it is spoken by about 400,000 people mainly in the Netherlands in the province of Friesland – in: Bezooijen R., Gooskens, Ch.: *How easy is it for speakers of Dutch to understand Frisian and Afrikaans, and why?*, Linguistics in the Netherlands, 2005, 22, p. 24.

6 In: Chawer N.P.: *Kolonia menonitów Wierchn'ogo Taszczenaka*, Melitopol'skij Krajewie-dzeskij Żurnat, 2013, 2, pp. 16–22.

Zaporizhzhia and Melitopol, and decided to establish a new Mennonite community. This resulted in a division within the colony itself and many old administrative and religious Mennonite members were removed from their functions in regions where supporters of the new movement prevailed. The schism also reached *Wohldemfuerst*. In 1862, in order to prevent further divisions, the Grand Duke Michael Romanow proposed to the Mennonites that they resettle to the Caucasus region and areas of Central Asia at the expense of the state. Although many colonists accepted the offer, Anna German's closest ancestors did not relocate. Many Protestants thus ended up in Uzbekistan and, more precisely, in a separate state called Khanate of Khiva, which in the second half of the 19th century became largely a protectorate of Russia and later its integral part. It was in the Khanate where, near the ancient city of Khiva in the valley of the Amu Darya River, which was conquered by the Russians in 1874, a new city of Novy Urgench (later called Urgench) was built and where at the end of the 19th century many Protestant colonists began to arrive. The new arrivals also settled in another new city of Fergana in the Khanate of Kokand located east of the Khanate of Khiv⁷.

THE STRENGTH OF PROTESTANT COMMUNITIES IN PRACTICE

All the information about Anna German's closest paternal ancestors (particularly from the second half of the 19th century to the present day) comes from the memoirs of her mother, Irma Martens, that were published in Poland under the title of "*Human fate*". Hence, we can learn that the artist's maternal great-grandparents did not intend to leave *Vielikokniazheskoye (Wohldemfuerst)*, but before World War I, they converted to Adventism. The family occupied a large, multi-generation house and its members had dealt in hospitality services, but also craftsmanship and construction. For example, they designed and built elevators at one of the railway stations and they also made furniture that was highly valued by their customers. Irma Martens, mother of Anna German, was born in 1909 as one of three children of Anna Martens née Freisen and Dawid Martens (the two other children were Wilmar (born in 1911) and Herta (born in 1920)). With the advent of the Bolshevik revolution, Protestant communities in Russia faced more and more difficulties. According to the memoirs of Anna's mother, their family managed to avoid being shot at least twice and so they began to consider leaving Kuban altogether. In 1928, Irma graduated from a local five-year middle school⁸ and started to look for a job as a primary teacher of German and Russian. She eventually found a position in Redkaya Dubrava, a village in Altai Krai that was more than 3,5 thousand kilometres away from her hometown. The village was inhabited by Mennonites and Irma taught children the languages of German and Russian. However, her stay in Altai Krai did not last long, and already during her first vacation spent at home in Kuban she met a researcher from the Odessa Pedagogical Institute who encouraged her to continue her higher education. She thus agreed to undertake four-year studies, which she completed in 1933, and started

7 Currently, the areas of the Khanate of Kokand and the north-central part of the former Khanate of Khiv are part of Uzbekistan; one of the cities of the Khanate of Kokand was Tashkent, the current capital of Uzbekistan.

8 It was most likely a second-level school with agricultural profile located in a village of Aleksandrovskoye, 100 km east of *Vielikokniazheskoye*.

working as a teacher in a German school in Cebrykowie in the Odessa region. This settlement, founded in the early 19th century by Protestants from Western Europe, was called *Hoffnungstal* or *Hoffnungsthal* (which translates into “the Valley of Hope” or “Тоффунгесталь” in Russian) until the third decade of the 20th century. Irma was soon joined by her mother and sister in Cebrykowie, who could no longer farm in *Vielikokniazheskoye*. It is probable that they were afraid of the consequences of *dekulakisation*, a state policy of hindering the activities of private farmers and bearing constituent elements of genocide, which between 1932 and 1933 resulted in a deadly wave of famine across Ukraine, the Volga region as well as Central Asia. However, Irma and her family did not stay long in Cebrykowie. Although we do not learn much about the reasons for leaving Cebrykowie in the memoirs, it can be assumed that a new state policy was pivotal here. Stalin had already started introducing what came to be known as the Great Terror, a brutal state crackdown on all minorities, factions or groups that could potentially threaten the sovereignty of the communist party. One of such waves fathoming upcoming persecutions began as early as 1934 and it is possible that the Martens family decided to look for a safer place to survive. Since it was around the time when Irma’s brother, Wilmar, was in military service in the Uzbek city of Fergana, the three women decided to join him and so embarked on a trip to the east, crossing over 4,000 km to reach an oil miners’ settlement of Chimyon (*Czimion* in Russian) and a balneological resort located 30 km south-west of Fergana, where Irma found a job as a teacher.

WHERE THE TWO FAMILIES MEET

It was in a housing estate near Fergana, where Irma Martens met Eugeniusz German who was working in the oil fields as an accountant. The two fell in love immediately and Anna’s mother was meticulous to refer in her memoirs to the appeal of Eugeniusz and also his intellectual and artistic qualities. She presented him as a spiritual man, a lover of poetry, a person playing guitar and singing, and a polyglot speaking Dutch, German and Russian. However, we do not know whether he confided in her that he had left behind his wife and son in Donbas. The happiness of the couple did not last long and politics fettered their personal affairs. On 1 December 1934, Sergei Kirov, a secretary of the Leningrad Committee and member of the Politburo of the Communist Party Central Committee, was killed in Leningrad. For Stalin, this served as a pretext to unleash yet another wave of terror and persecutions, and the very next day a decree was announced providing for “expedited procedures” in cases of those accused of “terrorist acts”, their preparation, incitement, aiding and abetting⁹. In practice, this meant that each NKVD unit had to prove that any of the alleged spies, terrorists and counterrevolutionaries had been detected and punished. After the murder of Kirov, someone informed Irma that the NKVD had been already enquiring about her partner (the memoirs mention a “husband”) and so the couple

9 “Content of the Decree: 1. Investigative authorities are instructed to conduct expedited proceedings against those accused of perpetrating or committing acts of terrorism. 2. Judicial authorities are instructed not to suspend the execution of death sentences in connection with requests for pardon, since the Presidium of the Central Executive Committee of the USSR does not consider it possible to accept such requests for consideration. 3. The bodies of NKVD are instructed to execute death sentences on criminals of the above-mentioned category immediately after the sentences are passed”. In: Conquest R.: *Wielki Terror*, Warsaw 1997, p. 54.

decided to flee Fergana straightway. As in many previous situations, they had to look for a new shelter that could offer them security, a sense of anonymity and where they could blend in a Protestant community. The oil fields of Uzbekistan or the Donbas Basin region – industrial centres characterised by a significant movement of people – had such advantages to offer. It was therefore Urgench with its 40,000 workers and still a shortage of hands to build new factories where Irma and Eugeniusz sought refuge. Irma again found a job as a school German teacher (the N. Krupska School), whereas Eugeniusz was employed in a large bakery as an accountant. They led a poor life, just like everyone else, in a house with an earthen floor hoping that no one was watching them. Although there is no trace of their house in Urgench in the present day, there is still the maternity hospital where Anna was born on 14 February 1936. After living in Urgench for a year, the German family decided to move out. One of the most important reasons that made them leave was their daughter's deteriorating health. Needless to say that the climate of Urgench – hot and feverish in summer, frosty and windy in winter – contributed to Anna's poor health. The city provided very poor living conditions having been forcibly transformed into an industrial centre. At the same time, the family also received some signals that the NKVD had become increasingly interested in them and so they quickly moved thousand kilometres away to Tashkent in the early 1937. Unfortunately, the NKVD had already tailed them and arrested Eugeniusz and Irma's brother on charges of spying for Germany while they were in Urgench to sort out certain matters related to the move. Although the evidence brought against them was falsified, this did not impede Soviet justice. Wilmar was sentenced to be sent to a labour camp and Eugeniusz was to be executed. Contrary to what some historians argue, the Anna German's father did not die in Tashkent, but he was transported to the outskirts of Urgench and killed there in tunnels dug in the fields. Because the NKVD did not intend to reveal anything, Anna and Irma learned about the death of their father and husband only in 1956.

EPILOGUE

When Eugeniusz was shot, Irma was pregnant. However, this had no meaning for the NKVD. She was ordered to leave Uzbekistan with her daughter and, after many trials and tribulations, she reached the settlement of *Orłowka* in Kazakhstan that had been also founded by Protestant colonists. The second child of Irma and Eugeniusz, a son, died two years later of scarlet fever. It is hard to imagine how the fate of Irma and her daughter would have turned out, had it not been for the help of Herman Gerner. He was a Polish Jew from Stanisławów (Ivano-Frankivsk), who had fled to the east after Germany invaded Poland. He worked as a teacher in Orłowka and lived in the same house as Irma and her daughter. Very soon after they had met, the couple got married. However, like any other Protestant colonist in the USSR, Irma was called up to work on the construction of a railway line in the Uzbek city of Chimyon, a place where she once met Eugeniusz German. She spent there less than a year and she managed to return to her daughter and husband in Orłowka. In 1943, Gerner joined the 1st Polish Infantry Division named after T. Kościuszko and went to the front. Deprived of her husband's support, Irma suffered from hunger and poverty, but when the war ended, she and Anna could leave the USSR as family of a Polish citizen. Irma and her 9-year-old daughter eagerly took advantage of this opportunity and they went to Szczecin,

later Nowa Ruda in Lower Silesia and, finally in 1949, they moved to Wrocław where the story of Anna German began. Although many biographers of the artist seem to focus on other dramatic aspects of her story, this perspective has little in common with observations about the life and identity of Anna German and her ancestors. Hence, a full stop should be placed here.

NEW RESEARCH CHALLENGES

The history of Anna German's family, paradoxically still insufficiently researched in Poland where the artist is still extremely popular, seems to be an inspiration for broader considerations on certain topics that I will only mention hereunder hoping that other researchers might peruse them in their publications. These are as follows:

1. The history of Protestant colonists in Ukraine.
2. The presence of Polish Protestants among the colonists in Ukraine.
3. Different types of migrants among Protestant colonists in the Russian Empire – from economic migrants to refugees.
4. Protestant diasporas in Uzbekistan and Kazakhstan and the situation of the Polish community there – differences and similarities.
5. Considerations on the psychological condition of migrants seem to be no less important – it would be valuable to compare the attitudes of people belonging to cohesive, strong communities with those not belonging to such groups. One conclusion based on the history of the families of Germans and Martens seems obvious: close-knit and consolidated communities help their members survive even the most unfavourable historical circumstances.

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Passenger air transport in Poland 2012-2022 and a forecast of changes in the number of passenger transport until 2035

Summary

The study analyzes the market of passenger air transport services in Poland in 2012-2022, with a particular emphasis on the negative impact of the COVID-19 pandemic on this market. In addition, the characteristics of transport and air transport in Poland were presented and a forecast of changes in the number of passenger transport until 2035. The main purpose of the work was to identify changes in the number of passenger transport in air transport in Poland in 2012-2022, and especially in 2020-2022 when there was a sudden and significant decrease in demand for such services. The source of data used was the literature on the subject and statistical data from the Civil Aviation Office. Research shows that in 2020, the COVID-19 pandemic negatively impacted air transport in Poland and beyond, as the number of passenger air transport plummeted, which was dictated by the sanitary restrictions introduced by the governments of individual countries.

Keywords: Airports; air transport; pandemic COVID-19; Poland; passenger transport.

1. INTRODUCTION

The modern world economy is becoming strongly integrated, and international politics is becoming increasingly interdependent, which is why air transport, as an element of the global economy, is so important that it should be considered as the causative impulse of many phenomena and processes [Wojewódzka-Król,

Załoga 2016: 11]. The transport system, as a department of management, has limited capabilities to respond quickly to the needs of the modern world, state, region, or local community. Changes taking place in it require time and large financial capital. It is therefore justified to research the development trends of the economy and society. This will make it possible to anticipate needs, i.e. – in the case of the aviation sector – the appropriate development of infrastructure and enrichment of the service offerings, which will meet the requirements of passengers and the external environment.

Air transport plays an increasingly important role for many Polish travelers. It is among the fastest and most comfortable means of transport. Air travel has become a permanent part of our everyday life. According to the forecasts of the Civil Aviation Office, the number of air travelers in Poland in 2035 may exceed 94 million people¹. Despite such positive forecasts, the unprecedented COVID-19 pandemic has left its toll on this industry. In 2020 and two subsequent years, there was a significant decrease in the number of passengers transported by air compared to previous years.

The following research is based on the subject literature, related websites, authors' observations, and secondary data from the Civil Aviation Authority. The data was analyzed and its results were presented in descriptive and graphical form. The research aimed to analyze passenger air transport in 2012–2022 and its further development in the upcoming years until 2035.

2. TRANSPORT'S GENERAL CHARACTERISTICS

Transport is a key sector of the economy, meeting the needs of moving people and goods. Cargo transport in the logistics system performs tasks related to the movement of materials, finished products, and components in the subsystems of production, distribution and supply. Efficient transport in the economy affects the efficiency of commercial transactions, both domestic and international trade. On the other hand, passenger transport fulfills the needs related to human life and its movement.

Transport comes from the Latin word *transportare*, which means to move, to carry. In practice, transport is an activity consisting in the intended movement of people, things or messages. This activity has been known for centuries, therefore man has always moved objects, and later also goods. With the passage of time, this activity was separated and provided for a fee by specialized companies.

As a whole, in business terms, transport is an economic, organizational and technical activity distinguished from other technological activities, e.g. industrial, agricultural. Differentiation of these transport activities and providing them in the form of services occurs when a separate business entity with appropriate means of transport is appointed to perform them [Mendyk 2009: 11–12].

Transport can be further defined as a human activity aimed at changing the location with the use of an appropriate means of transport and infrastructure [Kacperczyk 2009]. This causes a change of place in time and space in a conscious and purposeful

1 <https://ulc.gov.pl/pl/statystyki-analazy/statystyki-i-analazy-ryнку-transportu-lotniczego> (accessed: 08.12.2022).

way. The concept of transport also includes accompanying activities, such as preparation of means of transport, reloading, storage and logistic activities related to transport service.

Transport plays a significant role in every national economy. It performs service functions for other departments and enables the functioning of other sectors of the economy. There is a strong relationship between economic development and the transport system. Efficient transport is a catalyst for growth, and its underinvestment becomes a barrier to economic development.

Transport performs the following functions in the national economy:

- instrument for the exchange of goods and services,
- production location factor,
- meets the communication needs of society,
- impacts GDP growth [Krom, Puchacz, Wiśniewska 2017: 1073].

The basic division of transport into branches is the environment in which it operates. Therefore, land, water and air transport can be distinguished. When making a detailed division in terms of means of transport and road, the following modes of transport are distinguished:

- vehicle transport,
- railway transport,
- sea or water transport,
- air transport,
- water and inland transport [Gadziński 2013: 37].

3. AIR TRANSPORT

Air transport is an important element of the global transport system. It is used to handle various types of passenger, mail and freight transport. The consequence of its divergence is a low impact on demand and supply in the global system. The stakeholders of the exchange on the selected transport market are services related to the movement of people, cargo and mail, with the majority of air transport in the world resulting from passenger transport [Rucińska, Ruciński 2000: 104]. Transport services are provided in particular by airlines, companies or associations, but airports, travel agencies and freight forwarders are also elements of the transport mechanism. All these entities complement each other [Rydzkowski, Wojewódzka-Król 2009: 176]. An important element is also the aviation industry providing communication planes, which are the fundamental means of work.

The basis for the profitability of the aviation industry is the efficient functioning of carriers in the markets they serve. Modern phenomena of today's aviation market result from international trends in the economy and expanding globalization. The development of the Internet together with air transport is a fundamental factor in the international expansion of this branch of moving people and things.

Aviation is the only branch of transport that allows one to reach any location in the world within a day. The improvement and popularization of air transport is therefore the main factor in the development of globalization. This type of transport not only supports and accelerates internationalization, but is alone subject to the process of globalization.

Air transport is very similar to other branches of transport. It distinguishes linear elements, i.e. airways, which are air corridors at an altitude of 900-12,000 meters above sea level, and point elements, i.e. airports, landing fields and airports [Wojewódzka-Król, Załoga 2016: 11]. This type of transport does not require the existence of transport infrastructure during the entire journey, but only in its initial and final stages.

Point elements of air transport have been known and recognized for a long time, while linear elements have been introduced to aviation infrastructure quite recently. This is due to the air environment of functioning of the discussed branch of transport. This area belongs to the linear infrastructure only after the installation of guidance, surveillance and control devices on the ground.

Air transport is characterized by:

- high capital intensity,
- inseparable technical and economic elements,
- multitasking,
- long service life,
- functional and spatial mobility,
- advantage of fixed costs over variable costs [Wojewódzka-Król, Załoga 2022: 266, 272].

The growing popularity of air transport requires continuous investments and modernization of linear and point infrastructures. Air transport exists only between points designated for this purpose, defined as airports, airfields and airports. An airport is an area on land or water adapted in whole or in part to handle the arrivals and departures of aircraft, with the associated building structures. Airports are also present in commercial and economic operations. They are used for landing in order to take or leave luggage, passengers, goods and mail, transported for a fee².

The literature on the subject also includes the concept of an international airport. It is an area designated by the state for international flights. Within the airport, special activities are performed resulting from customs, migration and health protection regulations. This is particularly important in handling international passenger transport.

The space near the airport is formed by the so-called areas controlled by airports [Ruciński 2008]. This area, with a radius of several kilometers, is managed by the airport which manages traffic and communications. Controlled areas are an element connecting linear and point infrastructures.

2 Article 2 para. 4 and 8 of the Act of July 3, 2002. Aviation Law, Journal of Laws of 2002, No. 130, item 1112

Airports, similarly to bus or tram stops and railway stations in other modes of transport, play the role of a stop for the main means of transport. The service of aircraft by airports is very wide and comprehensive. These include technical services such as repairs, maintenance and fuel supply. Contemporary international ports are technical and economic organizations that enable the handling of millions of passengers and hundreds of thousands of tons of cargo per year.

The development of air services in the perspective of the coming years is of key importance for the development of Poland. The current state of the transport network in Poland shows a huge development potential that should be used in the forecast period. International and regional airports are an inseparable element of passenger and cargo services. Image 1 shows the location of airports in Poland.



Image 1. Polish airports.

Source: <https://markethub.pl/wp-content/uploads/Rynek-lotniczy-2.png> (access: 09.12.2022).

Currently, the following airports operate in Poland:

1. Warsaw Chopin Airport,
2. International Airport of Ignacy Jan Paderewski in Bydgoszcz
3. Krakow-Balice John Paul II International Airport,
4. Katowice International Airport in Pyrzowice;
5. Gdansk Lech Wałęsa Airport
6. Lublin Airport,
7. Lodz Władysław Reymont Airport
8. Olsztyn-Mazury Airport
9. Poznan-Lawica Airport of Henryk Wieniawski
10. Rzeszów-Jasionka Airport,
11. NSZZ „Solidarity” Szczecin-Goleniow Airport
12. Warsaw-Modlin Airport
13. Wrocław Mikołaj Kopernik Airport,
14. Zielona Góra-Babimost Airport³.

On the basis of Image 1, it can be concluded that in terms of the number of airports, the province is dominated by Mazowieckie with two points infrastructure facilities of this type. In 2023, it is planned to launch the third passenger airport in this voivodship in Radom (the Heroes of Radom June 1976 Warsaw-Radom airport)⁴. However, there are voivodships, such as Opolskie, Podlaskie or Świętokrzyskie, in which no airport was built.

4. PASSENGER TRANSPORT IN 2012-2022

Nowadays, an efficient and effective system of transporting people and goods is one of the pillars of the country's economy. A well-developed network of air routes and the number of airports influence the development of the aviation industry and provide better and better opportunities for the movement of goods and people, both nationally and internationally. Air transport popularity and dynamic development in recent years has been ensured primarily by the speed of transporting goods and people as well as the development of aviation infrastructure. The main factors that determine its development are safety, travel time, transport costs and travel range [Janczuk, Czapski, Kruszyński 2018: 58-61].

When analyzing the situation of airports in Poland, it should be noted that, due to the COVID-19 pandemic, there had been a significant crisis in passenger aviation. The Polish government undertook various health and safety measures to protect the well-being of the citizens in the country and abroad, and introduced heavy restrictions on international transport too. From March 15, 2020, international passenger air flights were suspended⁵.

3 <https://www.gov.pl/web/infrastruktura/lotniska> (accessed: 09.12.2022).

4 <https://www.rynek-lotniczy.pl/wiadomosci/wakacje-z-itaka-z-portu-warszawaradom-10-rejsow-w-tygodniu-na-poludnie-europy-i-do-egiptu-15421.html> (accessed: 09.12.2022).

5 <https://www.polsatnews.pl/wiadomosc/2020-05-21/jeden-z-najgorszych-miesiecy-lotniska-chopina-ponad-99-proc-spadek-obsluzonych-pasazerow/> (accessed: 09.12.2022).

For the purpose of this study, air transport in Poland from 2012 to the first half of 2022 was analyzed. In the examined years, a general trend could be observed, i.e. an increase in the total number of passengers using air transport in 2012-2019. Over the years, the total number has more than doubled, from over 24 million in 2012 to 49 million in 2019. 2020 brought a drastic decrease to over 14 million passengers. It was the worst year in the studied period, which resulted from the restrictions related to the COVID-19 pandemic.

Only the following year resulted in an increase in passengers in the discussed transport. The first half of 2022 did also move upward. This was due, among other things, to the lifting of restrictions and the return of the tendency to travel by plane. As the number of people decreased, so did the number of operations. Detailed data on the number of passengers served and PAX operations (arrivals and departures of passenger aircraft) in domestic and international traffic - regular and charter in the years 2012 - 2021 are presented in Figure 1.

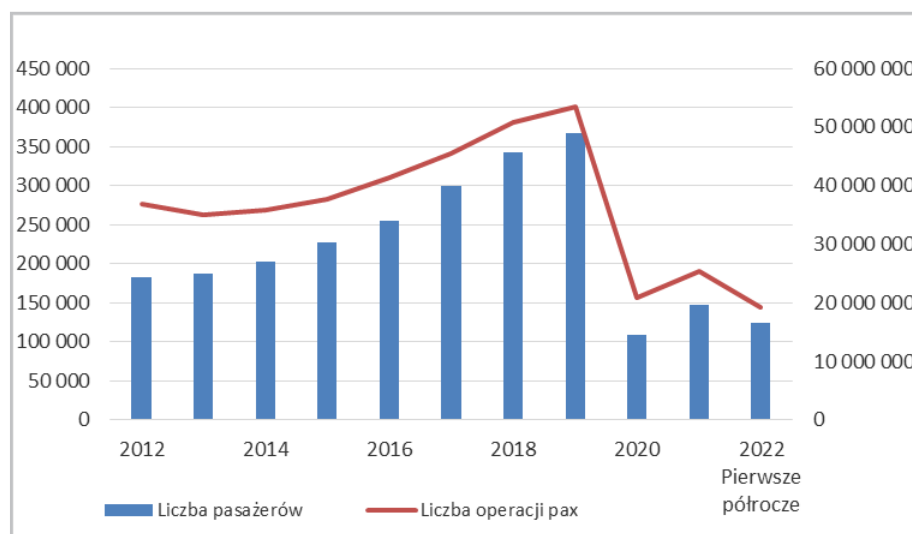


Figure 1. Transport of passengers by air in 2016-2021 thousands of people in Poland.

Source: own study based on: <https://ulc.gov.pl/pl/statystyki-analazy/statystyki-i-analazy-rynku-transportu-lotniczego> (accessed: 12.12.2022).

The year 2020 and the restrictions related to the COVID-19 pandemic were of great importance for the aviation industry. Airports halted their operations and airlines stopped flights. The epidemiological situation had led to the suspension of most passenger connections. The situation was reflected in a sharp drop in the number of passengers and PAX operations. In 2020, Polish airports served only 14.55 million passengers, which was 70% less than in 2019. The last time such a small number of people were served was 15 years ago. In 2021, airports in Poland served only 19.65 million passengers. This was almost 60% less than in 2019, when 49.01 million passengers were served, but the rebound after the pandemic was already visible, as

the number of passengers increased by over 35%. In 2020, only 155.8 thousand were completed. air operations, i.e. 61% less than a year earlier – 400.6 thousand ⁶.

Only in 2021 and in the first half of 2022, the situation improved – a rebound on the given market could be seen, which resulted in an increase in the number of passengers and PAX operations in 2021-2022.

The largest airport in Poland, i.e. Wasaw Chopin Airport, served only 5.5 million passengers throughout 2020, i.e. 13.4 million less than the year before. A similar situation was observed at Kraków-Balice Airport, the second largest in terms of traffic, which served only 2.6 million passengers in 2020, i.e. as much as 5.8 million passengers less than in 2019⁷.

Passenger transport is perceived as the most developing and dynamic segment of air transport development in the years 2015-2035. Forecasts provided by the Civil Aviation Office (ULC) show the dynamics of the increase in the number of passengers at an average level of 6.2% in the years 2015-2035 (Fig. 2).

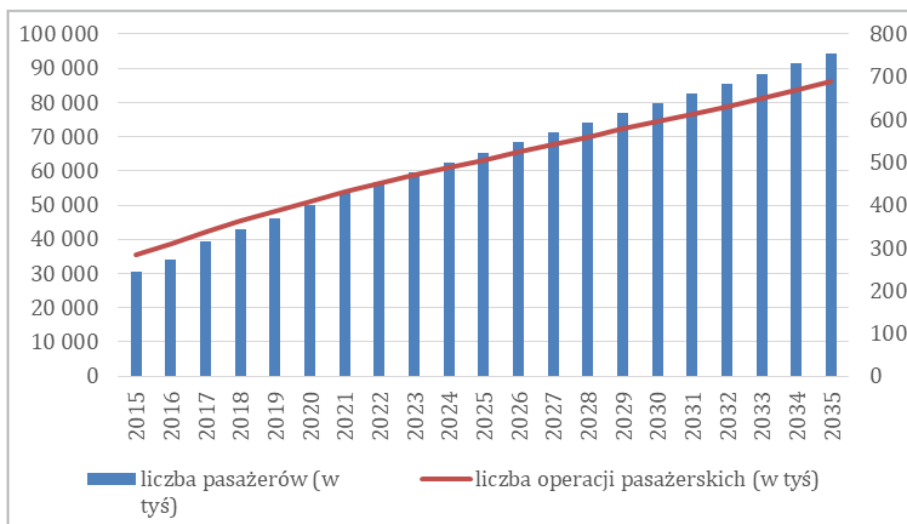


Figure 2. The number of passenger transport and passenger operations in Poland and the forecast for 2015-2035

Source: own study based on: <https://ulc.gov.pl/pl/statystyki-analazy/statystyki-i-analazy-rynku-transportu-lotniczego> (accessed: 14.12.2022).

When analyzing the situation of airports in Poland, it should be noted that due to the COVID-19 pandemic, there has been a significant crisis in passenger aviation. Therefore, the forecasts of the Civil Aviation Authority (ULC) will be subject to adjustment. The CAA forecast predicted that constant trends and directions of air transport development would result in an increase in the number of passenger

⁶ https://ulc.gov.pl/pl/aktualnosci/5632-przewozy-pasazerskie-w-transportcie-lotniczym-w-2020-roku?fbclid=IwAR3W7bRnVoMnExr6y_zWk7JGkBl4ujLX7b8KIoMFAC9ThMlfEX-d0aka5z0Y (accessed: 14.12.2022).

⁷ <https://www.ulc.gov.pl/pl/aktualnosci/5632-przewozy-pasazerskie-w-transportcie-lotniczym-w-2020-roku> (accessed: 14.12.2022).

transport to the level of 94 million people in 2035 compared to 2015 (30 million passengers). This is an increase of over 313% over 20 years, which shows the huge development potential in passenger transport in Poland and in the world⁸.

Odmienne przedstawiła się niestety sytuacja po pandemii COVID-19, która zostawiła znaczący ślad także na tym rynku i miała wpływ na spadek zainteresowania tym rodzajem transportu.

Unfortunately, the situation after the COVID-19 pandemic modified the trend, also leaving its toll on the market and impacting air transport attractiveness.

Nowadays, the development of air transport is certain and not at risk. In the nearest national perspective, an undoubted factor determining the development of the aviation industry will be the establishment of the Central Communication Port (CPK) [Bekisz, Kruszyński 2022: 82]. CPK is a planned transfer hub between Warsaw and Łódź, which is to integrate air, rail and road transport. As part of this project, to the west of Warsaw, 37 km, on an area of approximately 3,000 hectares, an airport will be built, which in the first stage of its operation will be able to handle 40 million passengers a year⁹.

5. SUMMARY AND CONCLUSION

The aviation industry has become one of the most dynamically developing transport branches in Poland, but also in the world. Its services are used by an increasing number of travelers, and yet it is the safest and fastest form of moving people and cargo to the most remote corners of the world. In the years 2012-2019, a clear increase in passenger transport and the transport of goods by air could be observed. Based on the analysis, it can be concluded that Polish air transport recorded a significant decrease in the number of transports due to restrictions, especially at the beginning of the pandemic, i.e. in 2020, compared to previous years. It can be said that Polish aviation managed to overcome the worst times.

Kryzys w branży lotniczej miał zasięg globalny ze względu na operacje międzynarodowe. Również polskie lotniska dotknęło pogorszenie sytuacji ze względu na mały ruch wewnętrzny. Pomoc państwa dla linii lotniczych w naszym kraju miała jednorazowy i ograniczony charakter. W związku z brakiem pomocy państwa w 2021 roku był on bardzo trudnym dla podmiotów zarządzających infrastrukturą lotniskową w Polsce. Kryzys wywołany pandemią COVID-19 w danej gałęzi transportowej można określić jako największy kryzys w historii współczesnego lotnictwa.

The crisis in the aviation industry was global due to the unprecedented disruptions in international operations. Polish airports also experienced a deterioration of the situation due to low internal traffic. The government aid for airlines in the country was of a one-off and limited nature. Due to the lack of it, 2021 became very difficult for entities managing airport infrastructure in Poland. The crisis caused by the COVID-19 pandemic in the discussed transport branch can be described as the greatest crisis in the history of modern aviation.

8 <https://ulc.gov.pl/statystyki-analazy/statystyki-i-analazy-ryнку-transportu-lotniczego> (accessed: 15.12.2022).

9 <https://www.cpk.pl/pl/inwestycja/lotnisko> (accessed: 15.12.2022).

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Implementation of diversity management through HR practices

Summary

Diversity in the external environment breeds diversity in the internal environment and the need for procedures and practices in human resource management as well. Reasons for linking human resource management to diversity management include the need to address the personnel aspects of the organization as well as the strategic position of human resources in the organization that are low-skilled to meet the challenges of diversity management. Diversity management helps to gain a competitive advantage by recruiting diverse people. Organizations can use a variety of practices to implement diversity management. The article contains topics: Management diversity and procedures of HRM, Diversity audit, Relationship of diversity management with organizational outputs.

Key words: diversity management, human resources, diversity audit

The diversity of the workforce does not mean that behavior and approaches to it are a matter of course. On the contrary, diversity management is becoming an important management tool and is even said to be a managerial skill due to the manager's ability to use the strengths of diverse employees to achieve the goals of his organization. In today's world, diversity management is an evolving concept. It represents a proactive approach aimed at managing a heterogeneous workforce in such a way as to maximize the potential benefits of diversity while minimizing its potential disadvantages. This means enabling a diverse workforce to reach its full potential in a fair work environment, where their individual differences are deeply valued, in order to build an organization based on the principles of

efficiency and effectiveness. Therefore, in order to manage diversity effectively and efficiently, we should not only accept and adapt to individual differences, but also support, develop and use them for the benefit of organizations. In order to learn and recognize these differences, it is essential to share an understanding between top management and HR managers. Diversity appreciation and cultural development to support diversity initiatives are key drivers of effective diversity management (Shen et al., 2009).

Diversity in the external environment breeds diversity in the internal environment and the need for procedures and practices in human resource management as well. Reasons for linking human resource management to diversity management include the need to address the personnel aspects of the organization as well as the strategic position of human resources in the organization that are low-skilled to meet the challenges of diversity management. Diversity management helps to gain a competitive advantage by recruiting diverse people. Organizations can use a variety of practices to implement diversity management.

1. MANAGEMENT DIVERSITY AND PROCEDURES OF HRM

Diversity in the external environment (various clients and other stakeholders) breeds diversity in the internal environment and the need for procedures and practices in human resource management as well. Reasons for linking human resource management to diversity management include the need to address the personnel aspects of the organization as well as the strategic position of human resources in the organization that are low-skilled to meet the challenges of diversity management (Babalola and Marques, 2013).

Diversity management helps to gain a competitive advantage by recruiting diverse people (Meena and Vanka, 2013). Many organizations have been effective in recruiting women, the disabled and the socially disadvantaged, and minorities, reflecting increasing diversity (Shen et al., 2009). Various human resource diversity practices include the development of recruitment strategies designed to improve diversity in the organization, advertising in local newspapers, etc. (Wambui et al., 2013). Choosing the right media to reach different audiences also creates a likelihood of a diverse workforce (Meena and Vanka, 2013), such as online recruitment programs, etc.

For effective diversity management, human resource managers must make decisions about diversity-sensitive criteria (Babalola and Marques, 2013). Several diversity-related programs involve the presence of different managers on selection boards, based on a selection process on job responsibilities, qualifications, competences and experience that meet selection criteria with anti-discrimination laws, etc. (Babalola and Marques, 2013). Education is a prerequisite for the successful implementation of diversity management. Diversity training is a systematic process in which the workforce is trained in cultural, socio-economic, national and religious differences between employees, and may include information training in this area such as increasing employee knowledge, sensitivity to diversity issues or training aimed at skills, behavioral changes, etc. in the form of seminars, trainings, workshops (Babalola and Marques, 2013).

An important function of human resources management is the remuneration of employees. To support the diversity of the workforce, there are currently many organizations that clearly provide incentives to managers based on their performance in diversity management (Meena and Vanka, 2013). Remuneration inequality and discrimination in performance appraisals are major causes of job dissatisfaction and demotivation among different workforces, and therefore become a major problem in human resource diversity (Shen et al., 2009).

Support for employee related groups is one of the main diversity-based human resources strategies that organizations can implement (Gomez-Mejia, 2010). Human resource managers can promote diversity by recognizing cultural and Christian holidays, celebrating various cultural festivals, promoting a healthy lifestyle, maintaining safe workplaces, providing fair and equal rights, and so on. (Babalola and Marques, 2013).

Measuring diversity is one of the main strategies for managing human resource diversity (Shen et al., 2009). Diversity audits help to remove hidden bias, overcome injustice and remove glass ceilings, unfortunately most organizations are reluctant to do a diversity audit, which could be part of personnel audits (Gomez-Mejia, 2010), to examine the effectiveness of their organizations' diversity management.

Baraias (2015) discusses ways to use diversity in human resource management in healthcare to improve patient care. These are various innovative strategies for attracting talent across generations, targeted efforts to recruit employees of different generations, the use of social media to reach them, diversity leadership. Diversity leadership makes it possible to fully contribute to the performance of the organization by facilitating the communication of unique ideas and reducing stereotypical ideas (Moldogaziev and Silvia, 2015). It promotes fruitful collaboration in different teams and enables inclusion not only in teams but also in organizations (Bae et al., 2017; Paustian-Underdahl et al. 2017; Randel et al., 2018; Ritz and Alfes, 2018). Inclusive leadership is considered beneficial in facilitating and promoting belonging and uniqueness. However, Ashikali et al. (2020) point out that diverse or inclusive leadership helps to promote an inclusive climate, as greater diversity of teams does not automatically create an inclusive environment. Inclusive leadership is therefore crucial to promoting inclusion in different teams.

2. DIVERSITY AUDIT

The diversity audit is used to map the situation in the field of diversity management, identify weaknesses and propose recommendations to improve the real situation in the area.

It aims to answer the following questions:

- What is the overall representation of women and men in the organization, as well as in their individual sections / sectors / departments, etc.?
- What is the age composition of employees in individual sections, sectors or departments of the organization?
- What is the representation of women and men in leadership positions?

- What is the age composition of employees in management positions?
- What are the differences in the rotation of different groups of employees, including their causes?
- What are the conditions for reconciling work, family and personal life?
- What are the employment opportunities and conditions for parents, especially women, of mothers of children aged 3 to 6?
- What are the employment opportunities and conditions for women (and men) over the age of 50?
- What are the employment opportunities and conditions of persons of another nationality / nationality?

At the beginning, it is necessary to consider whether the organization will carry out whole process by itself or use outsourcing, i.e., it will entrust the team to an external company. The choice of an external company brings with it certain advantages. For example, greater willingness of employees to provide unbiased information, greater confidence in the independence of analysis results or saving not only time but also human resources. Given the diversity of the audit with its own staff and time, it is important to clarify some information. And how the organization will obtain information, whether it will be a questionnaire survey or individual or group interviews, or a combination (Maříková et al., 2015). Eger (2009) recommends using methods such as focus group, interviews, collection, and analysis of archival and system data as well as reports. Furthermore, it is necessary to compile an outline of questions for questionably and choose methods for evaluating the obtained data. Furthermore, determine the size of human, time resources and, last but not least, take into account the ethical implications. The organization should clarify which areas it wants to analyze, such as remuneration, education, work-life balance, corporate culture, and more. When setting up an audit team, it is important that people are empathetic, have analytical thinking, and have enough time to devote to tasks and awareness of diversity (Maříková et al., 2015). The output of the audit will send the organization an assessment of the current situation and a proposal for recommendations for possible directions of changes, measures, and objectives. The audit team presents the results within the workplace, or partner and proposes future goals for the workplace diversity plan, resp. organizations (Maříková et al., 2015). The author divides the diversity audit into two basic phases: the preparatory and implementation phase. The preparation phase includes areas that concern both customers and employees, such as remuneration, corporate culture, communication, recruitment, employee retention, as well as a time schedule, information meeting and contact person. This represents the staff that will be available to the audit team. Part of the implementation phase is data collection, analysis, and final report.

In conducting an organization's audit of diversity, Williams and Jackson (2015) present five main questions that an organization should answer before the audit itself.

- What audit of diversity is appropriate for our organization?
 - External or internal?
 - Who is competent to coordinate and conduct a diversity audit to achieve optimal results?

- What will be the structure, model or framework of the audit performed?
- What combination of tools to use in a diversity audit?
- Based on what criteria organization will be monitored and evaluated?
- How and from whom will be obtained the necessary information?
- What are the sources for qualitative and quantitative data of organizations?
- How will the obtained data be analyzed and evaluated?
- What will be subsequently done with the obtained information?
- How will the mentioned data be used to support further progress of diversity management in the organization?

As part of the audit of diversity, several measures are implemented, which include:

- **Document analysis** (according to the type of workplace): code of ethics, institutions for selection procedures as well as the adaptation and integration process, work regulations, wage regulations, guidelines for employee training, guidelines for reconditioning leave, dress code guidelines, organization chart, employee benefits catalog, collective agreement, internal newspapers / bulletins / printed matter, etc.

Within the analysis of documents, the setting of processes of diversity management and reconciliation of work and private life in the basic documents of the organization is monitored, i.e., their content definition, but also their scope together with the use of language.

- **Labor force analysis** (PS): quantitative data (anonymized PS statistics), where the basic indicators, i.e., gender, age, nationality of individuals can be monitored in the case of public administration organization with regard to the level of education, length of employment with the employer, type of employment (permanent, partial, agreement), regular weekly working hours, annual paid number of hours worked (excluding overtime), paid overtime per year, gross annual earnings (excluding bonuses), remuneration / bonuses per year, grade, occupation in management position, etc. The analysis of the labor force monitors the horizontal and vertical segregation of the labor force, as well as wage / salary inequality according to basic criteria (i.e., gender, age, nationality) in combination with other criteria.
- **Qualitative workplace survey** (group discussion / interviews with employees and managers), where they are monitored: attitudes, opinions, and experiences of these groups with the diversity of work teams and with the reconciliation of work and private life. While conducting individual interviews with **managers** will make it possible to analyze the experiences and perspectives of diversity, together with the issue of reconciling work and private life of workers “from above”, group interviews map this experience and attitudes “from below”. Their penetration largely gives a picture of the organization.

The following topics are covered in both types of interviews:

- A) Diversity: actual and optimal composition of the workforce, hiring, departures and dismissal of employees, etc.

- B) Organizational practice of non-discrimination: opportunities for promotion and career growth, evaluation of work performance, equal opportunities
- C) Organizational culture: especially the issue of education, employee satisfaction, etc.
- D) Reconciliation of work and private life: flexible working hours and employee benefits, the needs of different groups of workers, etc.

Structure of the sample of individual interviews:

- a) Lower, middle, and senior management
- b) In the case of trade unions, interviews are also held with trade union representatives.

Structure of the sample of group interviews with ordinary employees:

- a) Young childless women under 35 years
- b) Young childless men under 35 years
- c) Women / parents on maternity and parental leave (MD / RD)
- d) Women with children under 12 years
- e) Men with children under 12 years
- f) Women aged 50 and over
- g) Men aged 50 and over

The following strategies and indicators of diversity management are monitored within the analysis of quantitative and qualitative data:

- **Organization structure:** Are decision-making positions occupied by people of different sexes, ages, nationalities and with different family situations? What are the experiences of different groups of employees with work diversity and work-life balance?
- **Awareness of diversity:** Is there a diversity education for managers (all employees)? Is this type of education part of the educational plan of the organization / company?
- **Workforce quality:** Is a diverse workforce developed and maintained? Are the principles of diversity promoted in recruitment, career planning and education?
- **Internal culture of the organization:** Does the organization strive to create equal opportunities for all employees, does it create a non-discriminatory work environment? Is the organization trying to understand the experiences of diverse groups among employees? The organization cooperates with other actors (organizations, etc.) to meet the needs of diverse clients, etc., respectively. the goal of a socially responsible organization? What is the communication system within the organization / company? Is a specific language used?
- **Reconciling work and private life:** Are flexible working arrangements offered? Who are they mainly used for and for what reason? How is the planned departure of people to MD / RD and their return to work? Is regular contact with people on MD / RD maintained? Are these people somehow integrated within the workplace during MD / RD, or how?

The main findings of the survey and the proposal for measures to manage diversity and reconcile work and private life are the result of a diversity audit.

3. RELATIONSHIP OF DIVERSITY MANAGEMENT WITH ORGANIZATIONAL OUTPUTS

Available literature sources suggest that the link between outcomes and performance of diversity management can be studied at three levels: at the level of the individual, group, and organization (Wambui et al., 2013).

Individual performance

In relation with employees, consequently, to increase their satisfaction, commitment the quality of services provided by them, there are also negative findings of many studies on low implementation of diversity management tools, but on the other hand many studies point to highly positive results of this tool in the context of human resources management.

Creating a harmonious environment through effective diversity management increases employee engagement, job satisfaction and commitment, which results in reduced absenteeism and workforce turnover (Wambui et al., 2013; Ogbo and Ukpere, 2014). In addition, employees who believe that their individual differences are deeply valued by their organization are more loyal and productive. For this reason, effectively managed workforce diversity can improve access and overall employee performance (Ogbo and Ukpere, 2014).

A 2014 report by the American Hospital Association provides insight into issues of diversity in this environment (Managing an Intergenerational Workforce: Strategies for Health Care Transformation, 2014). It states that generational diversity is rapidly changing the dynamics of the workforce. Each generation has its own priorities, attitudes, communication styles, work approaches and ways of communicating with colleagues that affect organizational culture and performance. At the same time, it recommends that each organization launch an intergenerational evaluation to determine the organisation's workforce profile and develop a comprehensive plan; implementation of targeted recruitment, segmented retention and succession strategies and development of tailor-made communication strategies that cultivate the understanding and sensitivity of generations.

A study by Cook and Bartram (2015) states that given the general pressures to reduce costs and the need for high-quality care in the healthcare and elderly care sectors, effective workforce management of organizations in these sectors is critical. In their article, they examined the changing health care environment and care systems for the elderly and identified key challenges in the field of human resource management, as they identified the most significant weaknesses in this area. According to the authors, human resource management systems in healthcare are not able to provide meaningful development of employees and employees are concerned about the invasion of performance culture into management itself. Based on their findings, the authors argue that aligning care ethics with business efficiency can be extremely problematic. The upward communication was also identified due to hierarchical

constraints and lack of opportunities. They emphasize two features of the professional work environment: the position of the hierarchy and the professional heterogeneity of employees. These environmental characteristics are sources of situational constraints in behavior. They argue that interdisciplinary and interprofessional strength and status have important implications for human resources practice if the knowledge chain is to be mediated instead of interrupted across professions, age groups, genders, etc.

Group / team performance

Culturally diverse groups are more effective in communication, performance, brainstorming, and business behavior compared to homogeneous groups. Teams that overcome diversity barriers can grow, learn and implement a common vision (Yeager and Nafukho, 2011), and therefore lead to greater creativity and increased performance (Ehimare and Ogaga-Oghene, 2011). In addition, group diversity is expected to be positively related to the high quality of decisions. However, the authors argued that the extent to which diversity will benefit group performance will depend on the strategies followed by human resource managers in managing group diversity in the organization. Kossek et al. (2006) found that working groups with greater gender diversity have a more favorable attitude towards organizational efforts related to diversity management. At the same time, they pointed out that the increase in the proportion of women in top management is associated with a decrease in stereotypes.

Opinions on the positive relationship of diversity with team performance are not always clear, because positivity is conditioned by several factors. Hoever et al. (2012) point out that team diversity may not be associated with higher team creativity in every case. They found that the higher creativity of a heterogeneous team is conditioned by the perception of the perspective of other team members, understanding their motives, thoughts, feelings, reasons, ie social interaction. Dahlke et al. (2018) examined team diversity and teamwork in relation to the job satisfaction of healthcare professionals, Kurowski et al. (2012) found that effective teamwork, including its diversity aspects, reduces clinical errors, the quality of healthcare and patient safety is increasing. Havig et al. (2013) condition these results on the self-government of diversity teams.

Research also focuses on examining the diversity of top management in various contexts (Boerner et al., 2011). The findings point to positives in relation to performance in short-term teams and, conversely, to negative effects on long-term teams. The connection between the nature of team processes (cooperative behavior, accurate exchange of information and decentralization of decision-making) in the top management team and team diversity was also confirmed. The characteristics and functional background of top managers and the performance of top management teams interact positively in improving the performance of organizations.

Schaffer (2019) points out that the implications of all research for management depend on the idea that understanding these processes can have real and substantial effects on team dynamics and related competitive advantages. It states that diversity in the workplace is currently the new standard in business, not the exception, and that the synergistic effects of problem-solving cooperation are seen as an important source of competitive advantage for many employers.

Existing theory and research on diversity, together with evidence highlighting the shift in societal and organizational norms, supports the continued development and penetration of research on the benefits of diversity management into many other areas.

Organizational performance

Successfully managed diversity brings a competitive advantage mainly in areas such as problem solving, creativity, innovation, and flexibility (Wambui et al., 2013) and thus increases overall organizational performance (Kosseck et al., 2006). Effective diversity management enables companies to compete effectively in the marketplace by meeting the demands of a diverse clientele (Gupta, 2013), as well as reducing costs resulting from absenteeism, labor turnover, litigation, lack of productivity, recruitment and training (Ogbo and Ukpere, 2014).

Companies that can respect and appreciate diversity are able to attract, hire and retain the best employees on the market (Wambui et al., 2013). Furthermore, Ogbo and Ukpere (2014) argue that well-managed workforce diversity is positively related to financial performance in terms of sales, market share and company profits. After examining 300 respondents working in Nigerian companies, they found that more than 90% of respondents believe that workforce diversity is significantly related to the profitability and performance of an organization.

Abroad, there are many studies on the positive relationship between diversity management and the specific outcomes of health facilities, either towards external interest groups, especially patients or internal staff. The importance of managing diversity in relation to better outcomes in the treatment of asthma in children has been documented (Lieu et al., 2004), in the treatment of diabetes (Zeh et al., 2012), and in improving the quality of patient care (Weech-Maldonado et al., 2012), in the implementation of patient-oriented healthcare (Avgar et al., 2011), in increasing patient safety and reducing clinical errors (Havig, et al., 2013; Kurowski et al., 2012).

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4. COCLUSION

Diversity is not only a trend of modern society, but also a necessity forced by changes in society, the globalization of the labor market and demographic development. Caring for a diverse workforce is not only an ethical or social approach, but also points to a good strategically oriented „business“ approach. In view of current changes around the world, diversity management has proven to be a tool to increase organizational efficiency and effectiveness. At the organizational level, diversity has become an increasingly relevant topic, going beyond equal employment opportunities

and laws on positive legal action or positive discrimination. Diversity management is the management of human resources, so we consider it necessary to define HRM practices to implement diversity management in organizations.

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This article is a partial output of research project VEGA no. 1/0010/23 entitled Adaptability of corporate culture - a factor supporting resilience and sustainability of enterprises in Slovakia in the post-covid period and KEGA no. 001EU-4/2021 Project of a study program in field of economics and management, which reflects conditions of digital age, appeal of sustainability of economic activity and global citizenship.



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Mediation in family and divorce-related litigations in Poland

Summary

The aim of this article is to present the institution of mediation as a way of solving problems in disputes in the field of family law. The fundamental question attempted to answer was formulated as: does the mediation institution enable the parties of the dispute to resolve the conflict faster and less stressfully? Mediation in family and divorce matters is an increasingly frequent and easy way to quickly resolve a conflict in the area of establishing alimony, contacts between minor children and their parents, etc. Unfortunately, the institution of mediation is still not so common and appreciated by both the lawyers and the judges. Within this article, the results of the own questionnaire survey, conducted via the Internet, will be presented. The study was conducted in a group of deliberately selected people – the respondents participated in at least one mediation. The results of the study show that the people who have used this method of conflict resolution appreciate it for its velocity, lack of the need to visit the court, and would be willing to use it in the event of another conflict, or would suggest using it to a friend in such a need. Low costs of mediation, quick time of its conduct and lower stress due to the lack of necessity to participate in a court hearing have a positive effect on the perception of mediation by the respondents. For this reason, mediation should be promoted at every stage of the dispute as a cheap and simple alternative to judicial proceedings.

Keywords: mediation, divorce, agreement, compromise.

INTRODUCTION

Family mediation in accordance with the civil procedure has the purpose of resolving the conflict, and if it concerns the breakdown of a marriage, and there still is a chance for reconciliation of the spouses, it should first try to maintain it, if this is impossible, an agreement should be found leading to the settlement of the dispute¹ on any other divorce-related issue.

¹ M. Białecki, *Mediacja w postępowaniu cywilnym*, LEX 2012, p. 22.

Most of us don't like conflicts, and if they concern our loved ones, they take on an additional amount of dimension and seriousness. The breakdown of a relationship is an absolutely distressing experience for both parties (spouses as well as informal partners), especially when they have minor children together².

When adults make a conscious decision to break up, they should take equal care of the welfare of their children and cause as little detriment to them as possible.

In Poland, a progressive increase in the number of divorces has been observed every year³.

As Dr. Agata Gójska⁴ points out, "Divorce is a multidimensional event. For each of the spouses, it means the need to redefine themselves, their own system of values and their own place in the world." It is joint by thoughts of the past, fear of the future and the hardships of surviving the present moment.

What makes the difficulty in family conflicts so distinct?

The multifaceted nature of the divorce process, the necessity of conducting detailed legal proceedings and the duration thereof cause the conflict to escalate, moreover, many new problems arise in life after the breakup. These problems are mainly situations where we suddenly have to face everything unattended. We have to go to work, prepare the children for school, pick them up after work, take them to extra-curricular activities, help them with homework, and suddenly it turns out it is too much for one person, which leads us to hold grudges against the other party for having left us and the conflict keeps on growing. After the split, one of the parties files a lawsuit, if they do it themselves, they often make mistakes, so they receive a summons to fill in the gaps, and if they manage to submit everything correctly, they receive a hearing date set in a years' time. It is followed by helplessness, to which we often refer as the feeling of having hit the wall.

It is often the case that a family conflict has been growing for some time, in which people become indifferent to each other, until one of the parties decides to radically end this stressful and difficult situation.

It is important to pay attention to the fact that the family conflict rarely concerns only the spouses and the children. Parents, siblings, grandparents, as well as other people in the close environment are often participants in the conflict, they offer their support, help, give advice and sometimes thanks to them it is easier for the parties⁵ to go through this difficult period.

In situations of relationship crisis, or in need of solving a problem, such as providing financial stability to children by paying alimony or arranging contacts with the children for a parent who no longer lives with the family, parties most often refer the case to a competent court that will decide on solving the problem.

Many people do not know that in such case, the most effective way to resolve essential matters is mediation, as it allows you to reach a compromise in a relatively

2 A.Gójska, *Mediacje rodzinne*, University of Warsaw Press, Warsaw 2014.

3 A.Czerederecka, *Rozwód a rywalizacja o opiekę nad dziećmi*, Warsaw 2020, p. 31.

4 A. Gójska, V. Huryn, *Mediacja w rozwiązywaniu konfliktów rodzinnych*. Wydawnictwo C.H. Beck, 2007, p. 69.

5 i.e. to people in conflict.

short amount of time and ensure the safety and continuous contact with the parties' children, regardless of the ongoing court process, which can be ended much faster because of the mediation.

The term „mediation” is derived from Latin „mediare”- to be in the middle, as well as from the Greek „medos”, which means intermediary, neutral, not belonging to either side. Mediation is a confidential and voluntary extrajudicial proceeding in which the settlement is possible. Mediation is also one of the alternative methods of solving disputes in (ADR – Alternative Dispute Resolution⁶), in which the mediator as a impartial and neutral person helps conflicting parties to communicate with the aim of finding a solution and ending the conflict or reducing it significantly⁷. This term signifies „amicable and conciliatory methods of resolving conflicts and disputes based on the idea of seeking agreement and finding a compromise way out of a conflict situation”⁸.

„Mediation is a conversation⁹” and often a very difficult one, as it is conducted by parties in conflict, but at the same time it is crucial to reach a positive conclusion.

There is no statutory definition of mediation in Polish law, the first record concerning mediation, appeared in the Act of May 23, 1991 on resolving collective disputes (Journal of Laws No. 55, item 236). Act of 6 June 1997 (Journal of Laws No. 89, item 555) introduced mediation in criminal proceedings. In civil law, mediation has been found to be applicable pursuant to the Act on July 28, 2005 amending the Act on the Civil Procedure Code and certain other acts (Journal of Laws No. 172, item 1438).

Mediation can be conducted in all civil cases where it is permissible by law to reach a settlement, which are the cases in whose the outcome of the proceedings may be dependent on the will of the parties.

Thanks to mediation, in the difficult time of parting and in the face of many new situations that people encounter after the breakup, it is possible to develop rules for the joint upbringing of children during the divorce process, which can be continued even after the end of the marriage, with a guarantee of their implementation through court approval.

The main topics of mediation in family and divorce cases are:

- Establishing the terms and conditions of divorce
- Establishing alimony
- Establishing contacts with children

6 R. Świeżak, M. Tański, Alternatywne metody rozwiązywania sporów. Przegląd zagadnień, „Partners” Foundation, Warsaw 2003 p.3

7 The expression of the dominant tendency to define the meaning of mediation is the definition contained in Article 3 listed in A Directive 2008/52 / EC of the European Parliament and of the Council of May 21, 2008 on certain aspects of mediation in civil matters and trade (Journal of Laws UE L 136, pp. 3–8), according to which „mediation means proceedings, regardless of its name or term, in which at least two the parties to the dispute will try to reach an agreement on their own to resolve their dispute, with the help of a mediator. Such proceedings may be initiated by parties, or they may be proposed or ordered by a court or by the law of the state”.

8 A.Kalisz, A.Zienkiewicz, Mediacja sądowa i pozasądowa. Zarys wykładu, Warsaw 2009, p. 26.

9 E.Gmurzyńska, R.Morek, Mediacje teoria i praktyka,Wolters Kluwer 2018 p. 23.

- Determining the whereabouts of children
- Fulfilling the needs of the family
- Establish a detailed parental care plan
- Determining issues relating to the division of property

By virtue of the agreement and the will to provide the minor children of the parties with stability in this difficult period, it is advisable to agree, establish the rules of contact between the parent and the children who do not live together anymore, determine the amount of alimony to ensure a proper life. When the parties agree, such agreements stay in power, and divorce often becomes a pure formality, and when the parties' opinions differ and they cannot reach an agreement, even a temporary parental agreement for the duration of the court proceedings ensures a financial security and guarantees contact with children who, regardless of resentment towards the partner, we love the most in the world.

We distinguish the following principles in mediation:

- voluntariness¹⁰, only with the mutual consent of the parties can they participate in mediation proceedings, such consent may be withdrawn at any stage of the mediation by either party;
- impartiality, each mediation party has equal rights and should be treated in the same way;
- confidentiality, the entire course of the mediation procedure is classified, the mediator is obliged to keep everything that he learned while conducting mediation secret;
- neutrality¹¹, the mediator cannot impose his own proposals on the parties dispute resolution, the agreement is worked out by the parties with the participation of the mediator;
- acceptability, the parties must accept the person of the mediator and their help in finding a compromise;
- adjustability, i.e. the lack of a single way of conducting a mediation procedure.

A mediator is a competent and professional person in possession of the skills to mediate in economic matters. It helps the parties to identify issues that are in dispute and to work out a solution satisfactory to both of them.

The mediator has no interest in making the provisions in the settlement sound different than what the parties wish for, the mediator much more often asks questions than answers them.

The mediator is not a judge and he is not the one to settle the dispute - the parties simply do it with his participation. The mediator should ensure that the parties treat each other with mutual respect and dignity during the discussion.

10 The principle of voluntary mediation arises directly from the content of Article 183 § 1 of the Code of Civil Procedure.

11 P.Waszkiewicz, *Zasady mediacji* [w:] *Mediacje. Teoria i praktyka*, red. E.Gmurzynska, R.Morek, Warsaw 2018, p. 170.

A person may become a permanent mediator entered on the list of a district court if they are a natural person with full legal capacity and entirety of civil rights. The person cannot be a judge (except a retired judge), must possess knowledge and skills in the field of mediation, must be over the age of 26, has to be fluent in Polish and cannot have been legally convicted of an intentional crime or an intentional fiscal offense.

In accordance to the ordinance of the Minister of Justice of 20 January 2016 on maintaining a list of permanent mediators¹², in order to become a permanent mediator, an application must be submitted to the President of the District Court, on the official form, along with the documents confirming the knowledge and skills in the field of mediation.

The mediator is entered on the list based on the verification that the person applying for the entry meets the conditions referred to in Article 157a of the Act on the Organisational Structure of Courts¹³.

The mediator may conduct both contractual mediation, i.e. one initiated by the party or parties, or court mediation, i.e. one to which the parties have been referred by the court.

In the case of mediation initiated by the court proceedings, the court refers the parties to mediation, indicating a person from the list of permanent mediators at a given district court¹⁴. From the moment the mediator receives the ruling¹⁵ to refer the parties to mediation, the time limit for mediation begins, which may last up to 3 months or longer, but only due to important reasons or at the joint request of the parties.

The important fact is that even when the court proceedings are pending, the parties may submit unanimous declarations of will regarding their willingness to mediate¹⁶, after which the parties try to resolve the dispute through mediation, and the court proceedings are suspended for that time.

The article consists of three parts. In the first one, a literature review had been made and it was found that mediation is an important element in resolving conflicts in family and divorce-related matters.

The second part defines the purpose of the study, characterizes the data sources and presents the research method. The third discusses the results of the empirical study. The article ends with a summary containing the conclusions of the analysis.

12 Regulation of the Minister of Justice of 20 January 2016, Journal of Laws No. item 122.

13 Act of 27 July 2001 – Law on the system of courts in common courts (Journal of Laws of 2020, item 2072).

14 A.Kalisz, E.Prokop-Perzyńska, *Mediacja w sprawach cywilnych w prawie polskim i europejskim*, EPS 2010/11, p. 14–24.

15 T.Żyznowski [w:] *Kodeks postępowania cywilnego*, Komentarz, eds. H.Dolecki, T.Wiśniewski, t.1, Warsaw 2011, p. 662.

16 K.Krziskowska, *Mediacje i postępowanie ugodowe w sprawach cywilnych i gospodarczych*, LEX 2019, sec.1.

THE PURPOSE OF THE WORK AND THE DATA SOURCES

The main goal of the empirical research is to determine how family and divorce-related conflicts are resolved – what mediation participants base their decisions on and what role does the mediator's attitude play in the conflict resolution process.

The main research question concerns how the perception of mediation and the mediator by the participants impacts reaching a compromise in family and divorce-related disputes.

To achieve this goal, a literature review and a survey of mediation participants were planned.

The empirical study has been focused on two main goals:

- finding the most influential factors in the satisfaction of mediation participants and in the fact that they chose mediation as a way to solve problems in family and divorce cases,
- assessment of the current perception of mediation as a method of conflict resolution in family and divorce matters.

The survey questionnaire consisted of 25 close-ended questions and 5 demographic questions.

There were 159 respondents – mediation participants, who took part in the study, of which:

107 people used mediation only in one case, 52 in more than one case.

The average age of the respondents was 33 years old, the oldest mediation participant was 67 years old, the youngest was 19 years old. In subsequent questions, the education and place of residence of the respondents were analyzed.

Wykształcenie – 159 odpowiedzi

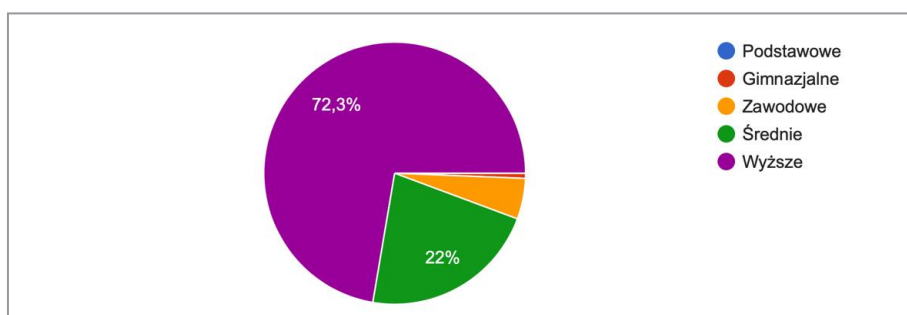


Chart 1. Education of the surveyed people

Source: own study based on own survey.

Most of the respondents (115 – 72.3% of all surveyed people) are people with higher education, 35 respondents and 22.0% of the surveyed group are people with secondary education, 9 people and 5.6% had vocational or lower education.

Miejsce zamieszkania – 159 odpowiedzi

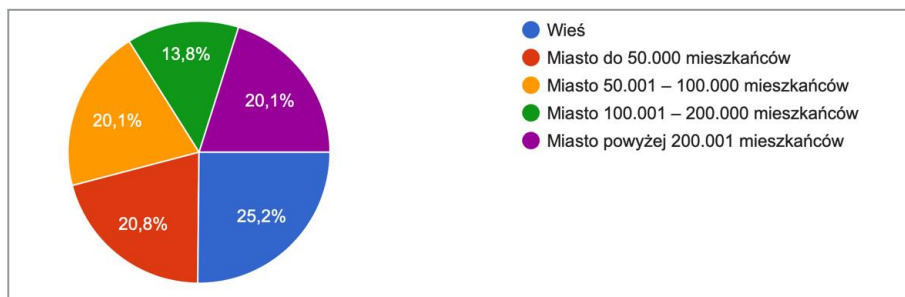


Chart 2. Place of residence of the surveyed people

Source: own study based on own survey.

Mediation in family and divorce cases was used equally in villages and cities of various sizes.

25.2% of the respondents, i.e. 40 people, lived in villages, the remaining group was 74.8% – 119 inhabitants lived in cities.

Mediation is a popular form of conflict resolution in family and divorce-related matters in cities of various sizes.

Chart 3 presents the expectations the participants have towards mediation, who undertake conflict resolution in family and divorce-related disputes with its use.

The choice of expectations was finite, although respondents could select more than one out of the seven possibilities. Subsequently, participants were allowed to express their views on their expectations in an open-ended question.

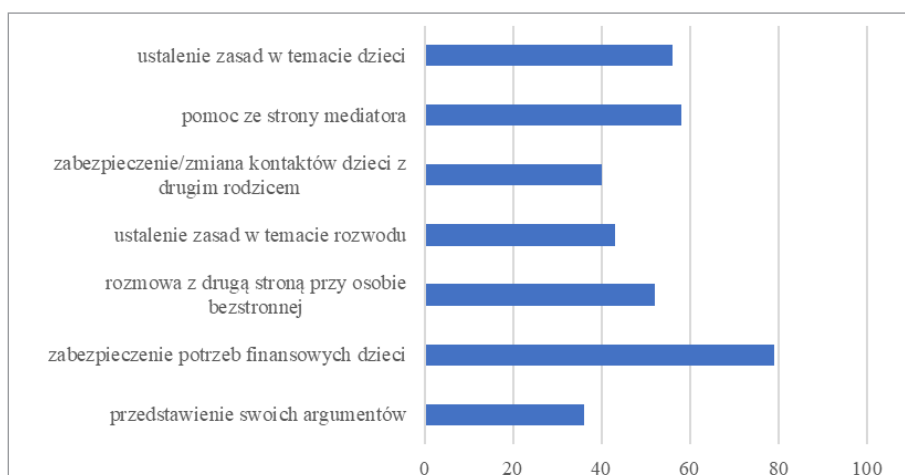


Chart 3. What were your expectations regarding mediation in family proceedings? (you can choose several answers)?

Source: own study based on own survey.

The most common expectation of the mediation participants was to secure the financial needs of the children and to establish rules regarding them, the respondents also perceived the expectations regarding the mediator's qualities as important, e.g. impartiality, neutrality.

Moreover, three respondents took the possibility of expressing their thoughts about mediation in their own family or divorce case.

The answers given by the respondents are presented below:

Respondent 1: "Unfortunately, in our case, mediation made the situation worse. The mediator, instead of listening to both sides, started pressing on what the other side wanted. She was acting nasty. She was rude, even arrogant. ,,

Respondent 2: «I absolutely wanted a divorce because my husband was mentally, physically and morally abusive, there were reasonable suspicions of him molesting our daughters, so this settlement was a joke ...»

Respondent 3: "It was a fulfillment of an obligation imposed by the court. I have been told that it will look bad if I don't agree to mediation. Mediation was a nightmare. «

The most common areas of mediation in family and divorce-related cases were the following:

- child support,
- issues related to the division of property,
- regarding the divorce itself and
- establishing contacts with children.
- The assessment of the effectiveness of conflict resolution in the opinion of the respondents is presented in Chart 4. Over 82% of respondents assessed mediation as an effective form of solving family and divorce problems – indicating that the mediations undertaken resulted in an agreement and the signing of a settlement.

The respondents' opinion on the evaluation of the effectiveness of mediation is presented in Chart 4.

Czy mediacje zakończyły się porozumieniem i podpisaniem ugody? – 159 odpowiedzi

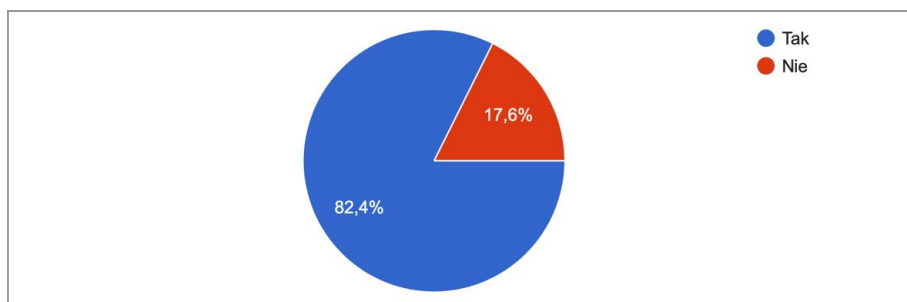


Chart 4.

Source: own study based on own survey.

In the next step of the analysis, it was checked how the opinion on the effectiveness of mediation influenced:

- opinion on how fast the conflict was resolved,
- lower levels of stress related to the conflict,
- sense of security of mediation participants,
- meeting expectations regarding mediation,

Czy uważa Pan/i że mediacje przyczyniły się do szybszego zakończenia sporu? – 159 odpowiedzi

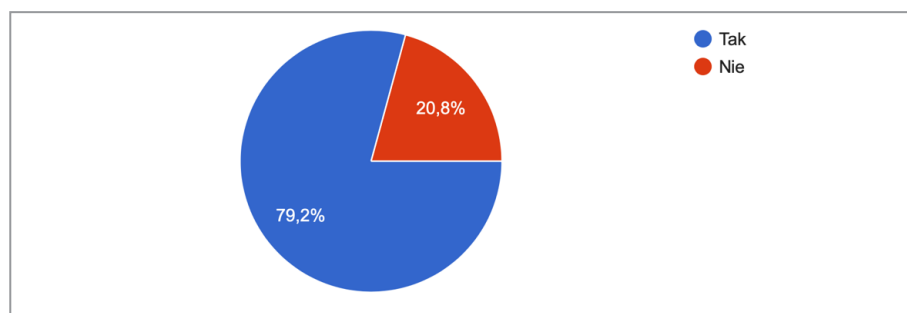


Chart 5. Do you think that mediation contributed to a faster resolution of the dispute?

Source: own study based on own survey.

Czy dzięki załatwieniu sprawy u mediatora udało się uniknąć wizyty w sądzie i stresu z tym związanego? – 159 odpowiedzi

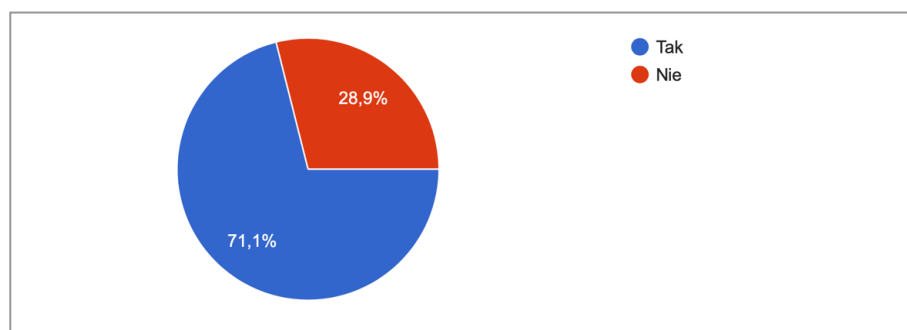


Chart 6. Was it possible to avoid court visits and the related stress thanks to settling the case with the mediator?

Source: own study based on own survey.

Czy zawarcie ugody mediacyjnej oraz zatwierdzenie jej przez sąd dało Panu/i poczucie bezpieczeństwa? – 159 odpowiedzi

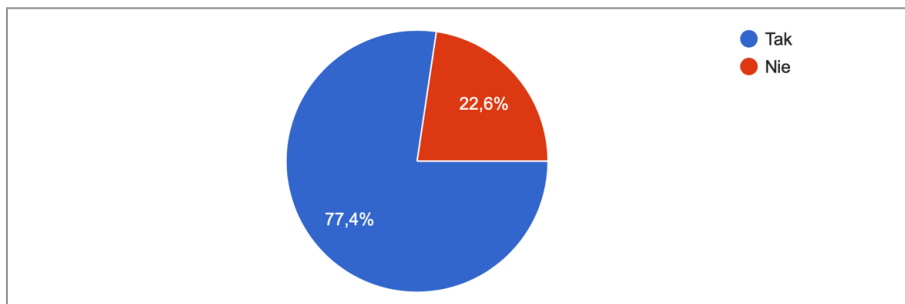


Chart 7. Has the conclusion of the mediation settlement and its approval by the court given you a sense of security?

Source: own study based on own survey.

Czy mediacja rodzinna spełniła Pani/a oczekiwania? – 159 odpowiedzi

– 159 odpowiedzi

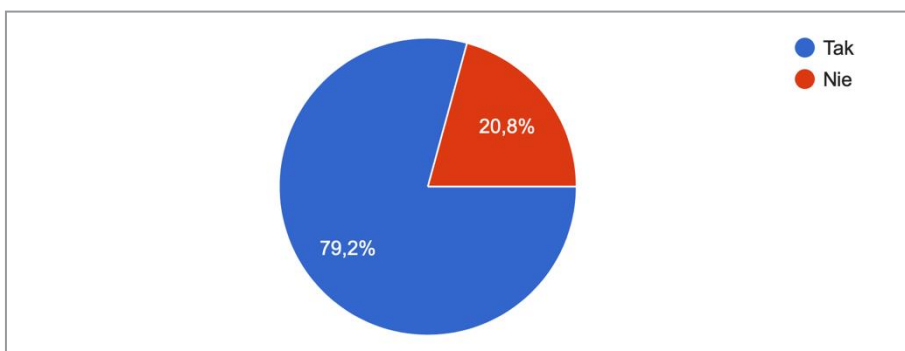


Chart 8. Did the family mediation meet your expectations?

Source: own study based on own survey.

Regardless of whether the participants had the opinion that mediation is an effective or ineffective method of conflict resolution, their responses to the following topics:

- opinion on the speed of conflict resolution,
- satisfaction with the mediation result,
- lower levels of stress associated with the conflict
- sense of security of mediation participants

do not differ statistically from each other.

What that means is – stress, safety, speed and satisfaction are assessed by both groups as important factors. The results of the study show that people who have used this method of conflict resolution appreciate it for its velocity, lack of the necessity to visit the court and would be willing to use it in the event of another conflict, or would suggest using

it to a friend in such a need. Low costs of mediation, quick time of its conduct and lower stress due to the lack of necessity to participate in a court hearing have a positive effect on the perception of mediation by the respondents. For this reason, mediation should be promoted at every stage of the dispute as a cheap and simple alternative to judicial proceedings. Due to the important role of the mediator in the procedure of solving family and divorce-related conflicts in the last, third part of the questionnaire, the mediator participants determined whether the mediator's attitude influenced their opinion on mediation by assessing the characteristics of the mediators.

The respondents were asked to answer the 10 following questions:

1. Was the mediator conducting your mediation: [impartial]
2. Was the mediator conducting your mediation: [trustworthy]
3. Was the mediator conducting your mediation: [had good communication skills]
4. Was the mediator conducting your mediation: [provided legal assistance]
5. Was the mediator conducting your mediation: [professional]
6. Was the mediator conducting your mediation: [able to listen]
7. Was the mediator conducting your mediation: [able to control the negative emotions accompanying mediations]
8. Before starting the family mediation, did the mediator inform you about the rules of the mediation?
9. Is your relationship (between the parties to the mediation) after mediation?
10. Was your relationship (between the parties to the mediation) affected by the characteristics and attitude of the mediator during the mediation?

The statistics of answers to the questions about the characteristics of the mediator are presented in Chart 9.

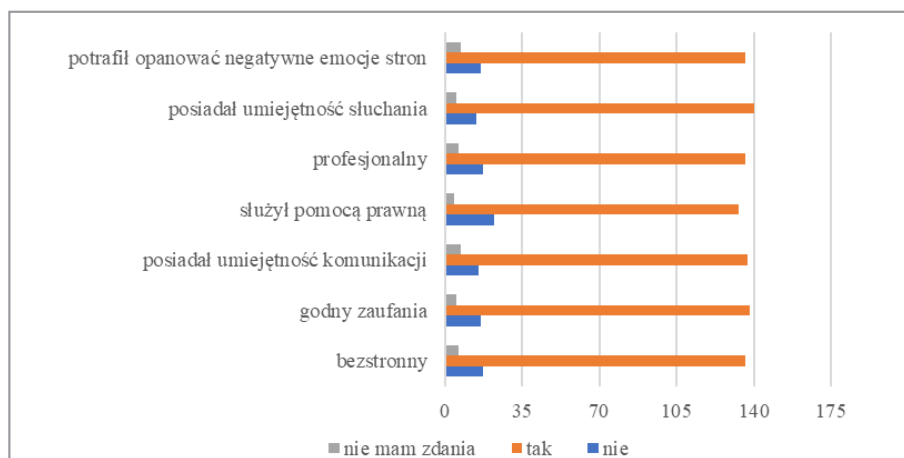


Chart 9. Was the mediator conducting your mediation: [impartial] [trustworthy] [had good communication skills] [provided legal assistance] [professional] [had the ability to listen] [was able to control the negative emotions accompanying mediation]

Source: own study based on own survey.

In most cases, mediation participants – respondents assessed that such features as: impartiality, trust, communication, legal knowledge, professionalism, the ability to listen and composure were the features of the mediator during the mediation in which they had participated.

The formal requirements of mediation require the mediator to act in accordance with the procedure and professional ethics. Before commencing mediation, the mediator shall inform the mediation participants about the applicable rules during the procedure.

According to the data presented in Chart 10, most mediators fulfill this obligation.

Nearly 94% of the respondents (149 people) confirmed that they had been informed by the mediator about the rules of mediation prior to mediation.

Only in 10 cases (6% of respondents) the mediator ignored this obligation.

Czy przed przystąpieniem do mediacji rodzinnej mediator poinformował o zasadach mediacji? – 159 odpowiedzi

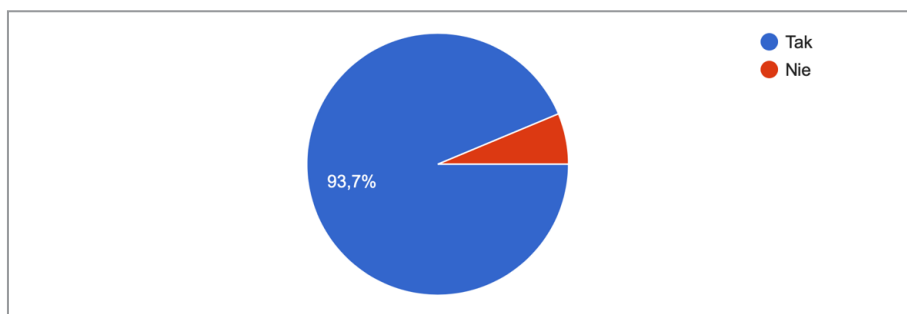


Chart 10. Did the mediator inform you about the rules of mediation before starting the family mediation?

Source: own study based on own survey.

Mediation, as a pre-trial procedure, should contribute to a less conflicting settlement, which causes less tension between the parties.

Furthermore, in mediation, the person and the attitude of the mediator play an important role, which should contribute to the improvement of relations between participants, both during and after the mediation.

Charts 11 and 12 show respectively the respondents views on the relationship between the parties after the mediation and the respondents' views on the role of the mediator in establishing these relationships.

Czy Państwa relacja (między stronami mediacji) po odbyciu mediacji? – 159 odpowiedzi

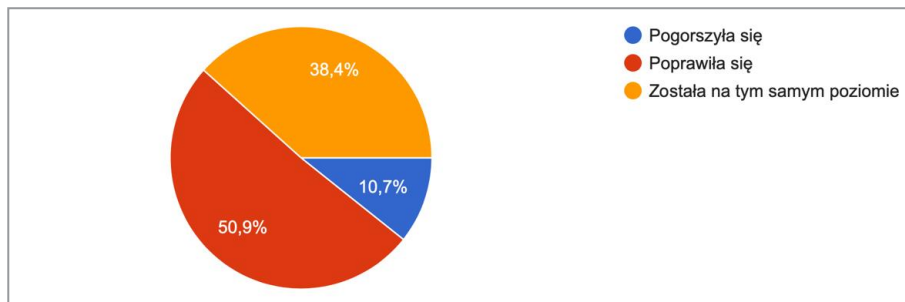


Chart 11. Is your relationship (between the parties to the mediation) after mediation?

Source: own study based on own survey.

Czy na Państwa relację (między stronami mediacji) po odbyciu mediacji wpływ miały cechy oraz postawa mediatora podczas mediacji? – 159 odpowiedzi

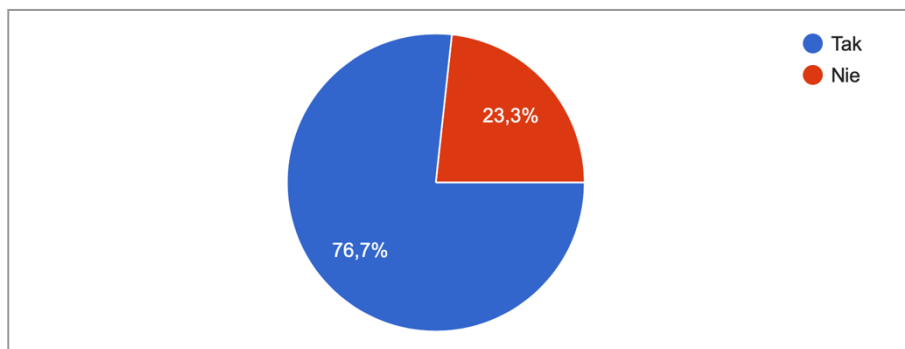


Chart 12. Was your relationship (between the parties to the mediation) affected by the characteristics and attitude of the mediator during mediation?

Source: own study based on own survey.

Only 11% of the respondents, i.e. 17 mediation participants, indicated that the relations between the parties have worsened because of the mediation. 38%, i.e. 61 mediation participants, declared no changes in their relations, while more than a half of the mediation participants (81 people, i.e. 51% of the respondents) believed that the relations between them had improved.

The respondents indicated that building positive relations between the parties was influenced by the attitude of the mediator – according to the respondents, those relations were influenced by the mediator in 77%.

SUMMARY

For every person, quick settlement of a contested dispute, in addition to providing a kind of stability and security, provides a psychological comfort, which is essential for the proper functioning in society. The short analysis of mediation in family law cases presented in this paper and the research summaries presented therein prove that the mediation institution is a much needed and developmental tool facilitating the dispute resolution. Family and divorce-related cases, i.e. those that mainly concern the issue of divorce, establishing alimony, establishing parent-child contacts, are extremely difficult due to the accompanying emotions of usually deeply conflicted parties. However, in all of this, especially when it comes to issues related to the minor children of the parties, negative emotions should be put aside to chiefly focus on their welfare. Despite the increasing popularity of mediation, it still remains uncommon and often people simply do not know that they can settle their disputes during mediation much faster than during court proceedings. Owing to the promotion of mediation, people in conflict, who often search for various information on the Internet, come to mediation completely by accident and start to take interest in it. A good source of information about the possibility of settling difficult cases through mediation are also people from our closest environment who managed to settle their case through mediation. Sometimes it is the court, that helps by referring parties to mediation. I believe that mediation should be so widespread that almost everyone knows about it, and my goal is to promote it wherever possible. I am truly glad that mediation is being talked about more and more in schools and I hope that our children, in the event of a dispute in their adult life, will know the institution of mediation and it will become highly popular. Mediation in divorce cases should be a compulsory element prior to court proceedings. Such meeting of an independent mediator with the parties of the conflict, necessarily outside the court building, may make them resolve the conflict in a civilized manner and give them the opportunity to “create” a verdict in their case by themselves, without having to reveal intimate details of their life in the courtroom. In addition, well-conducted mediation will allow the parties to secure many other issues that they would not have thought of during the trial due to the accompanying stress, limited time and solemnity of the trial.

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Néant et Amour de Montesquieu. Du point de vue de la philosophie du néant et de l'amour

Summary

Thesis of "The Court is Nothingness" by Montesquieu.

Here I get to the heart of "The Spirit of Laws". Because of the grandeur of the book's task, I will elucidate it in order. Parts 1 and 2 of "The Spirit of Laws" are the core of the book. Law expresses the relationship between things. That is, God, man, animals, and things each have a law. That animals have laws means that animals also have instinctive group rules and things have laws that are in accordance with the rules and natural laws of things. This is all organically connected, meaning organic world connections. This is what Buddhism calls 'Engi' and it is the worldview advocated by my philosophy and the Biocosmological Association. The fact that it is discussed from the perspective of cosmology is what makes it different from conventional Montesquieu studies.

Then, three political systems are proposed. They are republican government, monarchy and tyranny. This is only an ideal type. Contradictions appear in various places. But that is Montesquieu's true intention. In other words, he supports the absolute monarchy of Louis XIV. However, he is not satisfied with it and while criticizing it, he aims for a republican government with the aristocracy. This is the embrace of contradiction. Kitarō Nishida, a leading figure in Japanese philosophy, called this 'self-identity of absolute contradiction'. Montesquieu's goal was to achieve national peace and stability, not revolution. In this light, we can understand the contradiction. In the following, we will consider the people's education, virtue, punishment, equality, Chinese tyranny, defense, and courts that support the political system. Its conclusion poses a court of nothingness, invisible to the people, which does not cause fear among the people.

Key words: political system, philosophy, education, Law, Montesquieu.

INTRODUCTION

Montesquieu (1689–1755) a été un pionnier de la phénoménologie, rassemblant et décrivant autant d'informations que possible aux 17^e et 18^e siècles. Il a décrit les événements du monde qui étaient ouverts à la plupart des disciplines, notamment le droit, l'économie, la politique, la société et la culture. Cette diffusion est l'horizon infini de la conscience de mon idée et "l'ouverture" en tant qu'expérience pure de Kitarō Nishida, le premier philosophe du Japon. Éliminant les préjugés (réduction phénoménologique, époché), il observe strictement le monde comme l'observation expérimentale de Bacon et s'approche des événements eux-mêmes.

Il ne s'agit pas d'une simple description décousue. La passion de Montesquieu pour la vérité est semblable à celle de Socrate, Platon, Aristote, Confucius et Bouddha. De plus, sa quête et sa vie se recoupent avec mon principe de néant et d'amour. Montesquieu a perdu sa mère à l'âge de sept ans et son père à l'âge de vingt-quatre ans. C'est le néant de la perte parentale. Il en est de même pour Confucius et Aristote.

Confucius et Aristote ont tous deux connu le néant de la perte de leurs parents en tant qu'orphelins. Confucius a enseigné que la bienveillance (仁) était l'amour. En raison de cette expérience du néant dès l'enfance, il a recherché et enseigné l'amour véritable et la bienveillance. Aristote, de la même manière, a cherché et prêché le véritable amour, *Philia*. Montesquieu n'a pas prêché cette expérience spécifique mais il pouvait comprendre les sentiments d'un enfant qui a perdu un parent. Ce néant l'a conduit à la vérité et il a commencé son voyage de recherche de la vérité après être devenu juge. Il s'agissait d'un voyage de trois ans à travers l'Europe. Comme la vie d'interrogation de Socrate dans les rues et la vie errante de Descartes, c'était un voyage à la recherche de la vérité avec une passion sans limites (infinie). Dans "De l'esprit des lois"¹, qui décrit les coutumes, les lois et les conditions politiques de divers pays et terres de la planète, il se trouvait sur un horizon conscient infini. Il a donc décrit l'Europe, l'Afrique, l'Asie et même le Japon, en utilisant pleinement la littérature de l'époque. Les commentaires étaient brefs et réduits au minimum. Il laissait l'interprétation et le jugement au lecteur et se concentrait sur la description et l'écriture des faits.

Montesquieu n'a pas cherché à construire sa propre métaphysique et sa propre vision du monde comme l'a fait Hegel. C'est pourquoi ses écrits sont neutres et phénoménologiquement réduits. Nous pouvons comprendre avec précision la situation de l'époque, même aujourd'hui. Bien sûr, il y a des erreurs, mais les descriptions de l'époque ont plus de valeur que celles-ci.

Du néant à l'horizon de l'infini, il a exploré l'au-delà du temps, remontant jusqu'à la Grèce antique, l'Inde ancienne et la Chine antique. C'était une quête en phase avec l'éternité. L'infini et l'éternité mènent à l'être transcendant. C'est la théorie de la religion dans "De l'esprit des lois". Il était chrétien, mais il ne l'affirmait pas. Il a examiné diverses religions, notamment l'islam, le bouddhisme et le shintoïsme et a reconnu la diversité des religions. Cette vue d'ensemble des religions d'un point

¹ "De l'esprit des lois (1748)". Montesquieu Œuvres complètes, I, II Gallimard, 1949, Je l'ai esquissé "Œuvres complètes". "L'esprit des lois", version anglaise, Great Books in Philosophy, Prometheus Books, Amherst, New York, 2002, je l'esquisse "L'esprit des lois".

de vue rationnel a été critiquée par l'Église catholique qui lui reprochait de réduire le christianisme à une seule religion. Finalement, certaines de ses œuvres ont été publiées à l'étranger plutôt qu'en France et "De l'esprit des lois" a été désigné comme un livre mis à l'index par l'Église catholique et l'université de la Sorbonne. C'était une décision inattendue. Cependant, ses pensées ne s'arrêtent pas là. Son état d'être transcendant était "l'amour". La philosophie de Montesquieu s'explique aussi par ses principes de néant et d'amour. Le néant, comme la perte d'un parent, se poursuit par la recherche de la vérité infinie, la description de la phase éternelle et la théorie religieuse de l'être transcendant et de l'amour. Sur son chemin, il a toujours eu une position phénoménologique qui n'adhérait pas aux préjugés et dans ce sens, il a été un pionnier de la phénoménologie. Dans ses dernières années, il a perdu la vue à cause de la cataracte et est devenu aveugle, le néant. Il a eu une vie que tout le monde lui enviait. Mais il a rencontré et souffert du néant, comme un manque de lumière. La publication de "De l'esprit des lois" l'a plongé dans une angoisse existentielle. Par contre, "De l'esprit des lois" a été une cristallisation de sa souffrance de ces 20 années et la réalisation de conscience de l'amour de l'humanité et de l'amour de Dieu. C'est ma vision de Montesquieu.

1. LA MORT DE LA MÈRE ET DU PÈRE

Charles-Louis de Secondat de Montesquieu est né le 18 janvier 1689. C'était 100 ans avant la Révolution française. Au Japon, c'était l'époque du cinquième shogun du shogunat d'Edo, Tsunayoshi Tokugawa. Plus tard, Montesquieu parlera de Iemitsu et de Tsunayoshi Tokugawa dans "De l'esprit des lois". Il est né dans un milieu privilégié en tant que fils aîné d'une aristocratie de droit à Bordeaux. Le château de Blades, où il a grandi, aurait été construit au début du XVI^e siècle et constitue aujourd'hui une magnifique attraction touristique à Bordeaux. Parmi les chercheurs historiques de la vérité et de la loi, cette richesse fait immédiatement penser à Bouddha en Orient. Bouddha était un prince népalais qui vivait une vie sans aucun désagrément.

Il y avait des villas d'été et d'hiver, de magnifiques costumes en soie et des festins.

Cependant, lorsque Bouddha a vu le vieil homme à la porte est, les malades à la porte sud et les morts dans la procession funéraire à la porte ouest, il a ressenti l'incertitude et le néant de la vie. En sortant de la porte nord, il a rencontré un moine et a été si impressionné par son apparence divine qu'il a été ordonné. C'est ce que l'on appelle les quatre portes et le grand renoncement. En quête de vérité, il se consacre à la pratique du brahman. À première vue, Bouddha et Montesquieu ne semblent pas être liés. Mais Bouddha a enseigné la Voie du Milieu et Montesquieu a accepté le concept de la Modération d'Aristote. Le néant de mon principe relie les concepts de la Voie du Milieu et de la Modération. On peut dire la même chose du "Savoir ce qui est suffisant" de Confucius.

Montesquieu a eu la même chance que Bouddha en matière de richesse. Cependant, à l'âge de sept ans, sa mère meurt. À l'âge de 24 ans, il a perdu son père. À cette époque, il a rencontré le néant de l'absence de parents. La perte de ses parents était similaire à celle de Confucius et d'Aristote. Son oncle est également décédé et il a hérité du nom de sa famille, son nom est donc passé de Secondat à Montesquieu. Aristote était orphelin mais cela ne l'a pas empêché de rechercher le véritable amour

et de prêcher la philia. Montesquieu souhaitait la paix des peuples comme une large bienveillance. Cela s'est concrétisé dans "De l'esprit des lois". En fait, il a écrit que le motif du livre était "l'amour du bien, de la paix et du bonheur de tous les hommes", autrement dit, l'amour de l'humanité². C'était un humaniste. Montesquieu a écrit "De l'esprit des lois" comme une réalisation de l'amour en réaction à son expérience du néant. Cependant, ce livre n'a pas été écrit en une seule fois. Les idées ont été développées et formées au cours de décennies d'itinéraires divers.

La mort de sa mère préfigure les réalisations de toute sa vie. Au début de "De l'esprit des lois", on trouve l'affirmation suivante: "Un enfant né sans mère". On dit qu'il y a plusieurs interprétations de cette phrase. Je crois qu'elle fait référence à Montesquieu lui-même. La mère de Montesquieu a donné naissance à un petit frère et à deux petites sœurs. Mais après avoir donné naissance à la dernière sœur, elle est morte d'une maladie post-partum.

Il existe très peu de documents sur Montesquieu enfant. On raconte qu'immédiatement après sa naissance, il a été envoyé dans une ferme comme enfant adoptif et a été élevé parmi des enfants de paysans pendant trois ans³. Sa vie de fermier l'avait rendu robuste et il avait également appris le dialecte des paysans. Comme il était un noble local, il possédait beaucoup de terres. Beaucoup d'entre elles étaient des vignobles, dont la culture exigeait beaucoup de travail. Depuis cette époque, si les aristocrates s'amusaient, les fermiers engagés ne travaillaient pas pour eux. Montesquieu lui-même a écrit qu'il travaillait beaucoup dans la viticulture. La raison en est qu'il travaillait depuis son enfance.

À l'âge de sept ans, il entre au Collège royal de l'Ordre oratoire de la ville de Jouy, près de Paris (1700–1705). Cette école attirait les enfants de nobles de tout le pays. C'était une union libre qui appartenait aux évêques français, et s'opposait à l'éducation jésuite de l'époque, plus proche du jansénisme qui mettait l'accent sur le péché de l'homme. Le philosophe Pascal (1623-1662) était un adepte de cet enseignement. De nombreux professeurs se consacraient à la recherche. Au XVIIe siècle, le philosophe Nicolas de Malebranche (1638–1715) visitait parfois l'école⁴. Montesquieu y a séjourné pendant cinq ans mais dans les documents anciens de cette école, le nom de Charles-Louis de Secondat (Montesquieu) ne se trouve pas spécifiquement, seul le compte du bureau médical semble être mentionné. Qu'est-ce que cela signifie? Charles n'était pas un génie précoce. Les écoles de ce genre avaient des certificats et des prix pour encourager les élèves dans leurs études. Montesquieu était un élève normal qui n'entrait pas dans cette catégorie⁵.

Il convient de noter que Montesquieu a créé une tragédie au cours de cette période. Elle s'appelait "Pritomar", et était basée sur le roman historique populaire "Cléopâtre" de La Calprudone. Elle ne comportait que 120 lignes environ. Mais Montesquieu en a laissé une trace. Quant à la tragédie, je voudrais vous rappeler la "Poétique" d'Aristote. Dans la Grèce antique, la tragédie était la plus haute expression de

2 "L'esprit des lois", 3 volumes, volume de fond, Traduit par Yoshiyuki Noda et autres, Iwanami Bunko, Tokyo, 1989, p. 504.

3 Montesquieu [Vie et pensée], 3 volumes, Tadahihiro Fukukama, I, 1975, Sakai Shoten, p. 8. Je l'ai esquissé MLT.

4 "Montesquieu", Grands livres du monde, traduit par Kōji Inoue Chuōkōron-sha, 1972, p. 15.

5 MLT I, p. 14.

l'art. L'un des meilleurs exemples est "Œdipe Roi". Dans cette tragédie, il tue son père, commet l'inceste avec sa mère, s'aveugle et perd la vue. La tragédie interroge l'existence humaine au-delà du temps. Montesquieu avait déjà ce fondement de la pensée humaniste lorsqu'il était collégien.

En 1705, après avoir terminé ses études à l'école de la ville de Jouy, il entreprend des études de droit à l'université de Bordeaux. Sa famille était une famille noble de droit. Son père était le plus haut fonctionnaire de la noblesse bordelaise et s'occupait de la sécurité et des affaires judiciaires de la ville. Naturellement, Montesquieu en hérite consciencieusement. Pendant son temps libre, Montesquieu se consacre à la lecture des classiques grecs et romains, ainsi que de la littérature classique française, bien qu'il ait peut-être hésité à étudier le droit parce que ce n'était pas son choix. "Apprendre était pour moi le meilleur antidote contre les fatigues de la vie"⁶.

À cette époque, l'Université de Bordeaux comptait beaucoup de vieux professeurs et de professeurs absents. Il semblait qu'une éducation appropriée n'était pas dispensée. C'était également le cas au Japon il y a 50 ans, lorsque le mouvement étudiant était actif dans tout le pays et que les universités étaient souvent fermées et qu'il n'y avait pas de cours. Cela se produisait également dans les lycées. Cependant, les élèves qui n'allaient pas à l'école en raison du conflit n'avaient pas de mauvais résultats scolaires. Comme ils n'allaient pas à l'école, ils lisaient et étudiaient par eux-mêmes. En fait, on peut dire qu'ils ont appris par eux-mêmes. Par conséquent, Montesquieu a également appris à étudier à son propre rythme et à étudier par lui-même. En août 1708, il est admis au barreau de Bordeaux et devient un avocat (conseiller) à part entière. Dans le même temps, son oncle, qui n'a pas de successeur, lui donne son domaine et le titre de Montesquieu. Il prend donc le nom de "Charles-Louis de Secondat, Baron de la Brède et de Montesquieu".

Cependant, Montesquieu, juriste, ne pouvait s'enthousiasmer pour la pratique du droit qui n'était pas son choix. C'est peut-être ce changement de rythme, ou peut-être son désir d'apprendre, qui l'a conduit à vivre à Paris de 1709 à 1713. Il ne fait aucun doute que le jeune Montesquieu est intensément stimulé par la ville dynamique de Paris. Il observait, critiquait et notait tout avec un œil curieux. Un café à Paris était l'endroit idéal pour lui. On dit que "celui qui y entre acquiert quatre fois plus de sagesse"⁷. Aujourd'hui encore, les cafés sont des lieux de discours et de culture.

La plus grande réussite de Montesquieu pendant son séjour à Paris a été sa rencontre avec un Chinois nommé Hoan (黃) au début de 1713. Hoan est né dans la province de Fujian en 1679 et ses parents étaient probablement chrétiens. Il a été baptisé en tant que catholique. Finalement, il a été invité par des missionnaires à venir en France en 1703. Les Chinois étaient extrêmement rares à Paris à cette époque. Il a travaillé comme traducteur chinois, s'est marié et a mené une vie académique. De Hoan, Montesquieu reçoit beaucoup de nouvelles connaissances, qui sont reprises dans son œuvre posthume "Geographica"⁸. L'intérêt de Montesquieu pour l'Orient s'en trouve renforcé. Le contenu, bien que fragmentaire, couvre tous les domaines des religions confucéenne, taoïste et bouddhiste, les rituels, l'habillement, la famille,

6 *ibid.* p. 19.

7 *ibid.* p. 20.

8 *ibid.* p. 22.

la langue, la littérature, la politique, l'économie, le droit, l'étiquette et l'histoire. En outre, le contenu des articles est précis. En termes d'ampleur du sujet, c'était comme une préfiguration de "De l'esprit des lois". Voici un excellent exemple de ce dossier.

C'est un caractère chinois. On dit qu'il existe environ 80 000 caractères chinois. En général, il suffit d'apprendre 18 000 à 20 000 caractères. Les Européens peuvent lire librement en trois ans. L'avantage est qu'un seul caractère chinois, comme " cheval (馬)", est universellement accepté en Chine et au Japon. C'est une description aussi universelle qu'un chiffre, que l'on soit français, allemand ou d'un autre pays.

Ce qui est remarquable dans cette période d'études à Paris, c'est l'émergence d'une vision de la Chine. Il admettait que c'était un vaste empire et qu'il avait une longue histoire. Mais;

"Ils se considèrent comme la seule nation civilisée. La Chine est le centre du monde et toutes les nations environnantes sont traitées comme des barbares."

"Il y a peu de tribunaux dans le monde aussi brutaux que ceux qui jugent les crimes en Chine."

"Malgré la civilité du peuple, il y a toujours quelque élément de barbarie qui s'y cache."

"Les Chinois, bien qu'ils vénèrent le savoir et l'art, ils n'attachent pas la même importance à toutes les sciences. Ils ne respectent que la théologie, le droit public, le droit privé, les mathématiques et les arts. La physique, la géographie, et les autres sciences de ce genre y sont négligées. Dans les mathématiques mêmes, ils n'ont guère étudié que l'astronomie ou plutôt l'astrologie⁹."

Il a fait preuve de cette critique sévère. Mais au fond, il a saisi les faits et a fini par poursuivre "De l'esprit des lois".

Bien qu'il s'agisse d'une critique sévère, il avait lui-même quelques failles dans sa compréhension. En effet, il n'a pas su calculer la longitude. Il a fait des recherches sur l'époque de la crucifixion du Christ avec Hoan, il y avait une éclipse de soleil qui a été vérifiée pour voir si elle était dans les registres chinois. C'était pendant le règne de l'empereur Hongwu de la dernière dynastie Han. Dix éclipses ont été enregistrées au cours de cette période. La troisième éclipse était la plus proche. Cependant, la correspondance n'était pas parfaite. Montesquieu suppose que c'est dû aux différences entre le calendrier solaire européen et le calendrier lunaire chinois. Or, la France et la Chine sont opposées. L'hypothèse selon laquelle l'éclipse se produirait à la même date et à la même heure était elle-même différente. Ils n'ont pas inclus la longitude dans leurs calculs. Le décalage horaire entre Jérusalem et Pékin est de six heures. Au moment de la crucifixion du Christ, il faisait nuit de 12 h à 15 h¹⁰. Pâques est proche de l'équinoxe de printemps, donc 12 heures à Jérusalem correspondent exactement au coucher du soleil à 18 heures à Pékin. Cela signifie que les habitants de Pékin n'ont pas connu l'obscurité du jour.

⁹ *ibid.* p. 25.

¹⁰ "La Sainte Bible" Luc 23:42–48, Traduite sur les textes originaux Hébreu et Grec, Nouvelle Edition d'après la traduction de Louis Segond, Trinitarian Bible Society, London. "Nouvelle traduction de la Bible" Inochinokotobasha, Tokyo, 1960.

A la fin de l'année 1713, après avoir dialogué avec Hoan, Montesquieu rentre précipitamment à Bordeaux en raison de la mort de son père (rencontre du néant). À 24 ans, il devient maître du château de la Brède et s'occupe de son frère et de ses deux sœurs. En mars 1714, il est nommé conseiller (juge) du Parlement de Bordeaux, puis en devient le président. Il commence alors une carrière de dix ans comme avocat. Le Parlement n'était pas seulement un tribunal mais un organe similaire au Parlement britannique. Au Royaume-Uni, les membres de la Chambre des Lords sont membres de la Cour. En d'autres termes, la Cour suprême est composée de membres héréditaires de la Chambre des Lords. La Cour suprême est similaire à la Chambre des Lords et représente également la volonté du peuple. Elle ressemble au Parlement de France. Elle participait également à la politique nationale et avait parfois le droit de parole et de veto du roi. Dans l'histoire du monde, il y a eu la rébellion de la Fronde (1648–1653) qui était une résistance au pouvoir royal par les nobles et les juges. Le lanceur de pierres utilisé à cette époque était la Fronde. Je voudrais vous le rappeler. Dans "De l'esprit des lois", il s'agissait de la fonction la plus noble en tant que "gardien de la loi"¹¹.

2. NOMMÉ AU PALAIS DE JUSTICE

Probablement, le Palais de Justice de Bordeaux est l'actuel Tribunal de Bordeaux. J'ai visité Bordeaux une fois. Sur la place, j'ai regardé les splendides statues de Montaigne, Montesquieu et d'autres personnes qui ont été actives dans la Révolution française. Je savais que Montesquieu était juge. Donc j'ai pris le temps de visiter le palais de justice. En tant que touriste, je n'ai pu voir que l'extérieur. Le palais de justice est un magnifique et digne bâtiment de style grec et a beaucoup plus de poids historique que les bâtiments en béton du Japon. Le fait de penser que Montesquieu a travaillé ici m'a donné un sentiment de familiarité. En diagonale, de l'autre côté de la rue, se trouve le bureau du procureur. La ville de Bordeaux est magnifique. C'est une ville fascinante et j'aurais aimé y rester plus longtemps.

Montesquieu a travaillé comme juge dans ce palais de justice de 1714 à 1726. Il y a une citation de Montesquieu qui montre que le Palais de Justice n'est pas seulement un tribunal mais aussi un parlement. Il s'agit de la "Déclaration fondatrice sur la dette nationale". La jeunesse de Montesquieu était l'âge d'or de la monarchie absolue de Louis XIV (1638–1715). Dans l'ombre de la lumière, la France était engagée dans des guerres étrangères afin de maintenir son statut international. La guerre de Succession d'Espagne était la plus importante de ces guerres et le coût de ces guerres a entraîné des dettes énormes. En 1715, l'année de la mort de Louis XIV, Montesquieu épouse Jeanne de Lartigue, la fille d'un soldat. Jeanne est calviniste, quelque peu boiteuse et infirme¹². Je comprends les sentiments mitigés de son père. Il était heureux du mariage de sa fille et inquiet de son handicap à la jambe.

Cependant, c'est une femme sincère qui sait gérer les finances et les biens de sa famille. Pour cette raison, Jeanne était dévouée à Montesquieu. Elle gagne un procès foncier avec la ville de Bordeaux et acquiert environ 4,5 km² de terrain. En ce qui concerne les documents officiels, Montesquieu en avait 254 et elle 154, ce qui était un nombre

¹¹ MLT I p. 30.

¹² "Montesquieu", Grands livres du monde, Chuōkōron, 1972, Tokyo, p. 15.

extrêmement important compte tenu de la position des femmes à l'époque¹³. C'est le génie de Jeanne.

Après la mort de Louis XIV, Louis XV (1710–1774) était un enfant de seulement cinq ans. Le duc d'Orléans (Philippe II, 1674–1723) a donc régné en tant que régent. Que faire des énormes dettes? Pour répondre à cette question, Montesquieu propose une solution. Aujourd'hui, il est impossible pour un juge de proposer une déclaration écrite sur la reconstruction financière d'un pays. Une déclaration écrite ne peut être émise que par un membre du Parlement ou une personne liée au Parlement. Un juge est tenu de prendre une décision neutre. Cependant, c'était possible pour les membres du Palais de Justice où siégeait Montesquieu. Même s'ils étaient juges, ils étaient aussi membres du Parlement. C'est la raison d'être du Palais de Justice. Louis XIV avait connu la rébellion de la Fronde par les nobles du Palais de Justice quand il était jeune, il a donc supprimé le Palais de Justice. Le Duc d'Orléans a demandé la coopération du Palais de Justice supprimé afin de justifier sa position. En conséquence, le Palais de Justice retrouve son pouvoir. Le "pouvoir consultatif" a été restitué à l'État. Donc, Montesquieu a pu proposer un avis écrit à l'État sur les deux points suivants.

(1) L'énorme dette de Louis XIV est de 3,5 milliards de livres. Cela représente environ 420 milliards de dollars en termes d'aujourd'hui, si une livre est le salaire d'un jour de travail, soit 120 dollars.

Cette dette est couverte par des obligations d'État. Il propose donc d'escompter les obligations d'État à 50% de leur valeur. Le public peut acheter 20.000 dollars d'obligations pour 10.000 dollars. Avec 10.000 dollars en liquide, les gens peuvent acheter des biens d'une valeur de 20.000 dollars. De cette façon, la dette sera réduite de moitié. Répétez l'opération ci-dessus.

(2) Dans ce cas, ce qui est important, c'est la crédibilité des obligations. Ce sont les gouvernements locaux et les législatures des États qui les garantissent. Le crédit du roi a atteint sa limite mais les législatures des États peuvent facilement emprunter de l'argent car elles ont du crédit. Cependant, les gouvernements locaux et les législatures des États ne sont pas élus comme nous le savons aujourd'hui. Ils ne sont pas soutenus par les gens du peuple car ils sont composés de puissants locaux, de propriétaires terriens et d'aristocrates.

À première vue, cela semble fonctionner, mais il s'agissait d'une logique théorique. L'hypothèse était que Montesquieu ne comprenait pas les distorsions de l'époque et la charge fiscale des gens du peuple. En raison de difficultés financières, Louis XIV a imposé impôt sur impôt, et la charge fiscale des gens du peuple vers 1700 était d'environ 80%. Outre les impôts directs tels que l'impôt national de base, l'impôt par tête et l'impôt du dixième, il existait des impôts indirects tels que l'impôt sur la consommation du sel, l'impôt sur la consommation auxiliaire et l'impôt sur le transport. Comment les gens du peuple, qui vivent avec 20% de leurs revenus, pouvaient-ils se permettre d'acheter des obligations d'État dont la valeur avait baissé? Aujourd'hui, il est presque impossible pour une personne ayant un salaire mensuel de 2000 dollars de vivre avec 400 dollars au Japon. Dans ces circonstances,

¹³ "Montesquieu", l'héritage intellectuel de l'homme, Eisaburō Koga, Kōdansha, Tokyo, 1982, p. 45.

l'opinion de Montesquieu n'est pas convaincante. En ce qui concerne les garanties des gouvernements locaux et des législatures des états, les législatures ont été pointées du doigt par Louis XIV, car elles ne peuvent pas garantir des dettes énormes. C'était un expédient temporaire à appliquer aux gouvernements locaux et aux législatures des états. Par-dessus tout, le clergé et l'aristocratie étaient exemptés d'énormes taxes en tant que statut privilégié. La charge fiscale de la noblesse du Palais de Justice n'est que de 1%. Comme le revenu de la noblesse était quatre fois supérieur à celui du peuple, en termes japonais d'aujourd'hui, le salaire mensuel est de 8000 dollars et l'impôt payé est de 80 dollars. Montesquieu en a également profité. Il était impossible de demander au peuple de changer sans changer cela. Ici, on peut admettre la positivité de son opinion au gouvernement et au pouvoir des membres du Palais de Justice. Mais quant à sa politique, c'était un idéalisme venu d'en haut¹⁴.

Grâce au travail de Montesquieu au Palais de Justice, nous avons pu comprendre la fonction du Palais de Justice. Le fait que Montesquieu, un juge, ait pu faire ces recommandations au gouvernement signifie que le travail d'un juge n'était pas si pénible. En fait, il ne se rendait au tribunal que de manière limitée. Au fur et à mesure que sa vie stable se poursuivait et qu'il avait ce qu'on appelait une "scholê (loisir)" en philosophie, il a dû se souvenir progressivement de la conversation avec le traducteur chinois Hoan à Paris. En fin de compte, la curiosité intellectuelle et académique de Montesquieu a été éveillée. C'était son amour pour la connaissance infinie. À la même époque, en 1716, il est proposé pour devenir membre de l'Académie de Bordeaux.

3. ACTIVITÉS DE L'ACADÉMIE ROYALE DES SCIENCES, BELLES LETTRES ET ARTS DE BORDEAUX

L'Académie était à l'origine une assemblée de dames et de gentilshommes de la région. Elle a été fondée en 1712 par un groupe d'hommes politiques sur le modèle de l'Académie Française et enregistrée par le Parlement de Bordeaux le 3 mai 1713. C'est pour cette raison que Montesquieu a été recommandé. Cet organisme était chargé de trois départements: les sciences naturelles, les techniques (arts et techniques) et la littérature. Grâce au soutien de philanthropes, des prix scientifiques étaient sollicités chaque année. Ces membres étaient pour la plupart de jeunes hommes du même âge que Montesquieu. Le but de cette activité était de favoriser le développement des campagnes par l'éclaircissement des connaissances. Montesquieu prononçait également des discours avec un sens élevé de la mission. Le champ d'application de ses travaux était large et comprenait toutes les sciences empiriques.

Descartes, Pascal et Montaigne avaient déjà émergé en France et les bases étaient déjà en place pour le développement de l'étude de toutes choses. À cette époque, les disciplines académiques n'étaient pas aussi spécialisées qu'aujourd'hui. En tant que propriétaire terrien, Montesquieu était impliqué dans la viticulture, il a donc appris les sciences naturelles par le biais de l'agriculture. La lecture de livres n'est pas la seule façon d'apprendre. La viticulture requiert un large éventail de connaissances biologiques et scientifiques sur l'environnement naturel de la terre, des engrais, du vent et de la pluie, ainsi que sur l'amélioration des variétés. Une telle liaison organique

¹⁴ MLT I, p. 45–62.

du monde est une vision organique de l'univers. L'Association de Biocosmologie, dans laquelle je suis actif, est maintenant activement engagée dans ce domaine. Cette société vise à construire une philosophie du monde en réinterprétant la cosmologie organique d'Aristote de manière moderne. Elle recoupe ma propre philosophie¹⁵.

En outre, je voudrais vous rappeler l'entomologie de Jean-Henri Fabre (1823–1915). L'étude des insectes est liée à la terre et à l'environnement naturel. Fabre a également publié un livre illustré sur les plantes. Il a inventé l'idée des écosystèmes avant tout le monde. Lorsqu'une maladie de la vigne se propage en France, le microbiologiste Louis Pasteur (1822–1895) rend visite à Fabre. Les organismes, le corps humain et le monde sont interconnectés¹⁶.

Montesquieu était le directeur de l'Académie de Bordeaux et était chargé d'organiser les présentations. Il y a eu de nombreux exposés de recherche. En voici quelques exemples¹⁷.

Exemple 1: "Théorie de la causalité des échos" (1718)

Il s'agit d'un rapport sur l'examen d'un article primé. L'année précédente, un appel à communication avait été lancé sur les Echos. Montesquieu a présenté ce rapport. Il a commencé par un exposé rituel et le consensus était que la cause des Echos était la réflexion du son. Cela nécessitait des connaissances en acoustique et ne pouvait être résolu par une simple littérature mythologique ou légendaire. En conséquence, de nombreuses questions ont été soulevées. S'il ne s'agit que d'ondes, alors le son devrait être dupliqué et réfléchi. Quelle est la relation entre le son et la vitesse? Le son, quelle que soit sa taille, se déplace à la même vitesse. Pourquoi en est-il ainsi? Certains philosophes ont expliqué ce phénomène acoustique à l'aide d'études sur la réfraction et la réflexion des rayons. Tout comme il existe une image d'un objet qui attire l'œil (phénomène de réfraction), il existe également une image du son. En d'autres termes, le reste du son (réverbération) est l'écho. La théorie de la réverbération du son est valable et convaincante mais elle n'a pas résolu toutes les questions. Pourquoi le même mot est-il répété à l'identique? Pourquoi n'y a-t-il pas d'aigus et de graves

15 L'Association de biocosmologie est une société internationale qui est également associée au Congrès mondial de philosophie. La société est présidée par le professeur Xiaoting LIU (Beijing Normal University) et publie la revue électronique Biocosmology-neo-Aristotelism. Les réunions se tiennent alternativement à Pékin et en Europe. La théorie d'Aristote, l'ancestor de toutes les études, est reconsidérée de manière moderne et le monde et l'univers sont considérés comme le mouvement et le développement de l'énergie organique. Elle est similaire au réalisme de Bergson. Des articles créatifs, Nishida et Tanabe sont également publiés activement avec l'intention d'intégrer les philosophies européennes et asiatiques. Le rédacteur en chef est le professeur Konstantin S. KHROUTSKI (Russie, Université de Novgorod), un philosophe et un médecin. Son territoire est donc large, celui de la revue est diversifié. Le dernier congrès s'est tenu à l'Université d'État de Moscou (Zoom) en juin 2021, co-organisé avec l'Académie des sciences de Russie et le Roma Club. "Philosophie du néant et de l'amour" Kiyokazu Nakatomi, Éditions académiques Lambert, Allemagne, 2016.

16 "Évolution et non-évolution: Bergson et Fabre", (version japonaise). "Revue de Philosophie Française" n°14, Société franco-japonaise de philosophie, Tokyo, 2009. "Évolution et non-évolution. Bergson et Fabre" (version anglaise). Społeczeństwo i Edukacja, Międzynarodowe Studia Humanistyczne, Pologne 2014. "Evolución y No Evolución-Bergson y Fabre" (version espagnole). Społeczeństwo i edukacja, Międzynarodowe Studia Humanistyczne, Pologne, 2017. "Ewolucja czy nie-ewolucja? Bergson i Fabre" (version polonaise). Społeczeństwo i Edukacja Nr 1/2009, Międzynarodowe Studia Humanistyczne, Pologne, 2009.

17 MLT I, pp. 117–133.

dans le son? On pourrait dire que la conférence a soulevé de grandes questions. (Physique)

Exemple 2: "Théorie sur l'utilité des glandes rénales" (1718)

Il s'agit d'un rapport sur un travail de prix rédigé l'année précédente sous le titre "L'utilité de la glande rénale ou vésicule biliaire". En philosophie, Descartes avait étudié la glande pinéale dans le cerveau. Montesquieu, héritier de la philosophie de Descartes, posa le problème de la clarification du rein et de la bile. Plusieurs articles furent présentés, mais aucun n'était digne d'un prix. Une autopsie fut pratiquée devant les membres mais la difficulté de cette question fut reconnue. (Domaine médical)

Exemple 3: "Un plan de l'histoire physique (histoire naturelle) de la Terre dans l'Antiquité et les Temps Modernes" (1719)

Il s'agit d'une histoire du développement de la Terre et d'une théorie de la formation de la Terre. Montesquieu cherche des données spécifiques et précises sur la Terre. Il cherchait des données sur la formation et la disparition de toutes les masses terrestres, des océans, des îles, des rivières, des montagnes, des vallées et des lacs. Le guide a également été publié cette année-là dans les revues scientifiques "Mercure" et "Scholars Magazine". Les informations ont été envoyées à Montesquieu, président du palais de justice de Guyenne, à Bordeaux. Il sollicitait ouvertement des données sur la Terre. A première vue, ce grand plan semble téméraire et farfelu. Mais souvenez-vous de la conversation avec un traducteur chinois, Hoan, à Paris. Cette conversation lui a donné un énorme intérêt et une fascination pour la lointaine Asie. Le tour du monde de Magellan étant déjà terminé, il s'est tourné vers l'Amérique, l'Inde et le monde entier. (Géophysique)

Si la date et l'heure de la crucifixion du Christ lui échappent dès le départ, il a les yeux rivés sur l'histoire, la religion, la culture, la géologie et les sciences naturelles. Ainsi, à l'âge de 30 ans, Montesquieu a établi la pensée universelle de l'histoire et de la géologie du monde. L'expression romanesque de cette idée fut les "Lettres persanes", qui devinrent un tremplin pour "De l'esprit des lois". Il y décrit et explore la politique, l'économie, la religion, la culture, la géographie et tous les autres phénomènes. Il a formé le germe de la phénoménologie. Malheureusement, les données de l'histoire physique (histoire naturelle) de la Terre n'ont pas été recueillies. À cette époque, ce projet téméraire a été avorté et n'a pas abouti. Bien qu'il s'agisse d'une expérience du néant, cette expérience de l'histoire globale est finalement devenue une occasion de se diriger vers la recherche d'une connaissance infinie et éternelle. Cette aspiration au néant, à l'infini et à l'éternité est le principe du néant et de l'amour que j'affirme. Ceci est également compatible avec la pensée de Montesquieu.

4. PUBLICATION DES "LETTRES PERSANES".

Avant la recherche de ce livre, je vais montrer la confusion sociale avant et après la mort de Louis XIV. J'ai déjà écrit sur les dépenses engendrées par le style de vie luxueux comme la construction du château de Versailles et les dépenses fréquentes des guerres étrangères. Comme contre-mesure, un Britannique, John Law de Lauriston (1671–1729), a été invité. Né en Écosse d'un père financier, Law est doté

de talents financiers. Il s'est fait un nom à Londres, mais son style de vie opulent a entraîné sa chute. Il finit par tuer d'une simple passe de son épée son partenaire de duel Edward "Beau" Wilson in London et fut condamné à mort. Mais intelligemment, il s'est échappé de prison et a disparu.

Il s'est rendu aux Pays-Bas, où il a découvert le système bancaire et a été inspiré par l'économie de crédit de ce pays capitaliste avancé. Il se rend en Allemagne, en Italie et dans d'autres pays. En France, il s'est fait un nom parmi l'aristocratie parisienne en gagnant de l'argent grâce au jeu. Le gouvernement, qui cherchait désespérément à rembourser ses énormes dettes, n'a d'autre choix que d'engager Law. Il créa une banque nationale pour détenir tous les revenus du roi et paya les créanciers avec des billets de banque. En utilisant le crédit de la banque, il a éliminé l'énorme dette nationale. C'est le début de l'économie de crédit d'aujourd'hui. C'est ainsi qu'il a réussi à se sortir de la situation difficile. Ensuite, il a fait revivre la "India Company" (Société américaine de développement colonial) en hibernation et y a fusionné la "East India Company", la "China Company" et la "Africa Company". Puis il émet des certificats d'actions sous le nom de "Compagnie du Mississippi". Le régime d'Orléans lève l'interdiction des activités commerciales de la noblesse qui avaient été prohibées. Les nobles et les seigneurs à court d'argent se précipitèrent pour investir dans les banques et acheter des actions dans les compagnies coloniales. Des gens de toutes conditions sociales dépensèrent tout leur argent pour acheter des actions. Les prix des actions se sont envolés. C'est l'économie de bulle d'aujourd'hui. À son apogée en 1719, le prix des actions avait été multiplié par 24. Au début de l'année suivante, les spéculateurs ont décidé que le moment était venu de vendre et ont commencé à convertir les billets de banque défectueux en monnaie positive. Les Britanniques et les opposants à Law, qui se sentaient menacés par les politiques de ce dernier, ont également contribué à ce mouvement. Le marché boursier a commencé à s'effondrer. En quelques jours, le prix des actions a chuté de moitié, provoquant la panique. C'était comme l'éclatement de la vieille bulle du Japon en 1990 ou le choc Lehman de la dépression mondiale.

L'action valait maintenant moins de 1% de sa valeur. Le certificat d'actions est devenu un morceau de papier. Il est presque devenu le néant. Le peuple français et Law ont rencontré le néant. À l'époque, Law était le ministre français des Finances. En réponse à la crise, il ordonna de suspendre l'échange d'or et d'argent et d'interdire la vente de bijoux. Mais ces mesures ont provoqué de nouveaux troubles au sein de la population. La banque a été encerclée par le peuple. Law a été attaqué par les masses, échappant de justesse au danger. Il devient la cible du ressentiment populaire et ne peut rester en France. Finalement, il s'est enfui aux Pays-Bas avec de l'argent. Il était presque sans ressources et mourut à Venise, en Italie, en 1729. Montesquieu rencontra Law avant sa mort à Venise lors d'un voyage en Italie. La politique d'enrichissement de la France a créé des ravages en sens inverse. Les politiques de Law ont été efficaces à certains égards, car elles ont précédé le système bancaire et l'économie de crédit d'aujourd'hui, mais les changements rapides ont entraîné une perte d'équilibre. En d'autres termes, l'idée de "modération" faisait défaut. Comme je l'expliquerai plus tard, la politique de Law a également été abordée par Adam Smith dans "La richesse des nations".

À cette dépression économique s'ajoute la décadence morale au sein de la cour. L'aristocratie de Paris menait une vie élégante avec des vêtements luxueux, des festins et des pièces de théâtre. C'était un luxe excessif alors que le peuple vivait dans la

pauvreté. Et puis il y avait la décadence et l'adultère parmi la noblesse. C'est dans ces circonstances que Montesquieu a écrit "Lettres persanes" (1721). Il s'agit d'un roman fictif relatant les observations d'Usbek, le protagoniste de la famille royale persane, qui est venu à Paris depuis Ispahan, la ville iranienne. Le jeune préposé était Rica. Il s'agit d'une correspondance entre cinq épouses d'Usbek et des serviteurs de son harem en Perse. Il existe des comptes rendus détaillés de la situation à Paris et dans différents pays. À la fin, la femme du harem a une liaison avec l'un des serviteurs d'Usbek. Usbek retourne à Ispahan mais sa femme se suicide. Comme il s'agit d'un roman de fiction, il est difficile de tracer une ligne entre ce qui est réel et ce qui est imaginaire. Cependant, il y a des faits surprenants lorsque l'on confirme les vérités les unes après les autres et il y a une illumination qui ouvre les yeux et un progrès avec une critique acerbe. Il expose la cour et la société décadentes du règne de Louis XIV.

Ce protagoniste, Usbek, se confond avec Montesquieu qui vivait à Paris avec le traducteur chinois, Hoan. Il s'agit d'une attitude consistant à regarder objectivement la société du point de vue d'un pays différent, transformant les Chinois en Persans. Comme Montesquieu a déjà ouvert les yeux sur le monde, les contenus qu'il a couverts étaient larges. On a beaucoup spéculé sur la raison pour laquelle Montesquieu a écrit ce livre. Je pense que c'était une simple diversion à sa vie de juge.

Il voulait utiliser d'une manière ou d'une autre les connaissances et la perspicacité qu'il avait acquises au cours de ses études à l'Académie de Bordeaux. Par exemple, il a critiqué les contradictions d'une société qui devenait de plus en plus insatisfaite. Sa motivation pour écrire le roman était un changement de rythme, une distraction et quelque chose comme ça. La légèreté et la mélancolie du roman ont touché le cœur des gens. Il s'agissait d'un dévouement de grande classe de l'insatisfaction des gens.

En tant que romancier, Montesquieu était inconnu à Paris, il a donc cherché un éditeur. Il souhaitait en effet rester anonyme. Il a également payé pour sa propre publication¹⁸. La raison pour laquelle il a choisi de rester anonyme est probablement due au fait qu'il était le président de la cour, ce qui lui imposait d'être socialement neutre. Ses romans privés n'étaient pas autorisés. Aujourd'hui, même les juges japonais sont autorisés à écrire des ouvrages universitaires, mais pas des romans. Les paroles et les actes des juges ont une grande influence sur la société et ils sont tenus de se consacrer à leurs fonctions. Montesquieu avait également du bon sens dans ce domaine. L'éditeur n'était pas français mais hollandais. Ce pays était l'une des bases de l'édition secrète à cette époque. La prudence de Montesquieu était logique. En effet, le livre a connu un succès inattendu et est devenu un best-seller. En 1751, l'abbé Gauthier publia la mise en accusation que les "Lettres persanes" méritaient d'être condamnées pour leur "caractère profane". Le catholicisme étant également attaqué dans "De l'esprit des lois", Montesquieu doit tenir compte de cette suppression. Après la mort de Louis XIV, même s'il y eut une libération des chaînes, la surveillance catholique continua. Il bénéficiait d'un bon statut social et d'une vie agréable. Mais le joug du catholicisme était lourd.

La phrase suivante décrit la situation dans les milieux sociaux et à Paris. Dans les milieux sociaux, l'adultère était la norme:

¹⁸ *ibid.* p. 199.

“Les Français ne parlent presque jamais de leurs femmes; c’est qu’ils ont peur d’en parler devant des gens qui les connoissent mieux qu’eux....Ici, un mari qui aime sa femme est un homme qui n’a pas assez de mérite pour se faire aimer d’une autre;”¹⁹.

“Paris est peut-être la ville du Monde la plus sensuelle, et où l’on raffine le plus sur les plaisirs; mais c’est peut-être celle où l’on mène une vie plus dure. Pour qu’un homme vive délicieusement, il faut que cent autre travaillent sans relâche. Une femme s’est mise dans la tête qu’elle devoit paroître à une assemblée avec une certaine parure; il faut que, dès ce moment, cinquante artisans ne dorment plus et n’aient plus le loisir de boire et de manger: elle commande, et elle est obéie plus promptement que ne seroit notre monarque, parce que l’intérêt est le plus grand monarque de la Terre.”²⁰.

Il a écrit sur Louis XIV comme suit:

“Le Roi de France est le plus puissant prince de l’Europe. Il n’a point de mines d’or comme le roi d’Espagne, son voisin; mais il a plus de richesses que lui, parce qu’il les tire de la vanité des ses sujets, plus inépuisable que les mines. On lui a vu entreprendre ou soutenir de grandes guerres, n’ayant d’autres fonds que des titres d’honneur à vendre, et, par un prodige de l’orgueil humain, ses troupes se trouvoient payées, ses places, munies, et ses flottes, équipées.”²¹

"J'ai étudié son caractère, et j'y ai trouvé des contradictions qu'il m'est impossible de résoudre. Par exemple: il a un ministre qui n'a que dix-huit ans, et une maîtresse qui en a quatre-vingts; il aime sa religion, et il ne peut souffrir ceux qui disent qu'il la faut observer à la rigueur;"²²

Comme mentionné ci-dessus, Montesquieu était strict avec le roi. Les rois de France ont établi Versailles et d'autres lieux de luxe et ont mené de nombreuses guerres pour vanter leur pouvoir. Louis XIV a eu au moins six maîtresses, mais sa maîtresse de 80 ans était Madame de Maintenon (1635 - 1719), avec laquelle il a eu un mariage privé. Il a eu aussi des relations sexuelles avec un certain nombre de femmes. Celles du dessous imitent celles du dessus. Pourquoi Louis XIV vit-il dans un tel luxe et invite-t-il la noblesse dans son palais? Cette politique est similaire à celle des seigneurs féodaux, les Daimyo du shogunat d'Edo au Japon. En d'autres termes, en rassemblant la noblesse dans le palais, il s'agissait de l'empêcher de se révolter²³. Si le couple passait tous les jours au palais, les nobles locaux ne penseraient pas à se révolter. Au palais, le roi a imposé la règle des vêtements luxueux et a créé un système de classes strict. C'était un moyen de gagner la confiance des nobles. Les dames du palais étaient des otages. D'un autre côté, les vêtements de luxe ont permis le développement de l'industrie de la mode. Aujourd'hui, la France est toujours le leader mondial de la mode.

19 "Lettres persanes", N.55, "Œuvres complètes", I, Gallimard, pp. 211–212, "Lettres persanes", Nouvelle traduction de Margaret Mauldon, Oxford World's Classics, 2008, p. 72.

20 "Lettres persanes", N.106, "Œuvres complètes", I, Gallimard, p. 288, "Lettres persanes", Nouvelle traduction de Margaret Mauldon, Oxford World's Classics, 2008, p. 143.

21 "Lettres persanes", N.24, "Œuvres complètes", I, Gallimard, pp. 165–166, "Persian Letters", A new translation by Margaret Mauldon, Oxford World's Classics, 2008, p. 31.

22 "Lettres persanes", N.37, "Œuvres complètes", I, Gallimard, p. 184, "Persian Letters", A new translation by Margaret Mauldon, Oxford World's Classics, 2008, p. 47.

23 Wikipedia, Palace of Versailles.

C'était la même chose qu'à l'époque d'Edo, où les seigneurs féodaux, les Daimyo se rendaient à Edo tous les deux ans. De plus, des épouses étaient stationnées à Edo. Cette mesure visait à prévenir toute rébellion de la part des seigneurs féodaux et des samourais. La fréquentation du château d'Edo était similaire à celle de Versailles, avec toutes les formalités et des tenues de cérémonie coûteuses. La présence des seigneurs féodaux locaux à Edo était soumise à des règles et règlements détaillés et ils devaient dépenser beaucoup d'argent. Par cette présence, les seigneurs féodaux locaux perdaient leur pouvoir financier. Ils ne pouvaient pas se révolter. Par conséquent, le shogunat d'Edo a duré 250 ans. Bien que cet assidu soit un lourd fardeau pour les seigneurs féodaux, les routes vers Edo et les villes postales ont prospéré. D'autres industries locales se sont développées.

Versailles était un symbole de la puissance du roi. En même temps, il s'agissait d'une politique habile pour séduire la noblesse et les personnes influentes. Le roi a probablement bénéficié des conseils de ses collaborateurs, dont le cardinal Jules Mazarin (1602–1661) et Jean-Baptiste Colbert (1619 - 1683). La politique était financée par les impôts du peuple qui se voyait prélever 80% de ses revenus. J'ai déjà évoqué les difficultés économiques. La Révolution française avait été préparée.

Montesquieu publie les "Lettres persanes" avec une certaine appréhension. Mais, malgré son anonymat, il a fait mouche avec les faits de l'époque et est devenu un best-seller. Comme Montesquieu pouvait avoir confiance en son talent littéraire, il se rendit à Paris pour se perfectionner.

5. RÉALISATIONS À PARIS, RELATIONS PERSONNELLES ET "TRAITÉ DU DROIT NATUREL".

Il était pourtant le Président du Palais de Justice de Bordeaux, une figure littéraire locale. A Paris, il rencontre naturellement le Président du Palais de Justice de Paris et élargit le champ de ses relations. En tant que romancier, homme politique et juge, sa plus grande réussite est probablement sa rencontre avec Robert Walpole (1676 - 1745) qui fut le premier à mettre en œuvre le système anglais de cabinet responsable et le duc de Bourbon, Premier Ministre. Le duc de Bourbon était un admirateur particulier de l'œuvre de Montesquieu. Walpole a joué un rôle majeur dans l'introduction de la politique anglaise et du système parlementaire dans "De l'esprit des lois". Sa vie à Paris était une vie de cour luxueuse. Il a écrit plusieurs ouvrages à ce sujet. Par exemple, "Histoire de la Jalousie" et "Le Temple de Gnide" (1725), une histoire d'amour sensuelle. Bien que "Le Temple de Gnide" ait été recommandé par le duc de Bourbon à la haute société parisienne, il semble que les invendus soient nombreux²⁴. Pour tout dire, c'est un échec et cela n'inspire pas beaucoup de confiance à Montesquieu. En d'autres termes, dans ces romans, Montesquieu a connu la frustration et le néant.

Cependant, il y a quelque chose qui mérite d'être mentionné à cette époque. C'est que Montesquieu est tombé amoureux à l'âge de 35 ans, alors qu'il avait déjà une femme et trois enfants à Bordeaux.

"A l'âge de trente-cinq ans, j'aimais encore"²⁵.

24 MLT II, pp. 17–28.

25 MLT I, p. 297. "Œuvres Complètes", I, Mes Pensée 4 (213), p. 978.

Selon le professeur Fukukama, on pensait que Mlle Clermont et Madame Grave étaient liées à la famille royale. À Madame Grave, il a envoyé des livres et des lettres. Je ne connais pas l'étendue de leur relation, mais cela montre le côté humain de Montesquieu qui prêchait la théorie morale.

Le résultat de ce travail académique à Paris fut le "Traité du droit naturel". Au départ, les yeux de Montesquieu ont été ouverts sur le monde lorsqu'il a rencontré le traducteur chinois alors qu'il était un jeune homme de 20 ans. Il aspirait à un monde d'une ouverture infinie qui ne se limitait pas aux sciences humaines et naturelles. Après avoir fait l'expérience de la frustration et du néant dans ses romans, Montesquieu s'est enflammé d'explorer le monde infini. L'un d'entre eux fut ses activités à l'Académie de Bordeaux.

Il y étudie les sciences naturelles, la nature de la condition humaine, la moralité et le devoir. Après son échec à Paris, Montesquieu délaisse l'étude de la littérature et des sciences naturelles pour s'intéresser à la nature humaine, à la morale et à la société. C'était naturel, puisqu'il était lui-même juge. Les sciences naturelles avaient leurs propres lois. C'est ce que recherchait Montesquieu. Ces lois ne s'appliquent pas seulement aux phénomènes naturels. Elles s'appliquent aussi aux lois de la société humaine. En premier lieu, la loi est une vérité universelle qui transcende le temps et l'espace, y compris la loi naturelle.

Aujourd'hui, nous faisons la distinction entre les lois des sciences naturelles et les lois de l'État et de la société. Mais c'est l'accent mis par le rationalisme moderne. À l'origine, Aristote ne faisait pas cette distinction. J'en parle dans mes articles, "Grand philosophe japonais du droit-Fusaaki Uzawa" (Humanum, 2021), "Idée de la loi transcendante" et "Idée de la loi transcendante et études de la noosphère"²⁶. La loi d'Aristote a été héritée par Thomas d'Aquin (1225–1274) au Moyen Âge et est devenue la loi divine qui régit le monde et l'univers. La position catholique de Montesquieu hérite également de cette ligne. Puisque Dieu a donné à l'homme la raison, l'homme fait des lois et contrôle le monde en fonction de cette raison. C'est le droit naturel. A partir de là, lorsque la nature est la cible principale, cela devient le droit des sciences naturelles, puis il est divisé en droit naturel pour les hommes et la société. C'est une caractéristique des temps modernes où la science s'est développée. Montesquieu a pensé le droit naturel avant la différenciation dans l'esprit. Cette idée du droit naturel qui est décrite au début de "De l'esprit des lois" est devenue, pour ainsi dire, le fondement de ce livre. Il examine l'esprit de l'établissement du droit du point de vue de l'universel et de l'éternel.

Le contenu de "De l'esprit des lois" a émergé, pour ainsi dire, au cours de sa vie entre Paris et Bordeaux vers 1725–1729. En 1749, lors de la publication de "De l'esprit des lois", il a écrit qu'il y avait réfléchi pendant 20 ans.

Lorsque Montesquieu rentre de Paris en 1725, il écrit un récit précieux.

C'est une description de l'esprit du citoyen.

26 "Grand philosophe japonais du droit-Fusaaki Uzawa". "Humanum" Międzynarodowe Studia Społeczno-Humanistyczne, Pologne, 2021. "L'idée d'une loi transcendante", "Humanum", dont la publication est prévue. "L'idée de la loi transcendante et les études sur la noosphère". "Collection d'articles", Université d'État de Moscou, La 7e conférence scientifique internationale, 2021.

"L'esprit du citoyen est le désir de voir l'ordre dans l'État, de sentir de la joie dans la tranquillité publique, dans l'exacte administration de la justice, dans la sûreté des magistrats, dans la prospérité de ceux qui gouvernent, dans le respect rendu aux lois, dans la stabilité de la Monarchie ou de la République....

L'esprit du citoyen est d'exercer avec zèle, avec plaisir, avec satisfaction, cette espèce de magistrature, qui, dans le corps politique, est confiée à chaque: car il n'y a personne qui ne participe au gouvernement, soit dans son emploi, soit dans sa famille, soit dans l'administration de ses biens."²⁷

En bref, l'esprit du citoyen est le désir de stabilité, de sécurité et de vie paisible dans la nation et dans la vie publique. Puisque tous les citoyens participent à la gouvernance, la prospérité de la patrie est le fondement du bonheur de ses citoyens. Le bien-être des citoyens est le bien-être et l'amour de l'humanité, ce qui est le but de "De l'esprit des lois". La prospérité d'une nation est la prospérité du monde. Cette thèse a été découverte. Pour la réaliser, il faut une synthèse de toutes les connaissances qui rassemble les vrais problèmes. Il en trouve un indice dans les propos de Georges-Louis Leclerc, comte de Buffon (1707–1788).

"On peut dire que l'amour de l'étude de la nature suppose dans l'esprit deux qualités en apparence opposées: la vision du génie farouche qui embrasse tout d'un coup d'œil et l'attention de détail qui n'adhère qu'à un seul point par l'instinct diligent."²⁸

"Un des grands délices de l'esprit des hommes, c'est de faire des propositions générales".

"Il ne faut pas avoir beaucoup d'esprit pour brouiller tout; mais il faut en avoir beaucoup pour concilier tout."²⁹

Cette proposition est un principe général. C'est ce principe qui a été intuitionné. Ce fut une révélation, comme l'a dit le professeur Fukukama.

"Voici comme Je définis les talents: un don que Dieu nous a fait en secret, et que nous révélons sans le savoir "³⁰.

Montesquieu a eu l'intuition et la conscience de son fondement de la vérité infinie du ciel. C'était la vérité et la loi de l'éternité.

Fort de cette intuition de principe, il décida de la voie à suivre. Immédiatement, il commença à mettre de l'ordre dans ses affaires. Il retira son fils de l'école et entama le processus d'héritage du domaine familial. Il a également mis aux enchères son poste de juge, car son fils refusait d'hériter de ce poste. Il s'est débarrassé de sa position bénie au nom de la recherche de la vérité. C'était semblable à Bouddha qui s'était fait ordonner pour rechercher la vérité. C'était un grand renoncement. Heureusement, un procureur adjoint du même tribunal a acheté le poste.

27 MLT I, p. 114, "Œuvres Complètes" I, 1949, Mes Pensée 618, pp. 1143–1144.

28 Buffon: " Histoire naturelle ", Tome I (1789), " Premier discours: De la manière d'étudier et de traiter l'histoire naturelle ", cf. MLT I, p. 115.

29 MLT II, p.115, "Œuvres Complètes" I, Mes Pensée 1158 (1597), 1159 (2162), p. 1295.

30 MLT II, p. 116, "Œuvres Complètes" I, Mes Pensée 1155 (1428), p. 1295.

Le seul problème était qu'il s'agissait d'une période limitée et qu'il n'en avait que pour sa vie. Ainsi, il a rassemblé des fonds et s'est préparé à voyager en Europe. En même temps, comme il avait déjà fait la connaissance du premier ministre, de ministres, de nobles de la cour et d'autres personnes puissantes ainsi que d'experts littéraires et académiques, il a demandé à être admis à l'Académie Française. En 1727, il est sélectionné comme l'un des "Quarante immortels"³¹, la plus haute distinction qu'il pouvait recevoir en tant qu'homme de lettres.

LE VOYAGE EN EUROPE

Après avoir fait ses préparatifs, Montesquieu quitte Paris pour Vienne. Il est accompagné d'une vieille connaissance, un diplomate anglais, Lord Waldegrave. Il s'agit d'un voyage d'observation philosophique de trois ans en Autriche, en Hongrie, en Italie, en Suisse, en Allemagne, aux Pays-Bas et en Angleterre. Aujourd'hui, ce serait l'équivalent d'un tour du monde. Pour commencer, c'était un voyage dangereux car il y avait des groupes rebelles en France et des guerres étrangères. Mais sa curiosité infinie passa outre. Il est accompagné d'un diplomate britannique qui vient d'être muté de Paris à Vienne et qui est bien traité à destination.

Il arrive à Vienne le 26 avril 1728. Ses impressions de la ville sont extrêmement positives.

"Moi, je disois: « Il n'est beau de vieillir qu'à Vienne. » Les femmes de soixante ans y avoient des amants; les laides y avoient des amants. Enfin, on meurt à Vienne; mais on n'y vieillit jamais".³²

La cour est confortable et les grands nobles et ministres sont disposés à les rencontrer, ceci grâce au diplomate britannique qui l'accompagne. Montesquieu a dû être surpris par la large dignité des prérogatives du diplomate.

Il avait déjà renoncé à la fonction de juge héréditaire, mais il aspirait désormais à devenir un diplomate jouissant de relations et d'une autorité étendues et prestigieuses. Il a immédiatement envoyé une lettre au gouvernement à Paris, exprimant son désir d'un poste diplomatique. Mais cela ne se concrétise pas. Il était plus un mondain et un diplomate qu'un praticien solide.

Son accueil à Vienne est attesté par son audience avec l'empereur Charles VI et son épouse le 20 mai. Un romancier français, ancien juge, est reçu par l'empereur. Montesquieu n'aurait jamais pu le faire seul.

Environ un mois plus tard, il a quitté Vienne et s'est rendu en Hongrie. La raison en était que tous les pays d'Europe étaient autrefois comme la Hongrie et que Montesquieu voulait voir les coutumes de leurs ancêtres.

Il a passé douze jours à Bresburg (aujourd'hui Bratislava, la capitale de la Slovaquie), écoutant le Congrès, rencontrant tous les nobles de Hongrie et buvant beaucoup de vin. Il a eu un entretien avec un évêque de Belgrade nommé Nadaszthy, a bu du vin. Puis il reçoit une invitation à Belgrade. Montesquieu lui répond: "Vous êtes un tel

31 MLT II, p. 160.

32 MLT II, p. 171, "Œuvres Complètes" I, Mes Pensées 55 (2136), p. 985.

ivrogne que je serai tué par vous le jour même". Le lendemain, il se rend à la mine de Kremnitz. Comme le français est à peine compris en Hongrie, il converse en latin. Montesquieu, en tant que spécialiste des sciences naturelles, s'intéressait aux mines, mais aussi au développement des mines et de l'industrie. Avant ses voyages, il avait tenu une présentation de recherche à l'Académie de Bordeaux. Montesquieu était membre du comité directeur qui acceptait les présentateurs sur les mines. Il a également fait un exposé sur la mine à l'académie à une date ultérieure.

Le développement des mines a à l'esprit le développement réussi par l'Espagne des mines d'argent en Amérique du Sud. Toutefois, dans "De l'esprit des lois", il se montre critique à son égard. Le développement par l'Espagne de la mine d'argent de Potosi en Bolivie a conduit à une prospérité temporaire, mais la libération massive d'argent a entraîné une inflation. De plus, Potosi a utilisé les indigènes locaux pour développer la région. Cela signifie que les Espagnols n'ont pas été utilisés. Les Espagnols n'ont pas pu trouver d'emploi. Il n'y avait pas de demande effective pour les Espagnols. En fin de compte, c'était une politique esclavagiste extrême qui a été un échec. C'est la perspective qu'il avait. L'idée du développement minier était de connecter les populations locales à leurs emplois. Cela permettrait également de développer les compétences et les capacités des gens. Il pensait au développement de l'ensemble de l'industrie.

Après son voyage en Hongrie, Montesquieu retourne à Vienne et se dirige vers l'Italie et Venise.

"Le premier coup d'œil de Venise est charmant, et je ne sache point de ville où l'on aime le mieux être, le premier jour, qu' à Venise, soit par la nouveauté du spectacle ou des ses plaisirs"³³.

Au premier abord, c'est une destination touristique mondialement connue pour ses gondoles. Montesquieu est enchanté par sa beauté. Cependant, cette attraction touristique, la République, s'est délabrée à l'observation. Il voit la dépravation du vol, de l'avarice et de l'indulgence pour le plaisir.

"Quand à la liberté, on y jouit d'une liberté que la plupart des honnêtes gens ne veulent pas avoir: aller de plein jour voir des filles de joie; se marier avec elles; pouvoir ne pas faire ses pâques; être entièrement inconnu et independant dans ses actions: voilà la liberté que l'on a."³⁴

Ne pas aller à l'église à Pâques n'est pas un problème pour les autres religions. Mais aller voir une prostituée en plein jour, quel genre de dépravation est-ce là? La célèbre ville d'eau était devenue une ville touristique où les prostituées se promenaient. Selon le professeur Fukukama, Montesquieu a également profité de la "liberté" de cette ville de plaisir et a joué avec les femmes³⁵. Il a également fait la connaissance d'amateurs d'art et a apprécié leurs œuvres d'art.

C'est ici, à Venise, que Montesquieu rencontre l'ancien ministre des Finances, John Law. Le seul bien de Law est un seul diamant avec lequel il joue. Law s'exprime ainsi.

33 MLT II, p. 176, "Œuvres Complètes" I, p. 546.

34 MLT II, p. 177, "Œuvres Complètes" I, p. 548.

35 MLT II, p. 178.

"En Angleterre, l'argent était tout ce qu'il fallait pour embrasser le Parlement. En France, par contre, l'argent n'a pas fonctionné. C'est difficile de les rallier." Et ainsi de suite. Law est mort l'année suivante.

Après avoir séjourné à Venise pendant un mois, il se rendit à Padoue et à Vérone avant d'arriver à Milan le 24 septembre. Il y est resté trois semaines, visitant des personnes célèbres, des bibliothèques, des églises, des jardins, une école maternelle privée et regardant "La Cène" de Da Vinci à Milan.

De Milan, il s'est ensuite rendu à Turin. Il a eu une audience avec le roi de Sardaigne. Le roi lui demande des nouvelles de son oncle Joseph de Seconda (mort en 1726). Montesquieu fut surpris de la bonne mémoire du roi et dut être heureux que le roi se souvienne de son oncle. Il lui répond comme suit

"Sire, Votre Majesté est comme César, qui n'a jamais oublié aucun nom."³⁶

Il a rencontré le prince héritier, la famille royale, les grands nobles et les hommes politiques. Son impression de Turin est donc très positive.

"Turin est une ville riante, petite, quoique agrandie par le père du Roi..."³⁷

Cependant, en ce qui concerne la situation politique, en raison de la petite taille du pays, chaque détail était vérifié. Il semblait y avoir un espion dans chaque maison et les murs parlent d'eux-mêmes. Même les mariages des citadins sont surveillés. Il se sentait tellement étouffé par tout cela qu'il déclara qu'il n'avait aucun désir de servir dans ce pays et partit pour Gênes.

Il est arrivé à Gênes le 9 novembre. Les nobles génois semblaient tous être des marchands. Ils gardaient leur argent dans des banques. Les quelques personnes riches ne dépensaient pas leur argent mais le stockaient, il n'y avait donc pas de circulation d'argent. Au final, beaucoup de gens étaient pauvres. Le pays dans son ensemble était également pauvre avec moins de 5.000 soldats. Montesquieu semblait s'ennuyer. Il prit un bateau pour Pise.

Le 24 novembre. Il arrive à Pise. Il visite la célèbre tour penchée et Livourne, une belle ville semblable à Venise.

Le 1er décembre. il est arrivé à Florence. C'est le berceau de la Renaissance et une ville d'art. Ici aussi, il est accueilli par des fonctionnaires, des savants et des personnes célèbres. Il a demandé des anecdotes sur la famille Médicis. Cependant, les chefs-d'œuvre de la ville d'art lui ont ouvert les yeux pour apprécier l'art d'une nouvelle manière. En raison de l'excellence du musée, il a reporté ses projets d'un mois.

À son arrivée à Rome le 19 janvier 1729, Montesquieu rend visite au cardinal Polignac, l'ambassadeur de France à Rome. Ensuite, il interagit avec les gens de la classe politique et de la classe supérieure pour enquêter sur la situation du moment. Il est ainsi stupéfait de la pauvreté et de la corruption qui règnent dans le pays.

"L'homme Benoît XIII est souverainement méprisé dans ce pays-ci: on dit que c'est un genre de fou qui fait l'imbécile."³⁸

36 MLT II, p. 182, "Œuvres Complètes" I, Voyages, p. 605.

37 MLT II, p. 182, "Œuvres Complètes" I, p. 605.

38 MLT II, p. 189, "Œuvres Complètes" I, Mes Pensées, p. 674.

La raison en est que la vente d'objets et de postes du clergé est monnaie courante à Rome. Dans le passé, Martin Luther a mené la Réforme à cause de l'achat et de la vente de poste du clergé. Tout était motivé par l'argent et on était tombé dans le culte de l'argent. Cependant, Montesquieu lui-même a fait le commerce des postes de magistrats. À cette époque, il n'était pas conscient de son auto-contradiction. Il s'agit de l'auto-identité de la contradiction absolue dans la philosophie japonaise. Il y avait aussi le luxe de manger des repas somptueux. La disparité entre les riches et les pauvres était grande. La ville était devenue un lieu où les gens volaient, exigeaient de l'argent lorsqu'ils voyaient quelqu'un et comptaient sur les dons. Il n'y avait plus rien à voir avec les citoyens romains d'autrefois. La gloire du passé s'était évanouie dans le néant.

Cependant, il a ressenti un sentiment de grandeur lorsqu'il a vu les ruines, les bâtiments et les objets historiques de Rome. C'est là qu'il a contemplé la Rome éternelle. C'était une intuition du néant à l'infini et à l'éternité. Et lorsqu'il regardait les peintures de Raphaël, il avait l'intuition du Divin, de l'Être Transcendant.

"Ce que je trouve à Rome, c'est une ville éternelle. « Vixit in Urbe æterna, Il a vécu dans la ville éternelle », ai-je lu dans l'une des épitaphes à Florence. Voilà deux mille cinq ou six cent ans d'existence, et que, d'une manière ou d'une autre, elle est métropole d'une grande partie de l'Univers. Un trésor immense rassemblé de choses uniques, de ce qu'avoient les Romains, les Grecs, et les Égyptiens: car ils ont dépouillé ceux qui avoient dépouillé. Chacun vit à Rome et croit trouver sa patrie."³⁹

Il s'agissait d'une simple admiration de Montesquieu pour Raphaël au Vatican.

"Primo, les Loges de Raphaël, ouvrage divin et admirable. Quelle correction de dessin! Quelle beauté! Quel naturel! Ce n'est point de la peinture; c'est la nature même... Enfin il semble que Dieu se sert de la main de Raphaël pour créer."⁴⁰

On pouvait y reconnaître l'intervention de Dieu, Être Transcendant. Montesquieu était chrétien.

Mais pourquoi ce grand Empire romain s'est-il effondré? À l'école, il avait déjà une bonne formation en lettres classiques grecques et romaines. Il respectait Cicéron, qui avait romanisé la philosophie grecque et affronté courageusement César. Cette base lui a donné l'occasion de réfléchir sérieusement aux raisons de l'effondrement de l'Empire romain. L'Empire était un modèle de civilisation avec sa politique républicaine et sa puissance militaire sur un vaste empire et avait une culture avancée. Cette question a finalement conduit à l'écriture de "Considérations sur les causes de la grandeur des Romains et de leur décadence", qui a précédé "De l'esprit des lois". L'idée est que, puisque Rome était le concentré de la culture et de l'histoire du monde, on pouvait trouver les lois de la prospérité et du déclin du monde en examinant la prospérité et le déclin de Rome.

De Rome, il est passé par Naples, Bologne, Modène, Parme, Trento et Innsbruck.

Il est arrivé à Munich le 3 août. C'était une belle ville avec de larges routes et de beaux bâtiments. Il a eu une audience avec l'Électeur et sa femme. Le 16 août, il

39 MLT II, p. 192, "Œuvres Complètes" I, Voyages, p. 676.

40 "Œuvres Complètes" I, p. 692.

quitté Munich après une longue maladie. Il a eu des difficultés à trouver un médecin à Augsbourg. Malgré sa maladie, il arrive à Heidelberg, la plus ancienne université d'Allemagne. Il a visité les célèbres grands tonneaux pour la fabrication du vin. Je l'ai aussi regardé en 2012. Après avoir traversé les villes rhénanes, il s'est dirigé vers Cologne et Hanovre.

Le 24 septembre, il se rend à Braunschweig, où le roi de Prusse, Friedrich Wilhelm Ier, fait parler de lui. Ce roi, également connu sous le nom de Roi des armées, est celui qui a militarisé la Prusse. Avec sa richesse tyrannique et ses politiques puissantes et sa politique étrangère, il était une menace pour les gens qui l'entouraient. Au lieu d'aller à l'école, les enfants devaient s'inscrire dans l'armée dès l'âge de 10 ans. Les marchands étrangers n'entraient jamais dans l'État prussien, car les fonctionnaires les attrapaient et les enrôlaient dans l'armée. Dans ces conditions de tyrannie, Montesquieu n'aimait pas le pays. Cependant, il était invité à des banquets par la noblesse et avait des échanges avec elle.

Le 28 septembre, il va visiter les mines du Harz. Puis il se dirige vers les Pays-Bas.

Arrivée à Utrecht le 12 octobre. Il avait entendu parler de la cupidité et de la méchanceté des Hollandais. C'était plus que ce à quoi il s'attendait. Quand il entra dans un restaurant, le propriétaire exigeait 50 ou 100 fois le prix. Les fonctionnaires ne voulaient pas nous écouter, même s'il essayait de faire valoir ses arguments. Les gens qui nous indiquaient le chemin demandaient de l'argent. C'était complètement corrompu.

Arrivée à Amsterdam le 15 octobre. La ville était propre, belle et célèbre pour ses canaux. Montesquieu semblait la préférer à Venise. C'était l'une des plus belles villes du monde. Les citoyens sont très travailleurs. Après avoir traversé La Haye qui est aujourd'hui célèbre pour la Cour Internationale de Justice, il est entré au Royaume-Uni. Il n'y avait pas de documents de voyage sur ce séjour en Angleterre et il est inconnu. Nous n'avons pu en connaître que des fragments par d'autres sources.

De tous les pays qu'il a visités, c'est en Angleterre qu'il a passé le plus de temps, interagissant avec de nombreuses personnes, dont le roi, Walpole, des nobles et des personnalités littéraires. Il a passé un an et demi en Angleterre au cours de son voyage de trois ans. Cela signifie que l'Angleterre était l'endroit le plus intéressant.

La première chose qui l'a marqué pendant son séjour en Angleterre est qu'il a découvert l'idée de la séparation des pouvoirs. On dit qu'il a été inspiré par un article paru dans le *Craftsman*, un journal politique parrainé par Henry St. John Viscount Bolingbroke⁴¹.

Il ne s'est pas inspiré du système politique britannique, car à l'époque, la Grande-Bretagne n'avait pas de séparation des pouvoirs législatif, exécutif et judiciaire. John Locke (1632-1704) avait déjà préconisé la séparation des pouvoirs. Bolingbroke (1678-1751), l'adversaire politique de Walpole, attira l'attention de Montesquieu sur la phrase suivante: "Notre monarchie se trouve à mi-chemin entre la tyrannie d'une part et l'anarchie d'autre part"⁴².

41 MLT II, p. 380.

42 MLT II, p. 3.

En d'autres termes, l'idée des trois branches du gouvernement est née du concept d'équilibre des pouvoirs. La formation de ce concept a également été le processus de la formation ultérieure de la Constitution des États-Unis. Le système politique basé sur le concept d'équilibre est un "gouvernement modéré" ou un "gouvernement mixte". La vision d'un système politique dans lequel la monarchie, l'aristocratie et la démocratie sont en équilibre a été perçue par Montesquieu. Sa base du système politique était la monarchie.

La seconde est sa rencontre avec Pierre Coste (1668–1747), un disciple de John Locke. Coste était un connaisseur de Locke qui a traduit les livres de Locke en français et a passé les dernières années de la vie de Locke avec lui. L'étude française de Locke est due à Coste. Montesquieu semble s'être intéressé à l'homme Locke mais pas à la scolastique. En effet, on ne trouve pas Locke dans "De l'esprit des lois". Locke prêchait le droit à la révolution, il était donc naturel de supposer que Montesquieu, qui ne voulait pas de révolution, ne s'intéressait pas à lui. Cependant, Locke a eu une influence sur la Révolution française.

Troisièmement, Montesquieu a envoyé une lettre au gouvernement français, espérant obtenir un autre poste diplomatique en Angleterre. Cependant, il ne s'est pas rendu compte. Il pensait probablement que les idées de Montesquieu seraient utiles au gouvernement français, puisqu'un poste diplomatique implique de connaître la politique, l'économie, la société et la culture du pays en question. Cependant, le ministre des Affaires Étrangères et lui ne s'entendaient pas bien et cela ne s'est pas réalisé.

Quatrièmement, Montesquieu devient membre de la Royal Society de Londres. Celle-ci, comme l'Académie Française, est la plus haute organisation académique de la nation. Montesquieu a été recommandé pour devenir membre de cette organisation. Ce poste aurait permis à Montesquieu de voyager, de visiter et d'étudier en Angleterre assez librement.

Cinquièmement, il a appris à connaître la liberté des gentlemen en Angleterre. C'était une liberté ordonnée et équilibrée⁴³ et non une liberté libertine infestée de voleurs, de cupides et de prostituées. Fort de ces acquis, il rentre en France en avril 1731.

Telle était la situation en France avant son retour. C'est le cardinal Fleury, éducateur de Louis XV, qui a calmé l'effondrement financier et la confusion politique et économique provoqués par John Law et d'autres. À 72 ans, il n'est pas aussi flamboyant que Richelieu, mais adopte une politique douce et régulière d'assainissement des finances. En 1743, à l'âge de 90 ans, il meurt, après avoir été Premier ministre pendant 18 ans. Grâce à ses efforts, il a pu équilibrer les comptes en 1739. Il a également mis fin à un conflit religieux de longue date entre les jansénistes et les jésuites. Le jansénisme, qui trouve son origine dans le personnage religieux néerlandais Jansen, était une secte catholique qui prêchait l'extrême péché de l'homme et la grâce de Dieu. Parmi les philosophes, il était représenté par Pascal et était également soutenu par le Parlement (cour de justice). Elle est aussi le symbole du conflit entre le Parlement et le roi. Un incident se produisit à Paris.

43 MLT II, p. 220.

Un diacre nommé François de Pâris (1690–1727), mort à l'âge de 36 ans, a guéri le bras droit infirme d'un croyant venu se recueillir au tombeau. Croyant au miracle de la guérison d'une tumeur à la jambe, de nombreux croyants malades vinrent au tombeau et eurent des convulsions. Ce phénomène a rapidement pris de l'ampleur et s'est transformé en folie. Certains prétendaient être des prophètes du Christ, d'autres parlaient du Jugement dernier et la ville de Paris était en émoi et en confusion. Finalement, le Cimetière de Saint-Médard fut fermé. Le gouvernement avait déjà déclaré que le jansénisme était une erreur et en profita pour calmer le mouvement. Après sa politique religieuse, il fut également actif en politique étrangère et contribua à la paix en Europe en concluant le traité de Paris lors de la guerre de succession de Pologne et du conflit avec l'Espagne⁴⁴. Certains Premiers Ministres ont travaillé sans relâche pour le pays, et non pour leurs propres mérites. Cela a stabilisé le pays.

“Considérations sur les causes de la grandeur des romains et de leur décadence”, “De l'esprit des lois” et son influence sur Adam Smith

Lorsque Montesquieu revint de son voyage, il dut être surpris par l'essor et la décadence de Rome. D'un côté, il y avait la prospérité éternelle d'une grande architecture et de nombreuses œuvres d'art. D'un autre côté, il y avait la décadence morale de Rome. C'était seulement la deuxième république du monde après la Grèce. Si l'on considère la prospérité et le déclin ultérieurs de Rome, il est logique que nous puissions voir le monde en regardant Rome. Rome était reliée à la civilisation de l'Asie orientale par la route de la soie vers la Chine. Les "Voyages de Marco Polo" avaient déjà donné aux Européens le goût de l'Asie. La Perse et l'Inde étaient sur le chemin de la route de la soie. Rome était enceinte de la civilisation du monde. Par conséquent, si nous étudions la montée et la chute de Rome, nous pouvons comprendre la montée et la chute du monde et les principes de l'histoire mondiale.

Quand j'étais au lycée, nous avons passé beaucoup de temps sur la Grèce antique et Rome, peut-être deux ou trois mois. C'était beaucoup si l'on considère que nous devons couvrir tout, du début de l'humanité à la Seconde Guerre mondiale, en un an. "Pourquoi devons-nous l'étudier pendant si longtemps?" demanda un élève. Le professeur a répondu: "La Grèce antique et Rome sont l'incarnation de l'histoire du monde. Si vous étudiez cela bien, le reste n'est qu'une application". Je pensais que c'était sa réponse. Je ne sais pas si ce professeur connaissait bien Montesquieu, mais il y avait beaucoup de professeurs d'histoire mondiale qui avaient ce point de vue. Les professeurs japonais ne sont pas à écarter. Montesquieu l'a compris et l'a mis en pratique.

Lui aussi s'est exercé aux classiques grecs et romains pendant son séjour au Collège. Il avait déjà écrit une tragédie grecque et, plus tard, un traité sur Cicéron. À première vue, les "Considérations sur les causes de la grandeur des romains et de leur décadence"⁴⁵ semblent manquer de fraîcheur pour les nouveaux venus dans l'histoire romaine, car ils l'ont déjà apprise à l'école ou dans les programmes télévisés. Au début, moi aussi, je savais déjà de l'essor et la chute de Rome. Les causes de son déclin étaient également bien connues: elle est devenue trop grande, a perdu le contrôle et a connu

44 MLT II, pp. 267–273.

45 Considérations sur les causes de la grandeur des romains et de leur décadence, Œuvres Complètes II p. 9–209.

la décadence morale. La lecture de "Considérations sur les causes de la grandeur des romains et de leur décadence" devait donc attendre.

Cependant, comme vous pouvez le constater, les théories et les points de vue empiriques de Montesquieu ont été incorporés dans le développement de l'histoire romaine, la rendant extrêmement variée. Il a également comparé le système républicain avec celui de l'Angleterre et la situation en France à cette époque. Le livre ressemblait à un essai vivant. Ainsi, les "Lettres persanes" et "De l'esprit des lois", pris comme un ensemble, constituaient un lien organique.

En d'autres termes, lire "De l'esprit des lois" tout seul ne serait qu'ennuyeux. Il doit être appréhendé avec les "Lettres persanes" et les "Considérations sur les causes de la grandeur des romains et de leur décadence" dans une logique intégrée, trinitaire et triadique (trois fois un) pour être comprise avec précision. Les "Lettres persanes" nous donnent une idée de l'expansion géographique de la Perse et de la France, ainsi que de la Russie et d'autres pays étrangers. Il s'agit d'une expansion spatiale. D'autre part, les "Considérations sur les causes de la grandeur des romains et de leur décadence" examinent l'histoire sous la phase éternelle, de la Rome antique à l'Angleterre et à la France du XVIII^e siècle. En d'autres termes, il s'agit d'une expansion temporelle. C'est "De l'esprit des lois" qui synthétise cette expansion du temps et de l'espace. En l'interprétant de cette manière, la compréhension de Montesquieu s'élargit et s'approfondit. C'est un exemple de l'adaptation de la dialectique et de la logique triadique d'Aristote. Dans les livres de Montesquieu, la modération d'Aristote et la logique triadique sont utilisées en de nombreux endroits. C'est le point où il faut être extrêmement patient et la raison pour laquelle les lecteurs ne peuvent pas s'en approcher. En d'autres termes, c'est la profondeur et l'ampleur de ses livres.

"De l'esprit des lois" commence ainsi: "Les lois, dans la signification la plus étendue, sont les rapports nécessaires qui dérivent de la nature des choses". La loi fait ici référence non seulement à la loi moderne mais aussi à la loi de la nature. Puisqu'il s'agit d'une relation de choses, cela signifie un lien entre les choses. Ce n'est pas l'idée que les choses existent individuellement. Mais les choses existent dans un enchaînement de relations organiques. Nous pouvons penser au concept de loi d'Aristote ou à sa vision de la nature. Aristote entend par loi naturelle une loi universelle qui transcende le temps et le lieu. Elle implique également l'universalité éthique de la justice et la chaleur du feu. Aristote définit la loi naturelle comme incluant les lois des sciences naturelles et les règles sociales. Cela est naturel du point de vue d'Aristote, qui possède une vision organique du monde. Ce concept de droit naturel est lié au judéo-christianisme et est largement développé par Thomas d'Aquin.

Montesquieu a hérité d'Aristote et, en tant que chrétien, il a hérité du concept de droit naturel de Thomas d'Aquin. En bref, Montesquieu considère que le droit comprend le droit naturel qui repose sur une vision organique du monde. Parce que cette vision commence de manière si abrupte, les gens d'aujourd'hui restent perplexes devant "De l'esprit des lois". Cependant, si nous considérons le droit naturel, y compris le droit des sciences naturelles, il peut être pris rationnellement. Comme mentionné ci-dessus, Montesquieu ne fait aucune distinction entre les sciences naturelles et les sciences humaines. C'est la raison pour laquelle Montesquieu a commencé son livre "De l'esprit des lois" par une explication du droit naturel dans le premier chapitre.

Cette compréhension serait possible, si l'on savait que Montesquieu avait écrit son "Traité du droit naturel" à Paris à l'âge de 35 ans avant son voyage. "De l'esprit des lois" est organiquement lié à tous les événements de sa vie. Si l'on y pense de cette façon, on ne sera pas déconcerté par des cas qui apparaissent soudainement dans "De l'esprit des lois". En outre, la loi est liée au monde, ce qui en Asie est le concept de loi du Bouddha. Dans le bouddhisme, Dharma est synonyme de vérité et signifie le lien des choses, la causalité. La loi bouddhique comprend également la loi naturelle. La définition de la loi de Montesquieu est également commune au bouddhisme, ainsi que la voie du milieu. Bien sûr, elle est commune à "Savoir ce qui est suffisant" et "Ne pas dépasser la norme" de Confucius. Selon la vision organique, la philosophie chinoise ancienne étant basée sur le "néant", c'est-à-dire le flux de vie et d'énergie dans l'univers, tout est organiquement interconnecté par le néant.

Et, comme mentionné ci-dessus, Montesquieu était un pionnier de la phénoménologie parce qu'il utilisait le monde terrestre entier comme cible de sa description. Au lieu de décrire des choses mortes objectivées, il a décrit les faits vécus sans préjugés. Il s'agit d'une réduction phénoménologique d'époque dans la mesure où elle supprime les préjugés.

Il s'est concentré sur tout ce qui l'intéressait. Géographiquement, l'Asie, l'Afrique, et même les Amériques. On peut donc dire que son attitude est le moteur de la pensée comparative et de la théorie des civilisations comparées.

Il s'intéresse également à l'économie et discute de la théorie économique. En ce sens, il est en avance sur Adam Smith.

Dans "An Inquiry into the Nature and Causes of the Wealth of Nations" d'Adam Smith, on trouve souvent des citations de "The Spirit of Laws". Voici une liste de ce qui semble être les principales influences.⁴⁶

1. La méthode phénoménologique

La description fidèle du monde entier par Montesquieu est similaire à celle d'Adam Smith. Nous pouvons trouver des descriptions de la politique, de l'économie, de la religion, de la société, du droit, de l'armée, de la culture, des coutumes et d'autres aspects du monde. Les informations doivent déjà provenir de la Compagnie des Indes orientales. Il existe de nombreuses descriptions analytiques du Japon, de la Chine, de l'Asie et des Amériques. Cette méthode est la phénoménologie.

Adam Smith a également hérité de la méthode de Montesquieu. En outre, ces événements ne sont pas considérés isolément et ne constituent pas une simple énumération de cas. Ils ont des liens, des liens organiques et des liens avec le monde. Montesquieu a hérité de la vision organique du monde des études grecques et romaines, notamment d'Aristote. Il en va de même pour Smith, qui a été formé en Grèce et à Rome dans sa jeunesse. Bien qu'il soit analytique, il essaie de transmettre le sujet tel qu'il est. C'est son attitude.

⁴⁶ "L'innovation de l'étude de la société: Montesquieu et les Lumières écossaises", Hideo Tanaka, Université de Kyoto, Journal of Economics and Management (1995), 156(4): 141-162.

2. Utiliser la vertu de modération

Dans "De l'esprit des lois", Montesquieu explique la vertu de modération d'Aristote. Cette modération forme un gouvernement modéré ou mixte entre monarchie et république. Cette modération est héritée par Adam Smith. Il prêche la modération comme une vertu individuelle.

"La première de ces causes ou circonstances est la supériorité des qualités personnelles, de la force, de la beauté et de l'agilité du corps; de la sagesse et de la vertu; de la prudence, de la justice, de la force d'âme et de la modération d'esprit."⁴⁷

Aussi, en ce qui concerne la nature de l'état.

"...il est sûrement temps que la Grande-Bretagne se libère du coût de défendre ces provinces en temps de guerre, et de soutenir toute partie de leur établissement civil ou militaire en temps de paix; et qu'elle s'efforce d'adapter ses vues et desseins futurs à la médiocrité réelle de ses circonstances."⁴⁸

Elle est utilisée de cette façon. Utiliser la vertu de modération tant pour l'individu que pour le niveau national. Bien sûr, Adam Smith, en tant que spécialiste de la morale, aurait été familier avec Aristote, mais l'influence de Montesquieu est également évidente dans les citations de ses œuvres.

3. Voir le monde à travers Rome

Comme je l'ai mentionné, Montesquieu a étudié en profondeur l'histoire grecque et romaine avec la logique suivante: "Si l'on peut voir Rome, on peut voir le monde", et Adam Smith a hérité de cet esprit. Adam Smith ne se contente pas d'analyser la situation mondiale aux 17^e et 18^e siècles, il analyse également la Grèce et Rome. Les titres des chapitres concernés en disent long à eux seuls:

Livre III Des différents progrès de l'opulence dans différentes nations.

Chapitre II Du découragement de l'agriculture dans l'ancien état de l'Europe, après la chute de l'Empire romain.

Chapitre III De l'accroissement et du progrès des villes et des bourgs, après la chute de l'Empire romain⁴⁹

4. À propos de John Law

Montesquieu discute de la mauvaise gestion de John Law, le ministre français des finances. Les actions de la Compagnie du Mississippi ont atteint des niveaux sans précédent, créant un énorme boom. Cependant, les Britanniques s'étant abstenus d'acheter les actions, celles-ci ont fortement chuté. Les vastes avoirs en actions de la compagnie ont disparu d'un seul coup et se sont réduits à néant. Ce fut une rencontre avec le néant, tant pour Montesquieu que pour Adam Smith. John Law a échappé de

47 Une enquête sur la nature et les causes de la richesse des nations, imprimé au Japon Amazon.co.jp, 2022, p. 323. Le texte d'Adam Smith a été traduit en français par Nakatomi.

48 ibid. p. 437.

49 ibid. pp. 173–178.

justesse à la mort et s'est enfui en Hollande. Pendant le voyage en Italie, Montesquieu a rencontré John Law dans ses dernières années. Smith n'a pas rencontré John Law mais il l'a décrit. Smith connaissait aussi la peur de cette action et son néant. Alors, Smith a prêché le travail solide.

5. L'introduction de la séparation des pouvoirs

Montesquieu prêchait la séparation des pouvoirs législatifs, exécutifs et judiciaires. Smith l'a également adoptée. Le pouvoir judiciaire doit être séparé du pouvoir exécutif et rendu indépendant. Ceci afin d'éviter les procès arbitraires des gouvernants. L'introduction de cette idée a été la plus grande influence de Montesquieu sur Adam Smith. Smith mentionne également le Parlement (Cour de justice). C'est une acceptation évidente de Montesquieu. Comme c'est important, je vais noter la partie pertinente de la division du pouvoir. L'indépendance du pouvoir législatif est déjà une condition préalable depuis John Locke, donc la relation entre le pouvoir exécutif et le pouvoir judiciaire devient un problème.

"Quand le pouvoir judiciaire est uni au pouvoir exécutif, il n'est guère possible que la justice ne soit pas souvent sacrifiée à ce qu'on appelle vulgairement la politique. Les personnes chargées des grands intérêts de l'État peuvent, même sans aucune corruption, se croire quelquefois obligées de sacrifier à ces intérêts les droits d'un particulier. Mais de l'administration impartiale de la justice dépendent la liberté de chaque individu, le sentiment qu'il a de sa propre sécurité. Pour que chaque individu se sente parfaitement en sécurité dans la possession de tous les droits qui lui appartiennent, il faut non seulement que le pouvoir judiciaire soit séparé du pouvoir exécutif, mais qu'il soit rendu, autant que possible, indépendant de ce pouvoir."⁵⁰

6. La modération entre le commercialisme lourd et l'agraire lourd

Smith critique les deux, mais ne les rejette pas en bloc. Le commercialisme lourd est une politique de contrôle commercial étatique d'acquisition d'or et d'argent, et ne garantit pas la liberté d'activité des marchands individuels. Pour le critiquer, il prêche le laissez-faire commercial. Cette différence doit être clarifiée. En réaction au mercantilisme lourd, il prône un agrarisme lourd. Smith critiquait la théorie de François Quesnay (1694–1774) mais reconnaissait que l'agriculture était le fondement de l'industrie. La modération entre les deux est une synthèse dialectique et triadique d'Aristote et de Montesquieu.

Au Japon aujourd'hui, le nombre de personnes engagées dans l'agriculture est faible et l'autosuffisance alimentaire est un problème.

7. L'accent mis sur les coutumes

Montesquieu disait que géopolitiquement, les peuples nordiques vivent dans des régions froides, ils boivent donc beaucoup d'alcool pour garder leur corps au chaud. Les Russes boivent de la vodka. En revanche, les peuples du sud, par exemple dans les régions chaudes et désertiques de l'Arabie, ne boivent pas d'alcool en raison de leurs croyances religieuses. Boire de l'alcool en pleine chaleur leur donnerait soif,

⁵⁰ *ibid.* p. 328.

ce qui n'est pas rationnel. Les gens du sud n'ont pas recours à l'alcool. Il existe des descriptions de ces pratiques.

Smith décrit les coutumes des soldats français.

“Lorsqu'un régiment français vient de certaines provinces du nord de la France, où le vin est assez cher, pour être cantonné dans le sud, où il est très bon marché, les soldats, ai-je souvent entendu dire, sont d'abord débauchés par le bon marché et la nouveauté du bon vin; mais après quelques mois de séjour, la plupart d'entre eux deviennent aussi sobres que le reste des habitants.”⁵¹

8. L'armée

Montesquieu a écrit sur les affaires militaires, et Smith l'a suivi en discutant de la défense dans la partie 5 de "Une enquête sur la nature et les causes de la richesse des nations." Montesquieu s'est intéressé à l'armée de chaque pays lors de ses voyages en Europe et les a étudiées en détail. En un sens, on peut parler d'histoire militaire. L'histoire romaine est également une histoire militaire. Ce qui est intéressant chez Smith est sa description psychologique et sociologique des soldats. Il semble être un adepte de la psychologie et de la sociologie. Smith décrit:

“De même qu'un officier militaire se soumet, sans réticence, à l'autorité d'un supérieur qui l'a toujours commandé, mais ne peut supporter que son inférieur soit placé au-dessus de lui, de même les hommes se soumettent facilement à ceux qu'ils ont toujours soumis, eux et leurs ancêtres; mais s'enflamment d'indignation lorsqu'une autre famille, à laquelle ils n'ont jamais reconnu une telle supériorité, s'arrogue une domination sur eux”⁵².

Telles sont les influences de Montesquieu. Dans un autre article, j'aborderai les spécificités de: "De l'esprit des lois". Avant et après la publication de ce livre, Montesquieu a perdu la vue et a rencontré le néant et les ténèbres. Je vais écrire sur ce sujet.

VIII Perte de la vue, néant et ténèbres

Montesquieu meurt subitement d'une fièvre inflammatoire qui touche toutes les parties de son corps. Il semble qu'il ait lui-même eu le pressentiment de la mort. Dans un fragment du brouillon de la préface de:

"De l'esprit des lois", il écrit:

“J'avois conçu le dessein de donner plus d'étendue et plus de profondeur à quelques endroits de cet ouvrage; J'en suis devenu incapable. Mes lectures ont affaibli mes yeux, et il me semble que ce qui me reste encore de lumière n'est que l'aurore du jour où ils se fermeront pour jamais.

Je touche presque au moment où je dois commencer et finir, au moment qui dévoile et dérobe tout, au moment mêlé d'amertume et de joie, au moment où je perdrai jusqu'à mes faiblesses mêmes.

51 *ibid.* p. 219.

52 *ibid.* pp. 323–324.

Pourquoi m'occuperois-je encore de quelques écrits frivoles? Je cherche l'immortalité, et elle est dans moi-même. Mon âme, agrandissez-vous ! Précipitez-vous dans l'immensité ! Rentrez dans le grand Etre !...

Dans l'état déplorable où je me trouve, il ne m'a pas été possible de mettre à cet ouvrage la dernière main, et je l'aurois brûlé mille fois, si je n'avois pensé qu'il étoit beau de se rendre utile aux hommes jusqu'aux derniers soupirs mêmes...

Dieu immortel ! Le Genre humain est votre plus digne ouvrage. L'aimer, c'est vous aimer, et, en finissant ma vie, je vous consacre cet amour."⁵³

C'est ici que se résume mon principe de néant et d'amour. Le néant comme la faiblesse des yeux, l'absence de vue, le néant comme la mort qui met fin à la vie, l'infini du vaste monde sans limites, l'exploration de l'immortalité est éternelle, l'être transcendant du grand être, et l'amour pour Dieu, l'humanité. Le principe de néant, infini, éternité, être transcendant et amour sont-ils une coïncidence? Non, ce n'est pas le cas. Montesquieu a vécu les mêmes principes que moi. C'est l'arrivée du summum de l'apprentissage.

CONCLUSION

J'ai parlé de néant et d'amour de Montesquieu. Ici, je vais parler de l'amitié et de l'amour familial. J'ai déjà écrit sur les réalisations de Montesquieu. Cependant, il est rare de trouver un homme aussi béni par l'amitié et l'amour de la famille que lui. Il avait un père qui s'occupait de sa carrière et un oncle qui lui léguait son héritage, qui était sa stabilité financière. Lorsqu'il voyageait en Europe, il était accompagné de James Waldegrave, diplomate britannique. Il a eu la chance de rencontrer l'empereur à Vienne et le futur pape en Italie, ce qu'il n'aurait normalement pas eu l'occasion de faire. Bien sûr, ses amis ont dû respecter son humanité et ont voulu le rencontrer avec eux. Comme il a été béni ! Il avait de nombreux amis qui l'ont aidé dans la publication de ses livres et dans la suppression de l'interdiction catholique. En outre, Montesquieu a eu la chance d'avoir une famille aimante.

Sa femme, Jeanne, était handicapée des jambes. Montesquieu était naturellement protecteur envers elle. Elle n'était peut-être pas en mesure d'aider à la viticulture. Cependant, pendant que Montesquieu était en voyage en Europe, elle a géré avec constance les finances de la famille et a éduqué les trois enfants. Elle était infirme et, en raison de son apparence, elle n'avait aucun lien avec la cour glamour de Paris. Cependant, sa contribution au soutien de la famille et de la maison au château de Bordeaux en l'absence de son maître était importante. Grâce à elle, Montesquieu a pu travailler. Dans ses dernières années, Montesquieu a perdu la vue. Sa femme avait une jambe infirme. En 2021, les Jeux olympiques et paralympiques de Tokyo ont eu lieu et de nombreuses personnes ont été impressionnées par les activités des personnes aveugles ou handicapées.

Montesquieu et sa femme ont travaillé ensemble pour laisser derrière eux un livre célèbre dans le monde entier. En outre, ils ont eu trois enfants. Les filles sont devenues

53 MLT III, pp. 231–232, "Œuvres Complètes" II, Dossier de l'esprit des lois, 206, p. 1041.

les mains et les pieds de Montesquieu, transcrivant soigneusement la dictée de leur père. Le fils, après la mort de Montesquieu, a laissé une splendide note commémorative. La philia et l'amour familial ont complété les chefs d'œuvre de l'histoire et les ont fait briller comme l'amour humain. Cela conforte mon idée de loi transcendante.



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The regulation of consignment stocks as provided by § 6b German Value Added Tax Act (VATA): *One contribution for stronger resilience within transnational value-added-chains?*

Summary

The current economy, exposed to numerous crises simultaneously, is facing a significant pressure regarding its value and supply chain resilience. In an environment this challenging, consignment stocks, in general meaning immovable or movable repositories which a supplier places in a customer's location or warehouse they retain ownership of, and provide some level of flexibility in terms of inventory costs, time to market and reaction to fluctuating market needs. Simultaneously, such an agreement and legal construct produces certain potential taxation issues, especially with regards to countries in the European Union and their respective issues of value added taxes based on place of production and/or delivery.

This article aims to address the specific issues in the context regarding the consignment stock rule in Art. 17a Value-Added-Tax Directive, § 6b German Value Added Tax Act. By means of a detailed theoretical analysis and discussion, the paper aims to contribute to answering the question, as to whether this particular legal amendment generates additional value to corporate value and supply chain resilience in a transnational business environment. Main issues to consider are transnational Value Added Tax fraud, the resilience of transnational commercial streams and the potential mediating effect on corporate bureaucracy for international businesses.

The results show, from a legal perspective, that consignment stocks do not necessarily qualify as typical warehouses, given that any physically definable repository can be utilized for storage. However, location and ownership need to be clearly identifiable at all times to avoid any conflict with tax authorities. Digitalization and a sophisticated cross-border IT infrastructure, especially with regards to the

European Union, can support the required transparency. Consequently, even within the discussed legal framework, value and supply chain resilience is feasible utilizing consignment stocks, even under consideration of potential future threats. This is especially relevant for Germany as a major economic power in Europe, enforcing a number of major transformations in the coming years with unclear outcome and increasing international dependencies.

Key words: Consignment stocks, § 6 German Value Added Tax Act, Criteria of conceptual definition, Different types of consignment stocks, Transnational turnover.

1. INTRODUCTION, PROBLEM AND OVERVIEW

Invariably, each taxation causes one economic burden for the taxpayer. Due to the high complexity of the legal provisions on taxation, particularly SMSC, are above-average burdens by taxes since they are factually forced to mandate a tax-consultant to unlock those margins that enable them one effective reduction of their tax-burden. The equity of taxation is one constitutional postulate of both the rule of equality (Art. 20 ECFR, Art. 3 para. 1 GG) and the non-discrimination-rule (Art. 21 ECFR). The latter even contains the postulate to organize the relevant tax-system in a less complex manner.

To sustainably enhance the equity of taxation, there is one indispensable practical need to sustainably simplify it.¹ In the current situation of multiple overlapping crises such as the COVID-19-pandemic², the conflict between Russia and Ukraine, and the subsequent energy-crisis, this counts more than ever. Notably driven by the Zero-Covid-policy of the Peoples Republic of China (PCR), one of the largest trade-partners of Germany, these crises cause multifold interruptions of transnational chains of economic value added (VAC) and negatively impact the yield of corporations. However, the call to sustainably simplify the German tax-system partially collides with the practical need to effectively control international VACs. Since the introduction of the all-stage-tax-on-net-turnover (Allphasennettbesteuerung) in Germany on January/1st/1968, the value-added tax (VAT) is invariably imposed on all stages of commercial streams. Due to countless taxable transactions the VAT avails of mass-character, notably driven by the Single European Market in the sense of Art. 3 para. 3 St. 1 TEU, Art. 26 para. 2 TFEU (SEM).

As one consequence of the usually extremely limited human resource of the financial authorities and the efficiency-driven incline of transnational commerce, it often reveals ambitious to consistently control transnational commercial transactions. Both corporations and the primarily taxed-financed state extremely depend on each other, notably in times of manifold overlapping crises, Hence, both may profit from one simplified VAT-system that fosters irrefutable economic requirements such as the timely availability of sub-contractor-components (just-in-time-deliveries³), the matching of consumer-needs, the independency of internationally volatile

1 Cp. BAL, Tax Notes International 2019, p. 322 (323).

2 On the VAT-measures of the EU to contain the Covid-19-pandemic: N.N., Covid-19 (2021), p. 1.

3 Cp. BAL, Tax Notes International 2019, p. 322 (323).

commodity-prices and possibly late maturity of tax payments. The beforementioned crises particularly impact internationally operating corporations with one broad range of sub-contractors that usually depend on one highly customized availability of transnationally delivered merchandise. They affect large segments of our economy. By name, they deeply affect corporations that are involved in transnational VACs. To adhere to one continuous and efficient level of production, many corporations depend on reliable deliveries *just in time*. Thus, one VAT-system that simplifies taxation of transnational commercial streams may particularly consist of fostering consignment-stocks (CS) such as Call-of-stocks⁴ or Vendor-Managed-Ventories that are meanwhile widespread in economic practice. In general, CS are immovable or movable repositories located near the place of destination where the non-domestic vendor puts one clearly-defined merchandise, notably to enable one just-in-time-availability for the domestic purchaser.

Within internationally interrupted VCA, they keep inventory costs low and contribute to precisely match current consumer needs. They strengthen the pareto-efficiency of transnational merchandise. Nevertheless, particularly due to the extending bureaucracy expenditure by the competent financial authorities, CS were long suspected as drivers of transnational VAT-fraud. Moreover, they highlight the dilemma of the European member-states to draw one final decision in terms of transnational VAT, either for the country-of-origin-principle or the destination-principle. Whereas the first one is based on raising the VAT in the country where the transnational delivery begins, the last one will impose the VAT in the country where the transnational delivery ends.

The destination-principle provides that the import of goods and services is exclusively taxed by the purchaser and the addressee of the commercial stream respectively.⁵ In view of the ongoing European integration process that is not fully completed in terms of VAT, as underlined by the current version of the Art. 113 TFEU, the EU-legislator currently opts for the destination-principle that even determines the VAT-directive. Until the last amendment, the VAT-treatment of call-off-stocks significantly differs among the member-states.⁶ In view of these considerations, the instant exposure presents the consignment-stock-rule in Art. 17a VAT-Dir., § 6b VATA (CSR) and analyzes the contribute to the involved trade partners. Moreover, it particularly focuses the question whether the legal amendment generates one additional value to strengthen their resilience within internationally interrupted VAC. One resilient VAC primarily depends on timely delivered merchandise that is significantly fostered by using call-off-contracts.⁷ The exposure analyzes whether the CSR is one step forward to both effectively contain transnational VAT-fraud, foster resilience of transnational commercial streams and sustainably relief internationally operating entrepreneurs from bureaucracy.

4 Basically, on call-off-stocks: BAL, Tax Notes International 2019, p. 322 ff.; GARTENSCHLÄGER/DUERHOLT, „Quick Fixes“ (2020), p. 1 ff.; HM REVENUE & CUSTOMS, Consignment-Stock (2012), p. 1 ff.; N.N., call-off-stock-arrangements (2022), p. 1 ff.

5 Cp. Wernsmann, in: SCHULZE/JANSSEN/KADELBACH (2020), § 31, N 24.

6 Cp. BAL, Tax Notes International 2019, p. 322 (323).

7 Cp. BAL, Tax Notes International 2019, p. 322 (324).

2. DEFINITION OF CONSIGNMENT STOCK

2.1. Judicial requirements for conceptual definition

With respect to the instant thesis, it is essential to precisely define the outstanding term of the consignment-stock – notably due to the non-existence of one legal definition neither by the VAT-Dir. nor by the VATA. In view of those manifold insecurities caused by the above-mentioned crises, transnationally operating corporations extremely depend on legal security. Insecurity is, meanwhile, deemed as the “new normal” – albeit that the legislature uses several vague legal concepts that do not ease participate in the consignment-privilege.

Moreover, in economic practice, there are several types of CS such as *Call-of-Stocks*⁸ *Vendor-Managed Ventories* (VMV) and movable warehouses (railway-cars, container, trailer etc.). Thus, it is essential to clearly define the different types and distinguish them from each other. The appropriate criteria of conceptual definition are generated by the historical, economical and VAT-specific interpretation.

2.2. Criteria of conceptual definition

Historically, the term consignment-stock has roots in the Latin word *consignatio* that refers to the existence of one certificate that covenant the delivery of a certain merchandise. Nowadays, the term of the consignment-stock stands for the declaration of one covenant of content for a certain purpose. Commercially, one repository is deemed as CS provided that one entrepreneur (*consignor*) leaves merchandise to another entrepreneur (*consignee*), which the latter can autonomously dispose of and promptly deliver to one market-counterparty. In view of the latter definition, the term consignment-stock may even define VAT specifically. Consequently, one CS is one repository (container, clearly defined room, railway-car etc.) kept by the consignor and one specialized third person (expediter, specialized service-provider etc.) where the VAT is not imposed before the repositied merchandise leaves stock.

The entrepreneurial deliverer (the specialized service-agent) transports or ships the merchandise from the state of origin into the country of destination where the latter is repositied or tendered to another entrepreneur who autonomously decides on the time of withdrawal by its own discretion.⁹ The purchaser may withdraw the merchandise on demand (*just in time*) without any restriction.¹⁰ In terms of VAT, the existence of an CS is not verified by the number of potential purchasers but by further indices, such as the transfer of substantially valuable goods, their value and objective yield.¹¹ As a determinant of the CSR, Art. 17 para. Lit. a) VAT-Dir. defines the term consignment-stock in the way that physical goods are sent or transported by the assessable entrepreneur or a third person into another jurisdiction to deliver to another assessable person. In compliance with one written agreement between the

8 Cp. *Hoink*, IWB 2022, p. 238 (239).

9 Cp. *Hoink*, IWB 2022, p. 238 (239).

10 Cp. *Hoink*, IWB 2022, p. 238 (239).

11 Cp. *Scharrer/Schreiber*, DB 2019, p. 18 (20).

assessable persons, the latter is legally entitled to acquire the property of the respective goods. To unfold the maximum highest effectivity (*effet utile*¹²) it is important to interpret and implement the CSR in the light of the VAT-Directive.

2.3. Different types of consignment stocks

Though these repositories are legally not defined, they can generally distinguish in two different ways. Provided that several purchasers are entitled to withdraw merchandise from the repository, it indicates the existence of one CS. In general, the term consignment stock describes a transfer of merchandise by one transnational deliverer from one member-state to another, driven by the economic concern to keep the latter in stock and distribute them to customers by request.¹³ The consigned goods are factually controlled by the deliverer and the supplier and – in diligent contrast to call-off-stock-arrangements – is not intended for any other customer apart from the person who is known to the latter at the very beginning of the transport.¹⁴ Typically, this kind of repository is characterized by delivering merchandise to the storage facilities of one consignee who intends to resell the latter to third persons.¹⁵ CS are widespread in practice to effectively distribute product-innovations when the consignor (manufacturer, importer etc.) sends the respective merchandise to potential distributors.¹⁶ They are one highly accepted tool to reach potential customers since the consignee is released from financing the purchase as long as the goods are successfully sold to the customer.¹⁷

In contrast, the repository exclusively organized for one single and clearly-defined purchaser, it argues for on call-off-stock.¹⁸ By definition, this type refers to the transfer of goods performed by one member-state (country of origin) to another (country of destination) to generate one stock of merchandise from which the purchaser may request them (“call-off”) at one point of time of his own discretion.¹⁹ Consequently, the merchandise is transferred between the two states on the basis of one pre-assigned contract between the supplier and the intended purchaser (IP).²⁰ To participate in any fiscal privilege, the intentional purchaser must clearly defined and known to the purchaser at the very beginning of the delivery.²¹

Call-off-stocks are particularly widespread in the segments of automobile-manufacturing²², construction and aviation since customers can obtain easy access to stock when required.²³ They take respect to one situation in that an entrepreneur obtains regular supplies to an inventory within one warehouse kept by the customer that either belongs to or is situated near the IP and factually enables the latter to withdraw (“call-off”) the merchandise at an individually chosen point of time (“by

12 König/Kleinlein, in: SCHULZE/JANSSEN/KADELBACH, Europarecht (2019), § 16, N 4.

13 Cp. N.N., call-off-stock-arrangements (2022), p. 3.

14 Cp. N.N., call-off-stock-arrangements (2022), p. 3.

15 Cp. BAL, Tax Notes International 2019, p. 322 (324).

16 Cp. BAL, Tax Notes International 2019, p. 322 (324).

17 Cp. BAL, Tax Notes International 2019, p. 322 (324).

18 Cp. OFD FfM., Warenlieferungen (2018).

19 Cp. HM REVENUE & CUSTOMS, Consignment-Stock (2012), 1.

20 Cp. N.N., call-off-stock-arrangements (2022), p. 3.

21 Cp. N.N., call-off-stock-arrangements (2022), p. 3.

22 Cp. IHK Bonn, Konsignationslager (2020), S. 1.

23 Cp. BAL, Tax Notes International 2019, p. 322 (323).

request”).²⁴ In that moment, the purchaser withdraws the merchandise from stock, the latter are supplied pursuant to the applicable civil law whereupon the supplier regularly submits an invoice.²⁵

Hence, the merchandise is reposit in the country of destination where they are available to the purchaser at the individually chosen time.²⁶ In terms of VAT, it is crucial that the arrival of goods in the call-off-stock does not coincide with the withdrawal by the IP. That means that the ownership of the merchandise is only transferred to the latter under the provision that the goods are reposit anyway for one logical second.²⁷ Under the provision that the IP does not withdraw the reposit merchandise, they return to their legal proprietor and the taxable delivery is not effect.²⁸

2.4. Interim results

Regardless of these distinctions, to participate in the consignment-privilege, the repository need not avail itself of the features of one typical warehouse, as underlined by Sect. 6b.1 para. 4 St. 2 of the VATA-announcing 2021. Pursuant to the legal opinion in *Gerhard*, the respective merchandise may intermediately be stored in any physically definable repository such as railway-cars, silos, container, river-boats or comparable facilities.²⁹ With respect to the probability of one tax audit and to enable the responsible financial authorities one adequate control of the respective transactions, the trade-partners are recommended to precociously take measures to clearly distinguish the consigned merchandise and, ideally, reposit them at one clearly defined place.³⁰ Moreover, pursuant to Art. 54 para. 1 lit. c) of the by-law to implement the VATA (VATA-Dc.³¹), the concretely chosen repository should avail itself of one postal address and one doubtlessly identifiable owner.³²

3. EUROPEAN DETERMINANTS

Against this background and to effectively face transnational VAT-fraud, the European legislature, backed by the recommendations of the *Economic and Financial Affairs Council* (ECOFIN³³), launched the so called “Quick Fixes³⁴” on December/4th/2018.³⁵ They contain the European Directive No. 2018/1910/EU³⁶ and came into legal force

24 Cp. BAL, *Tax Notes International* 2019, p. 322 (323).

25 Cp. BAL, *Tax Notes International* 2019, p. 322 (323); GARTENSCHLÄGER/DUERHOLT, „Quick Fixes“ (2020), p. 5

26 Cp. N.N., *call-off-stock-arrangements* (2022), p. 3.

27 Cp. GARTENSCHLÄGER/DUERHOLT, „Quick Fixes“ (2020), p. 5; N.N.

28 Cp. BAL, *Tax Notes International* 2019, p. 322 (323).

29 Cp. *Gerhard*, *DStZ* 2019, p. 534 (541).

30 Cp. *OFD Frankfurt am Main*, 12.12.2019, S 7500 A-1318-St 110, N 5.

31 German Value Added Tax Act Application decree in that version of 2022.

32 Cp. Ministry of Finance of the state Saxony-Anhalt, January/13th/2020/, 42-S 7140-13, N 3.

33 <https://www.consilium.europa.eu/en/council-eu/configurations/ecofin/>.

34 Cp. *Europäischer Rat, Schnelle Lösungen* (2018).

35 Cp. GARTENSCHLÄGER/DUERHOLT, „Quick Fixes“ (2020), p. 1 ff.

36 Directive 2018/1910/EU of December/4th/2018 amending directive 2006/112/EC as regards the harmonization and simplification of certain rules in the value added tax system for the taxation of trade between member state; *Official Journal of the EU* L 311/3 of December/7th/2018.

January/1st/2020. The rules shall be applicable until one fully harmonized VAT-system is realized at the European level that finally settles the conflict between the origin-principle and the principle of destination. As one advanced regime, the “Quick Fixes” contains extended immediate measures of the EU to flank the delineated economic needs, to mitigate the dilemma between inclining transnational commerce and the limited staff of the financial authorities and, finally, to foster neutrality in terms of fiscal effects on economic competition. They shall strengthen the functioning of the European VAT-system in terms of intra-European deliveries (intra-European supplies vs. intra-European acquisitions³⁷) and contribute to build one *level playing field* (LPE³⁸).³⁹ Thus, they recommended amending the VAT-Dir. by one legal provision on CS. In view of the general CS-definition, the EU-legislator amended Art. 17 lit. a) of the VAT-Dir. as follows:

Article 17a

The transfer by a taxable person of goods forming part of his business assets to another Member State under call-off stock arrangements shall not be treated as a supply of goods for consideration.

In terms of CS, the legal amendment follows the concept of significantly easing intra-European streams of goods by treating the reposition in one call-off-stock as one “short-term-interruption” within one storage period in a maximum of twelve month.⁴⁰ Under the provision, the respective delivery matches the requirements of the CSR and the instantly applicable law deems one exclusively domestic disposition for both the deliverer and the IP.⁴¹ Due to Art. 288 para. 3 TFEU, the German legislature domestically concretizes Art. 17 lit. a) VAT-Dir. by § 6b VATA. As clarified by § 6b para. 2 No. 1 VATA, that transfer is deemed as one intra-community-delivery of goods in that sense of § 6a para. 1 VATA (ICD). Consequently, the VAT is generally not payable before the merchandise leaves the CS. The Federal Ministry of Finance (FMF) has concretized § 6b VATA by VATA-announcing 2021. In general, CSR such as Art. 17 lit. a) VAT-directive – and § 6b VATA privileges both the transnational deliverer and the domestic purchaser.

They shall significantly simplify the taxation of transnational deliveries by releasing the nonresident deliverer from VAT-registering in the country of destination.⁴² Thus, the entrepreneurial deliverer is no longer required to hold one VAT-identification-number in the sense of § 27a para. 1 VATA (VAT-IN) in the country of destination.⁴³ Instead, one VAT-IN is exclusively required by the domestic purchaser who is legally entitled to autonomously chose the date of picking within one total time of twelve month (§ 6b para. 3 VATA), calculated from the point of time that the commercial good enters the CS. Apart from this simplification, the CSR as provided by Art. 17 lit. a) VAT-Dir., § 6b VATA shall legally back just-in-time-deliveries. In addition, the amendment shall effectively relieve the domestic purchaser since the VAT is generally

37 Cp. GARTENSCHLÄGER/DUERHOLT, „Quick Fixes“ (2020), p. 4.

38 Cp. *Wernsmann*, in: SCHULZE/JANSSEN/KADELBACH (2020), § 31, N 29.

39 Cp. BAL, *Tax Notes International* 2019, p. 322 (323).

40 Cp. GARTENSCHLÄGER/DUERHOLT, „Quick Fixes“ (2020), p. 4.

41 Cp. HM REVENUE & CUSTOMS, *Consignment-Stock* (2012), p. 2.

42 Cp. BAL, *Tax Notes International* 2019, p. 322 (325).

43 Cp. GARTENSCHLÄGER/DUERHOLT, „Quick Fixes“ (2020), p. 6.

not payable before the last one picks the consigned merchandise from stock. The domestic purchaser does not realize the matter of withdrawal in the sense of § 3 para. 1b No. 1 VATA before the merchandise is picked from stock.⁴⁴

4. CONSIGNMENT-STOCK-REGULATION BY § 6B VATA

4.1. Judicial qualification of the consignment-stock-rule

By name, the systematical position of the CSR and even the wording⁴⁵ of § 6b para. 2 No. 2 VATA (“is equally treated with one *taxable* intra-community acquisition”) argue to qualify the latter as one rule that aims to ease taxation of ICDs instead of governing their taxability.⁴⁶ This is even underlined by the systematical position of Art. 17a VAT-Dir. in title IV that is editorially overwritten “taxable turnover”.

4.2. Concretization by the FMF-announcing of December/10th/2021

As instantly⁴⁷ already mentioned, the CSR is concretized by the VATA-announcing 2021.⁴⁸ With respect to several vague legal concepts of § 6b para. 1 VATA and the consequently-caused legal insecurity among transnational trade-partners, the announcement shall provide guidance for practice in unleashing and fostering intra-Community-transactions. The final finding results in significant amendments to the VATA-Dc.⁴⁹ These will be exposed in the respective area.

4.3. Objectives of the consignment-stock-rule

The CSR shall *primarily* simplify taxation in concretely defined delivery-situations.⁵⁰ By name, an amendment shall effectively simplify temporary storage of merchandise by releasing the IP from the expenditure of an own storage.⁵¹ The latter is judicially not committed to settle the transaction until he picks the consigned merchandise from stock, but obtains the legally protected option to cap the resulting costs of freight by collective deliveries.⁵² Consequently, the FMF qualifies the CSR as one simplification for deliveries into repositories by request within the EU („*Vereinfachungsregelung für Lieferungen in Warenlager zu Abrufzwecken im Gemeinschaftsgebiet*“).⁵³ *Second*, the CSR shall further harmonize transnational turnover-taxation, release transnationally operating entrepreneurs from disproportional non-tariff-barriers and foster the realization of the SEM.⁵⁴ It shall generate one *level playing field* – even in terms of

44 Cp. GARTENSCHLÄGER/DUERHOLT, „Quick Fixes“ (2020), p. 5.

45 On the wording as interpretation-measure: *Gersch*, in: KLEIN/ORLOPP, AO (2020), § 4, N 27.

46 Cp. *Körner*, in: WÄGER, UStG, 2022, § 6b, N 1.

47 Cp. Bullet No. 2.4.

48 Cp. HOINK, IWB 2022, p. 238 ff.; *Radtke*, Zoll Profi 2/2022, p. 5 ff.

49 Cp. MEURER, UStB 2022, p. 77 ff.

50 Cp. FIETZ/LEHNER, MwStR 2021, p. 454 (454); other opinion: TREJO, MwStR 2020, p. 8 ff.

51 Cp. HERMSDORF, Konsignationslager (2020), p. 41.

52 Cp. HERMSDORF, Konsignationslager (2020), p. 41.

53 Cp. Sect. 6b.1 para. 1 St. 1 VATA-Dc.

54 Cp. SCHREIBER, Steuerrecht (2018), p. 6.

VAT. Until the commencement of the “Quick Fixes”, due to the mass-character of turnover-taxation and limited staff of the financial authorities to effectively supervise and control transnational commercial streams, transnational VAT-fraud was one practically widespread dilemma that, from the fiscal perspective, caused substantial shortfalls of taxation and, judicially breached the constitutional postulate of equality⁵⁵. *Third*, the CSR shall generate enhanced capacities to effectively control and contain the dilemma of transnational VAT-fraud. This is deeply necessary due to the annual damage from transnational VAT-fraud that covers some € 50 Mrd., particularly due to the undervaluation of goods in import-declarations.⁵⁶

4.4. Requirements of the consignment-stock-privilege

4.4.1. Cumulative realization of the legal requirements

Anyway, provided that the trade partners completely fulfil the requirements of the CSR, they are generally mandatorily subject to the latter. Due to the exceptional character of the CSR that is highlighted by the systematical position of the rule, the legal requirements are *primarily* cumulatively fulfilled.⁵⁷ In other cases, the CSR is not applicable.⁵⁸ *Second*, the requirements must restrictively interpret. Otherwise, the regulatory intention of the legislature is not sufficiently effected and the latter does not adequately fulfil the equality-principle whose application in VAT-law is widely accepted. The legal requirements are exclusive due to the wording of § 6b para. 1 VATA (“under the provision that”).

4.4.2. Transnational turnover of sales in concrete delivery situations

To participate in the consignment-privilege, the respective merchandise must be clearly distinguished from other goods, particularly to enable the financial authorities one doubtless assignment to one clearly identified taxable person.⁵⁹ Albeit, it does neither depend on the state of aggregation nor on the bundling with other goods as long one certain taxable person is clearly identifiable. By name, even gases, liquids and other fugitive goods are generally consignable.⁶⁰ To match the requirements of one diligent documentation, fugitive goods that are intended for several purchasers but repositied within one single tank, it only takes one separated stock accounting without one physical separation within the tank.⁶¹ The good that enters stock must be physically identical to that one the IP withdraws from stock. Substantial losses are only tolerated until 5 percent (%) of the total amount.⁶²

As underlined by the wording of § 6b para. 1 VATA (“transport or dispatch...from the area of one member-state into that of another...”), the consignable merchandise must be transferred from one member-state (state of origin) to another (country of

55 Cp. Bullet No. 1.

56 Cp. NEUGEBAUER, UR 2020, S. 104 (104); NIESKOVEN, PISb 2019, p. 45 (45).

57 Cp. TREJO, MwStR 2020, p. 8 f.

58 Cp. TREJO, MwStR 2020, p. 8 f.

59 Cp. Sect. 6b.1 para. 4 St. 3 VATA-Dc.

60 Cp. Sect. 6b.1 para. 4 St. 5 and 6b.1. para. 16 St. 1 VATA-Dc.

61 Cp. *Körner*, in: WÄGER, UStG, 2022, § 6b, N 32.

62 Cp. IHK Bonn, Konsignationslager (2020), p. 3.

destination). That means two European member-states must minimally participate in the transaction, so that the trade-partner realize the matter of an intra-community transaction. The deliverer realizes one ICD, the purchaser one intra-community acquisition in that sense of § 1a para. 1 VATA (§ 6b para. 2 VATA). Both trade-partners must necessarily avail themselves of entrepreneurial status due to the conception of the VAT as indirect tax that is exclusively imposed from entrepreneurial persons.

Due to the qualification as ICD and the character of the CSR as a clearly restricted exemption from the general VAT-provisions the IP must clearly define at the very beginning of the transport, ideally before the consigned merchandise leaves the state of origin.⁶³ This requirement follows the jurisdiction of the *Federal Court of Finance* (FCF), whereupon the IP must be clearly defined at the very beginning of dispatch.⁶⁴ The latter must avail itself of entrepreneurial status when the participating trade-partners close the agreement under § 6b para. 1 No. 1 VATA and intend to acquire the goods for the corporation.⁶⁵ To give evidence on full compliance of the mandatory legal provisions, the deliverer should precociously draw one framework-agreement⁶⁶ with the IP which should contain the VAT-IN of the latter. This agreement should apply to the general requirements of the CSR and may serve as one source of experience of the mutual duties of information, disclosure, accounting, credit vouchers and indemnities.⁶⁷ Should the merchandise stored before the purchaser is defined, as exemplarily in the case of warehouses, markets or trade-fairs, the CSR is not applicable.⁶⁸

Even provided that the trade partners have drawn one framework-agreement, the IP is judicially not committed to withdraw the consigned merchandise from stock, as underlined by Sect. 6b.1 para 3 St. 2 VAT-Dc.⁶⁹ One legally binding order at the very beginning of the delivery necessarily excludes the applicability of the CSR.⁷⁰ Thus, within the twelve-month-period of § 6b para. 3 VATA the IP is instead free to autonomously decide whether he picks the merchandise from stock, calculated from that point of time the latter has verifiable entered the CS. Due to the exceptional character of the CSR, the mandatory nature of § 6b para. 3 VAT and the clarification by Sect. 6b.1 para. 6 St. 5 VATA-Dc., the 12-month-period is generally not prolongable even if the IP is substituted at any stage of the delivery, so that one contrary contractual clause is invalid.⁷¹

The current version of the CSR does not explicitly define minimum requirements to the stock. Consequently, these must be deduced from the regulatory purpose⁷² of the CSR to simplify taxation of ICDs and effectively contain crossborder VAT fraud. One CS generally requires one physically distinguishable repository. Thus, the stock must *primarily* avail itself of one postal address. *Second*, it must clearly distinguish itself from other repositories. In contrast, it neither depends on the quality of the

63 On the requirements of one fiscally privileged ICD: STERZINGER, UStB 2022, p. 187 ff.

64 Cp. BFH, judgment of October/20th/2016, legal matter No. V R 31/15, BB 2017, p. 149 ff.

65 Cp. Sect. 6b.1 para. 5 St. 1 VATA-dc.

66 Cp. HOINK, IWB 2022, p. 238 (239).

67 Cp. HOINK, IWB 2022, p. 238 (239).

68 Cp. HOINK, IWB 2022, p. 238 (240).

69 Cp. *Körner*, in: WÄGER, UStG, 2022, § 6b, N 36.

70 Cp. HOINK, IWB 2022, p. 238 (241).

71 Cp. HOINK, IWB 2022, p. 238 (243).

72 Cp. Bullet No. 4.3.

repository as building⁷³ – one cellar or container is completely sufficient – nor the movability or immovability of the latter. Even railway-wagons and riverboats are expressively acknowledged as consignable repositories.⁷⁴ Moreover, even one publicly accessible trade-fair-stand matches the requirements of the CSR.⁷⁵ Hence, the trade-partners are free to autonomously decide on the quality of the store, referring to the specific requirements of the merchandise, and may exemplarily opt for one high-bay-warehouse, one (regular) storehouse, open showrooms or caves.⁷⁶ In addition, the applicability of the CSR does not require that the stock is exclusively organized for one single purchaser.⁷⁷ Moreover, the CSR even allows a change in the store as long as the turnover-taxation in the country of destination is effectively secured.⁷⁸ It is crucial that the exterritorial CS is neither owned nor located by the deliverer.⁷⁹ Any physical presence or the deliverer in the state of destination results in the loss of the CSR-privilege without further ado.⁸⁰

In addition, it is crucial that the consigned merchandise, seen from the perspective of an independent third person, is clearly and diligently distinguished from other goods.⁸¹ This requirement concretizes the jurisdiction of the FFC whereupon one delivery or dispatch in the sense of § 3 para. 6 St. 1 VATA requires one clearly addressed purchaser.⁸² Albeit, one change of the assigned purchaser is still possible subsequent to the arrival of the consigned good in stock provided that this is written pre-agreed between the trade-partners. There must no doubt put on the IP at any stage of the delivery. Any doubt in this regard is harmful for the consignment-privilege. To clearly identify the consigned good, one written sales-contract in the sense of § 433 GCC, one legally binding order or one already effected payment is generally sufficient.⁸³ To clearly distinguish the consigned good from others it is essential to use adequate device (iron-barred, comparable boxes etc.) at all delivery-stages.⁸⁴

In any case of doubt, one view of Art. 66a VAT-Dir. and Art. 41a EU-VAT-Dc. Is that the VAT is not payable at any time before the IP withdraws the consigned merchandise from stock.⁸⁵ While picking it from stock, the legal authority to dispose of the goods transfers them from the deliverer to the IP.⁸⁶ By obtaining the latter, the economic performance of the IP increases corresponding with the accretion of judicially protected applicability. Both economic and judicial considerations justify the imposition of VAT in view of the equality-principle⁸⁷.

73 Cp. Sect. 6b.1 para. 4 St. 2 VATA-Dc.

74 Cp. Sect. 6b.1 para 4 St. 5 VATA-Dc.

75 Cp. HOINK, IWB 2022, p. 238 (242).

76 Cp. HOINK, IWB 2022, p. 238 (242).

77 Cp. HOINK, IWB 2022, p. 238 (239).

78 Cp. HOINK, IWB 2022, p. 238 (244).

79 Cp. Sect. 6b para. 2 St. 1 VATA-Dc.

80 Cp. Sect. 6b.1 para. 2 St. 3 VATA-Dc.; ROBISCH, NWB 2022, p. 234 (234).

81 Cp. *Körner*, in: WÄGER, UStG, 2022, § 6b, N 32.

82 Cp. BFH, judgment of October/20th/2016, V R 31/15, BStBl. II 2017, p. 1076; *BFH*, judgment of November/16th/2016, V R 1/16, BStBl. II 2017, p. 1079.

83 Cp. OFD FfM., Warenlieferungen (2018).

84 Cp. *Körner*, in: WÄGER, UStG, 2022, § 6b, N 32.

85 Cp. BECKER/MICHELUTTI (2020), p. 1817 (1822).

86 Cp. *Wäger*, in: WÄGER, UStG (2022), § 3, N 104.

87 Cp. *Bullet No. 1*.

4.4.3. No physical presence of the deliverer in the country of destination

Pursuant to § 6b para. 1 No. 2 VATA and even the concretization by Sect. 6b.1 para. 2 St. 1 VATA-Dc. and to effectively combat transnational VAT-fraud, the deliverer must not avail itself of any physical presence (§ 11 GFC), management (§ 10 GFC) or facility⁸⁸ (§ 12 para. 1 GFC) in the country of destination.⁸⁹ Provided that the deliverer avails itself of its own warehouse in the country of destination, the CSR is not applicable. The latter provision primarily names management and facility as sample applications of one physical presence. Thus, it is a question as to which ties are covered by the term “facility”. Under the premise that the deliverer does not effect its own performance, it does not avail itself of an assignable facility in the country of destination and, instead, engages an external service-provider, such as an expeditor or logistic-provider, to run an repository there.⁹⁰ Moreover, it does not constitute his residence in the country of destination when its own staff is, meanwhile, present at the CS for purposes of control and physical inventory.⁹¹ The wording of § 6b para. 1 No. 2 VATA that even names the (main) residence as a criterion for exclusion argues for one *genuine link*⁹² for the deliverer. Interpreted that way, the mere existence of one VAT-IN of the country of destination is not sufficient to exclude the deliverer from the consignment-privilege. Albeit, pursuant to Sect. 6b.1 para. 5 St. 3 VATA-dec. the IP is neither required to avail of one place of business nor any other residential criterion in the country of destination.

4.4.4. Assignment of the VAT-identification-number of the purchaser

It is mandatorily necessary to participate in the consignment-privilege that the IP avails itself of one VAT-IN by the country of destination that is used for the concrete delivery (§ 6b Para. 1 No 3 VATA).⁹³ That VAT-IN must be known to the deliverer at the latest by the beginning of the respective delivery. Since the applicability of the CSR exclusively depends on that VAT-IN awarded by the country of destination and, under that provision, any double-taxation of the IP is excluded with high probability, it is sufficient in terms of VAT that the deliverer has positively noted that number at the very beginning of the delivery.⁹⁴ To give evidence on that, the VAT-IN should be expressively noted in the framework-agreement. The doubtlessly assigned VAT-IN secures effective turnover-taxation in the country of destination.⁹⁵ To adequately comply with all applicable legal provisions, the trade partners are explicitly recommended to name the VAT-IN in the framework-agreement and, should the competent financial authority ask for that number, always avail itself of an presentable copy of that contract.⁹⁶

88 On the submissions to the ECJ: L'HABITANT, UStB 2022, p. 130 ff.

89 Cp. HOINK, IWB 2022, p. 238 (240).

90 Cp. ROBISCH, NWB 2022, p. 234 (234).

91 Cp. HOINK, IWB 2022, p. 238 (240).

92 On the requirement of one *genuine link*: cp. *Hailbronner*, in: HAILBRONNER/RENNER/MAASSEN, Staatsangehörigkeitsrecht (2010), introduction, N 28.

93 Cp. HOINK, IWB 2022, p. 238 (240).

94 Cp. *Körner*, in: WÄGER, UStG, 2022, § 6b, N 52.

95 Cp. IHK Bonn, Konsignationslager (2020), p. 1.

96 Cp. *Heuermann*, in: SÖLCH/RINGLEB, Umsatzsteuergesetz (2022), § 6b, N 71.

4.4.5. Proper separate documentation of the turnover by the entrepreneur

Fourthly, the deliverer must separately document the dispatch or delivery of the consigned good pursuant to § 22 para. 4f VATA. As provided by § 18a para. 1, 6 No. 3 and 7 No. 2a VATA the deliverer must timely, accurately and in any other aspect completely comply with the commitment of one summarized announcement in the sense of Art. 262 VAT-Dir. (§ 6b Abs. 1 No 4 VATA).⁹⁷ It is mandatory to state the complete name and address of the deliverer, his website, the VAT-IN and the bank account, the place where the delivery begins, the place of destination, time and volume of the turnover and one precise definition of the consigned merchandise (§ 27f para. 1 St. 1 No. 1-9 VATA). Due to the origin of the CSR in the VAT-Dir., the duties of proper documentation in the sense of § 22 para. 4 VATA are interpreted with respect to Art. 54a EU-VAT-Dc. that defines one qualified duty of information with respect to the organization of the CS in the sense of Art. 243 para. 3 VAT-Dir. In any case of doubt, it depends on the value of the consigned merchandise in the sense of Art. 54a para. 1 lit. d) EU-VAT-Dc. respectively their acquisition costs (§ 255 para. 1 GComC), that means that value the deliverer assigns the goods in that point of time he relocates them.⁹⁸

4.4.6. Consequences of exchanging the purchaser

To effectively combat cross border VAT-fraud and simultaneously reduce the resulting effort for the financial authorities, the IP as expressively noted in the framework-agreement must generally coincide with that entrepreneur who picks the consigned merchandise from stock. Consequently, any exchange of the IP that is not precociously known to the competent financial authority generally endangers the consignment-privilege. Albeit, in view of the regulatory objectives to flank the realization of the SEM, to unleash transnational deliveries as source of general wealth and to generate one *level playing field* without discriminating transnational deliverers, one exchange of the IP is not harmful in terms of VAT under certain requirements. It is the regulatory purpose of neither of the European nor the national legislature to patronize economic actions, as underlined by the substance-over-form-principle⁹⁹ codified by § 40 GFC.

Hence, § 6b para. 5 VATA explicitly permits one exchange of the IP between the beginning of the delivery and withdrawal from stock under the provision that the substitute uses the VAT-IN of the country of destination towards the original entrepreneur; the latter knows the complete name and the complete postal address of the substitute and, finally, separately documents the effected exchange pursuant to § 22 para. 4f VATA. Should the deliverer subsequently intend to substitute the original IP, the trade partners should draw one written agreement that guarantees that the goods are both doubtlessly and seamlessly assigned to the IP at all stages of the transport.¹⁰⁰ Due to the regulatory purpose of the CSR it is necessarily harmful in terms of VAT, should another person but the contractually defined IP picks the consigned merchandise from stock and, by doing this, avails the legal authority to

97 Cp. Körner, in: WÄGER, UStG, 2022, § 6b, N 54.

98 Cp. Heuermann, in: SÖLCH/RINGLEB, Umsatzsteuergesetz (2022), § 6b, N 75.

99 Cp. Gersch, in: KLEIN/ORLOPP, AO (2020), § 4, N 23.

100 Cp. Körner, in: WÄGER, UStG, 2022, § 6b, N 30.

judicially dispose on the latter, as (explicitly) exposed by § 6b para. 6 St. 2 VATA and Sect. 6b.1 para. 20 VATA-Dc.¹⁰¹

4.5. Legal consequences of the consignment-stock-rule

Under the provision that the legally expressly named requirements of the CSR (§ 6b para. 1 No. 1-4 VATA) are completely fulfilled, the delivery is deemed as taxable but tax-free ICD for the deliverer (§ 6b para. 1 VATA) and as one taxable intra-community acquisition in that sense of § 1a para. 1 VATA for the IP. The decisive moment for the transfer from the sphere of the deliverer into that one of the acquirer is that the latter receives the exclusive legal authority to dispose of the goods.¹⁰²

Due to the effected incline of economic capability, it does not depend on whether the deliverer or the IP forwards the merchandise into the CS as long as the latter obviously executes the transfer in the name of the deliverer without obtaining power of disposition.¹⁰³ Provided that the trade-partners match all requirements of the CSR, this is mandatorily applied.¹⁰⁴ Should they want to release from the CSR, they are free to intentionally foresee to fulfill all legal requirements. It is not the regulatory objective nor of the European nor the national legislator to patronize them but to foster legal security of intra-community transactions that are subject to VAT.

Provided that the trade-partners do not completely match the requirements of § 6b para. 1 UStG, primarily because the 12-month-respite effortlessly elapses, the deliverer becomes resident in the country of destination, the consigned merchandise is disposed to another without matching the requirements of § 6b para. 5 VATA, the latter is brought to any third state, destroyed, gets lost or suffers a substantial loss of more than five percent, the delivery is deemed as intra-community movement of goods in the sense of § 6a para. 2, § 3 para. 1a UStG, as underlined by Sect. 6b.1 para. 3 St. 4 VATA-Dc.¹⁰⁵ Consequently, the deliverer must immediately register in terms of VAT in the country of destination.¹⁰⁶

5. CRITICAL EVALUATION

Since the IP is not legally committed to pay the VAT before the merchandise leaves stock and obtains the judicially protected authority to dispose of the goods at his own discretion, the CSR results in one suspended realization of the taxation basis. Due to the judicial nature of the CSR as a legal provision referring to the taxability of ICDs, the obligation to pay the VAT is not cancelled but suspended at the point of time that the IP receives one growth of individual capability.

The CSR significantly releases the trade partners from disproportional bureaucracy, contributes to economize human resource of the financial authorities and focuses their disposable staff on indispensable matters. Consequently, both the taxable trade

101 Cp. HOINK, IWB 2022, p. 238 (243).

102 Cp. Wäger, in: WÄGER, UStG, 2022, § 3, N 104.

103 Cp. HOINK, IWB 2022, p. 238 (238).

104 Cp. TREJO, MwStR 2020, p. 8 f.

105 Cp. IHK Bonn, Konsignationslager (2020), p. 1.

106 Cp. IHK Bonn, Konsignationslager (2020), p. 1.

partners and the financial authorities profit. Notwithstanding this, the legislature may further improve upon the fiscal framework for ICDs, particularly due to the general meaning of the SEM as a source of transnational wealth. *De lege lata*, the CSR confronts the trade-partners with disproportional complex duties due to the commitments to diligently document the ICD in full compliance with the requirements §§ 6b Abs. 1 No 4, 22 para. 4f VATA. To face the systematical conflict with the PCR, to further unleash ICDs and to release them from manifold legal uncertainties, there is one outstanding need to further digitalize the European VAT-system.

Honest merchants need not fear digitalization. By adapting innovative IT-solutions, they strengthen both their adaptability to the manifold transformations of the digital age and, consequently, their resilience. Thus, namely the VATA-announcing 2021 further concretizes and simplifies the requirements of ICDs. The announcement further concretizes the requirements of the CSR and gives the trade partners one practical guideline that, considering the relevant jurisdiction of the FFC, releases them from legal uncertainties and contributes to both intelligent investments and efficient allocation of goods. To sustainably contain cross border VAT-fraud, it seems essential to further harmonize the IT-systems of the financial authorities. Not seldom, member-states regard these as one *national reserve* that directly correlates with their national sovereignty. Particularly in view of the widespread sale of intellectual properties to precarious states such as the PCR whereas the last decade, IT-systems are deemed as critical infrastructure. Nonetheless, to win the systemic competition between liberal democracies and autocracies, even in the field of crossborder-taxation, it seems indispensable that the member-states avail of one coherent IT-system that erases those insufficiencies. Different IT-systems are revealed as obstacles to effectively contain that dilemma – notably, in view of the historical turning-point subsequent the Ukrainian conflict.

6. TOTAL RESULT, SUMMARY AND OUTLOOK

Regardless of his function as the “European locomotive of growth”, Germany remains short of raw material even in the digital age. More than other OECD-countries, it depends on the reliable imports of raw materials, finished products and sub-contractor-components. The ubiquitous¹⁰⁷ character of digitalization, the triumphal procession of artificial intelligence and the governmental decision to finally leave civilian use of nuclear energy impressively outlined both the dependence of the federal republic from other countries and the uncertainty of entrepreneurial decisions. Due to the abovementioned crises, uncertainty is deemed as the “new normal”. Worldwide VACs remain interrupted, whereas volatility of consumer prices further inclines. Hence, ICDs deeply depend on reliable VAT-regulation that respects the individually taken entrepreneurial decisions. Consequently, the CSR is one overdue step into the right direction. It enables domestic corporations to withdraw indispensable goods *just in time* from VAT-privileged stocks provided that these goods are doubtlessly assignable to one certain IP who obtains the exclusive authority to individually dispose on the latter. By obtaining that authority to individually decide on the time of withdrawal

¹⁰⁷ Ubiquitous goods are simultaneously usable at several places without mutually excluding anyone (Concept of the non-rival goods); cp. SATTLER, CR 2020, p. 145 (148 f.).

within the limits of the twelve-month-period without any mandatory commitment to pick the latter from stock, the CSR strengthens flexibility of entrepreneurial decisions. The IP obtains both one *Safe harbour*¹⁰⁸ and stronger resilience within the abovementioned insecurities. In the context of an increasing conflict over distribution of raw materials and sub-contractor-components, the CSR contributes to the entrepreneurial capacity to screen from both global volatilities of consumer prices and availability of indispensable goods. The amendment strengthens independence from precarious states such as the Russian federation and the PCR – notably in the case that the latter should dare to attack Taiwan whose integrity is deeply essential for the worldwide supply of semiconductors. Should the tradepartners not agree otherwise, the price of the merchandise in the time of withdrawal is deemed as the exclusively relevant fiscal basis of assessment. But even for the deliverer, the CSR significantly simplifies ICDs because the latter is released from the judicial commitment to register for VAT-taxation in the country of destination. In summary, the simplification due to the CSR strengthens attractiveness of ICDs, significantly contains conflicts of commercial triage and stabilizes the price-level in the EU. It reveals as another key-factor to realize enhanced resilience within the SEM.

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Is there a Misalignment of Property Prices?

Summary

Global property prices have risen significantly between 2010 and 2021. The development was not uniformly positive worldwide, but the economically prosperous regions and large cities in particular recorded above-average price increases. Since the beginning of 2022, the situation has deteriorated significantly due to changes in fundamental factors. This could mean that there is currently an overvaluation in the real estate market. In this article, key determinants for the valuation of the real estate market are examined, and whether these indicate overvaluation. To this end, the real estate market is viewed from the perspectives of different stakeholders. Especially, two variables are used in several models to evaluate the real estate market. On the one hand the long-term interest rate and on the other hand the economic activity. For the analysis of the overvaluation of housing prices, simple price-income- or rental-return-ratios are examined. These procedures have proved to be quite reliable in backtesting.

The real estate market is very differentiated so that on the one hand a consideration only at a national or regional level can in principle be used to assess the overall economic situation. On the other hand, only a strongly graded regional analysis could be used to conclude as to which area is “riskier” than others. Banks are among the victims of the real estate crisis, but there is also evidence that banks could contribute to the emergence of the problems. Self-reinforcing positive feedback is considered and a proposal to mitigate them is presented.

JEL Classification Numbers: R21, R31, G21

Keywords: house prices, mortgages, banks.

1. INTRODUCTION

Global house prices increased significantly between 2010 and 2021. The development has not been unified worldwide, but in particular, the economically prosperous regions and large cities have recorded disproportionately high price increases. Since the beginning of 2022, however, the situation has changed

significantly due to changed fundamental factors: nominal interest rates and inflation have risen, operations are still disrupted by COVID 19 pandemic, and we are experiencing deglobalization because of the conflict in Ukraine.

Due to the significant increase in real estate prices in recent years, it can initially be assumed that the current price level is above an equilibrium price. This could mean that there is currently an overvaluation in the real estate market. Analyzing property price valuations is important for several reasons.

The first to be mentioned is the behavior of private households. With the house representing the largest single asset for most households, changes in its valuation would have important consequences on households' balance sheets, subjective wealth, and thus spending behavior.

Second, there are political implications to consider. House prices also have a direct and indirect effect on the consumer price index and thus on inflation and inflation expectations. Therefore, understanding house price dynamics have important implications for monetary policy when it comes to maintaining price and financial stability. Finally, income from real estate transactions has a significant impact on a country's budget situation.

The third and final point is financial solidity. Mortgages and other real estate-related assets also represent an important part of financial institutions' balance sheets. After all, these receivables account for almost half of commercial banking lending institutions' customer-related loans, which means that developments in the housing market are having a significant impact on the health of the financial system, including profitability and soundness. The last time such a financial and economic crisis occurred was in 2007 and 2008.

Despite the limitations of econometric estimates of house price dynamics, the degree of overvaluation indicates that the development of the real estate market in recent years cannot be continued without restriction. It cannot be ruled out that there is currently an overvaluation.

In this article, different models for estimating real estate prices are presented. Based on this, key determinants are assessed that influence real estate prices and could help to identify overvaluation.

The paper is structured as follows. In the next section, the different models are presented, and key determinants assessed. Section III presents the findings on the balance of the determinants' capabilities. Section IV provides a summary of the results, the relative advantages and limitations of each, and your recommendations for future work. Section V concludes this paper.

2. METHODS

The theories and theoretical models for the housing market differ from those for standard goods and financial assets because housing goods are both commodities and capital goods. Basically, the theoretical models of the housing market usually assume that it consists at least of two markets - one for the stock of existing houses,

which determines the price of houses, and one for the flow of new buildings, which determines the level of new investment (Poterba 1984). Hlaváček and Komárek (2011) also divide the housing market into these two segments: the segment of existing apartments with inelastic supply, where the price is determined, and the segment of new housing construction, where the price determines the scope of new construction. The supply in the existing housing market can be represented by the saturation of housing demand or its dynamics (the number of newly completed apartments). A higher saturation of housing demand should lead *ceteris paribus* to less upward pressure on housing prices.

Historically, long-term equilibrium models of housing markets and countries that have high availability of long period of housing market data are limited, as a sufficiently large period is required to test long-term relationships. Accordingly, most studies have focused mainly on the US, the UK, and some other countries with corresponding data series (Adams and Füss 2010). Cadil (2009) studied the real estate market in the Czech Republic and used the price-income ratio and then used a VAR analysis to determine the possibility of a bubble in the Czech housing market for the period 1998-2006 for the prices of both apartments and single-family homes Bogin et al. (2017) note that monitoring real estate markets at a national level does not give a clear picture, as there can be significant differences between the respective regions, the urban-rural divide, and the economic development within a country. In their analysis, they use a baseline data set based on nearly 100 million underlying mortgage transactions with repeat sales for 18,000 zip codes in the U.S. This method with repeated sales is attractive because changes in an index can be interpreted as an increase in value with constant quality between sales. They focus on zip codes that include real estate, all located within a single Core-Based Statistical Area (CBSA) and with a populated price index as of at least 1990. Using local house price indices that cover the United States from 1975 to 2016, they focus on the evolution of house prices in the years immediately following sustained periods of rapid acceleration. They define episodes of significant growth acceleration based on an analysis of cross-border GDP growth. The method requires the fulfillment of three criteria to classify a period as acceleration: 1) a threshold for the growth rate, 2) a threshold for acceleration, and 3) a global maximum at the level of the series. The first two limit the sample to areas with high and rising growth rates, and the third ensures that acceleration is not recovering from a previous upswing. In their paper, they apply these criteria to the study of real house prices in the U.S. zip codes between 1975 and 2016 and calibrate them. The limit value for the first criterion is a logarithmic difference of 0.4 (about 50 % growth rate) over a period of four years. The second criterion assumes that the growth rate exceeds the previous 4-year growth rate by a logarithmic difference of at least 0.2 (22 %). They omit the third criterion, preferring instead to examine the dynamics of accelerations, which are preceded by both an increase and a decline in house prices.

In their study, Kishor and Marfatia (2017) analyze the relationship between house prices, disposable income, and interest rates for 38 years from the first quarter of 1975 to the last quarter of 2013 for 15 OECD countries. To ensure consistency of comparisons between countries, they use the seasonally adjusted quarterly real house price index and the disposable income index. Disposable personal income is expressed per capita of the working-age population. The series of real property

prices and real personal income is calculated by deflation of the nominal series with the deflator of personal consumption expenditure (PCE) of a country. The data on interest rates use short-term interest rates from the OECD data set for the main economic indicators.

When analyzing the factors that affect the real estate market, Hlaváček and Komárek (2011) subdivide them into supply and demand factors. Supply factors also include most cost factors, such as the prices of building plots or building construction costs. Due to the long preparation and implementation time of a construction project, supply factors are often only reflected in real estate prices with a long delay. The demand for real estate is primarily determined by the disposable income of households, of which wages and salaries are the main components. They affect both the formation of savings and wealth by households and the availability and risk of home loans. Other labor market factors that can affect property prices include the unemployment rate, the employment rate of the population, and the number of vacancies. Gimeno and Martínez-Carrascal (2010) examine the developments of house purchase loans, house prices, and the relationships between these variables. The investigation aims to determine deviations of these variables from an equilibrium level and for this purpose a vector error correction model is estimated. To analyze the relationships between house prices and house purchase loans, a three-order VAR with the constant Unrestricted is estimated, and including house purchase loans, house prices, labor income, and nominal interest rates. For this, both the loans and the income are expressed per household since each household needs at least its own or rented house for its accommodation. The higher the number of households, the higher the demand for houses if all other factors remain the same. Kishor and Marfatia (2017) note that the price-to-income ratio and the price-rent ratio are the two most commonly used indicators of housing market health. According to Adams and Füss (2010), the choice of variables used to estimate the driving factors of property prices is largely dependent on the underlying models. They roughly divide these into two economic models, on the one hand, according to affordability factors and on the other hand according to asset models. The affordability models serve to investigate overvaluations in the real estate market and are not used in the future. The advantage of asset price approaches is that they model equilibrium conditions that result from the simple arbitrage relationship so that the apartment rents should basically correspond to the user costs of the apartment. For their panel regression analysis, three variables are used: economic activity, long-term interest rate, and construction costs. If there is no linear relationship between the macroeconomic and housing market variables, the variables are cointegrated. To test for cointegration, Adams and Füss apply a cointegration test for heterogeneous panels with multiple regressions. This test has only one hypothesis for no cointegration and allows balanced panels.

From the perspective of risk management in banks, Bogin et al. (2015) examine real estate prices, which often estimate credit risk and thus property prices through stress testing. It is regularly examined to what extent house prices are above the long-term trend and how far they can fall below the trend. They investigate the latter and develop a theoretically sound statistical method for determining a conservative lower limit for house prices. Hott (2011) shows how credit and real estate cycles can be caused by irrational expectations of banks. More specifically, he develops a partial equilibrium

model that allows to examine the effects of three different types of expectation formations on banks' lending behavior, real estate prices, and bank mortgage losses.

The question of whether there is a significant impact of loan-to-value (LTV) on market prices for residential real estate has been intensively discussed time and again. Hui et al. (2017) aim to examine the long-term and short-term effects of the loan-to-value ratio on real estate prices. During its investigation period in Hong Kong, where there is an LTV-ratio, the interest rate is low and the growth rate of mortgage rates is slower than the growth rate of market prices. Risk-based capital requirements have been in place for financial companies for many years. The experience of the recent financial crisis led to increased criticism that these regulations are pro-cyclical, i.e., that they require too little capital in boom times and too much capital in times of recession. In response, recent revisions of these rules have provided for a countercyclical capital buffer, but this is problematic because implementation is at the discretion of regulators in terms of both timing and amount. Smith et al. (2016) have prepared a design proposal and an empirical evaluation for this purpose, which provides for a dynamically adjusting stress test for mortgage values.

Table 1. Determinants and their effect on real estate prices

Study	Determinants	Correlation to real estate prices*
Adams and Füss (2010)	economic activity long-term interest rate construction costs	+ - +
Bogin et al. (2017)	Analysis of sales prices	+
Cadil (2009)	price-income ratio	+
Duca et al. (2021)	interest rates income credit standards	- + -
Gimeno and Martínez-Carrascal (2010)	house purchase loans labor income nominal interest rates	+ + -
Hlaváček and Komárek (2011)	prices of building plot construction costs disposable income unemployment rate	+ (with a long delay) + (with a long delay) + -
Hott (2011)	banks' lending behavior	+
Hui et al. (2017)	LTV-ratio (as supervisory instrument)	~
Kishor and Marfatia (2017)	disposable income (adj.) short-term interest rates price-to-income ratio price-rent ratio	+ - ~ ~
Smith et al. (2016)	countercyclical capital buffer (as a supervisory instrument)	-

* positive correlation (+), negative correlation (-), no correlation (~)

Source: Own work

Another perspective is the targeted analysis of bubbles in the real estate market. Komarek and Kubicová (2011) draw on bubble literature in their paper and discuss theoretically the classification of asset price bubbles based on characteristics such as differences in investor rationality, their information(a)symmetry, arbitrage limits, and heterogeneous beliefs. It also highlights the identification issues associated with determining the fundamental value of an asset. Cadil (2009) uses the first standard bubble indicators such as the price-income ratio to identify the possibility of a bubble in the Czech housing market. As a second step, a regression analysis (VAR model) is used for a deeper investigation of the situation.

3. RESULTS

First, the results of the models are evaluated based on the indicators used for the models to evaluate the real estate market. As part of their analysis, Adams and Füss (2010) find that the two macroeconomic variables, long-term interest rates, and economic activity, have a significant impact on house prices. Gimeno and Martínez-Carrascal (2010) have examined the developments in house loans and house purchase prices as well as the correlations. For this purpose, deviations of these variables from their equilibrium level were determined. For this purpose, a vector error correction model is estimated. The results show that, first, both variables are interdependent in the long term. Second, the results show that both variables were above their equilibrium level at the end of the sample period in Q1 2009 in the midst of the economic crisis. Thirdly, it has been found that overvaluation of real estate and thus possibly an over-indebtedness of the property owners can lead to a false feeling of not over-indebtedness. In an already existing bubble situation, private households may tend to spend more and thus further drive the situation of overvaluation.

Hlaváček and Komárek (2011) have pragmatically illustrated the overvaluation of house prices in the Czech Republic using simple price-income or rental-return-ratios. In most Czech regions rental-return-ratio between 2000 and 2008 H1 has steadily deteriorated. Until 2005, this deterioration was accompanied by a decline in interest rates, but from 2006 onwards, rental-return-ratio continued to decline despite rising yields on government bonds and interest rates on home loans. Thus, according to the rental-return-indicator, price growth in the years 2006-2008 could have a certain bubble component. The price-income ratio also points to two potential bubbles in housing prices, namely in early 2003 and late 2007 and early 2008 respectively. These are the periods of high price growth. For the period 2004-2006, it can be seen that the real estate price bubble could easily ease from the point of view of the price-income ratio. During this period, housing prices were more or less stable, and the improvement in the price-income ratio was due to wage growth. The improvement in the price-income ratio in 2009 was mainly due to the decline in housing prices. The ratio remains at a relatively high level. Such developments in overvaluations in house prices are usually triggered, according to the study of Duca et al. (2021) by changes in the framework conditions (interest rates, income, credit standards etc.), the dynamic effects of which interact with supply conditions and by the tendency of households to form house price expectations that differ from the rational expectations associated with efficient markets, can be strongly differentiated, can be strengthened. More generally, asset overvaluation can result from exogenous macroeconomic shocks,

shifts in the fragile financial sector and fiscal fundamentals, and endogenous dynamic processes. The former includes deteriorating terms of trade, higher oil import prices, falling export demand, natural disasters, pandemics, higher interest rates, or a shortage of external credit supply. Such shocks are regularly unpredictable, although increased physical risks and transition risks from climate change are to be expected. Another example is extrapolative house price expectations. In Abraham and Hendershott's (1996) equilibrium correction model, there are positive "bubble-forming" effects on house prices resulting from the recent rise in house prices and negative "bubble-destroying" effects resulting from a high level of real house prices relative to fundamentals. Another source of overvaluation is endogenous, dynamic processes such as the subsequent leverage cycle: debt rises when property prices fall, tightening debt restrictions. Again, this development can force investors to sell, causing prices to fall, which can trigger a deflationary feedback loop. Similarly, positive news about house prices can trigger an inflationary feedback loop. In all models, it must be considered that the changes, for example, compared to the stock market, only have a significant impact with significant delays. The results show a mixed picture and are partly implausible in the analyses (Gimeno and Martínez-Carrascal 2010), (Duca et al. 2021). Adams and Füss (2010) estimates suggest that only about 16% of adjustments are made per year. Therefore, the time to full recovery can be much slower. It can take up to 14 years for deviations from long-term equilibrium to lead to a dynamic adjustment process.

The analysis of the real estate market can often turn out to be difficult for various reasons and is considered using the example of the Czech Republic. The domestic market is still partially regulated well into the 2000s, which means that there are not very long time series of data available and sometimes even a lack of relevant and up-to-date data. Apart from this fact, the housing market varies greatly from region to region (it is the same as in other countries), and currently, regional statistics are not sufficient to carry out deeper analyses in the regions. These problems affect any housing market analysis carried out, and therefore the conclusions of this analysis cannot be considered completely reliable either (Cadil 2009). Bogin et al. (2017) demonstrate that this geographic aggregation level at the national or regional or state level is in many cases not detailed enough – the risk of collateral often varies within cities. Price accelerations tend to accumulate over time and occur more frequently in large cities than in small ones. Inner-city differences in price dynamics are used to demonstrate that prices initially exceed sustainable levels, but that in some areas the momentum reflects and can be maintained by positive underlying economic fundamentals. After an acceleration, prices reach their lowest point after 4 or 5 years. In small towns, a steady fall in prices can be observed, while in large cities the price decline is more pronounced with increasing distance from the city center. Both the price-income-ratio and the rental-return-ratio can also be used to deduce which regions are "riskier" from the point of view of these indicators (Hlaváček and Komárek 2011).

Banks' credit conditions could be influenced by the development of their existing loan portfolio rather than by expected future fundamentals. Hott's (2011) findings suggest that the development of real estate prices influences bank lending. In general, it can be said that the relationship works in both directions, i.e., there is a positive feedback loop between real estate prices, mortgage loans, and bank profits. Several

models formalize this feedback effect. Banks are often among the victims of real estate crises. However, there is evidence that banks are also contributing to the emergence of the problems. They are providing more and more financial resources for real estate purchases and thus contributing to the emergence of a price bubble. When the bubble bursts, they are highly exposed and suffer high losses. He has demonstrated how banks can generate real estate cycles through their behavior, namely their expectation formation. He makes this clear through three different types of approaches to irrational expectations on a benchmark model of real estate prices and mortgages: mood swings, momentum forecasting, and disaster myopia. However, it can be assumed that in reality, markets are likely to be influenced by both rational expectations and each of the three types of irrational expectations.

An instrument that has been intensively discussed could be a limitation of the loan-to-value ratio in the financing of real estate. However, the current literature is intensively discussing whether there is a significant influence on real estate prices. Gómez et al. (2019) illustrate the feasibility of this approach through some simulations. Hui et al. (2017) aim in their study to examine the long-term and short-term effects of the loan-to-value ratio on real estate prices in Hong Kong. During the investigation period, the interest rate is low, and the growth rate of mortgage rates is slower than the growth rate of market prices. The results show that changes in the mortgage lending rate have not been able to influence the willingness of potential buyers to buy apartments over the past decade.

Also, from the perspective of the risk management of banks, Bogin et al. (2015) examine real estate prices, which often estimate credit risk and thus real estate prices through stress tests. It regularly examines how far house prices are above the long-term trend and how far they can fall below the long-term trend. They investigate the latter and develop a theoretically sound statistical method for determining a conservative lower limit for house prices. The approach performs well in several historical backtests and has high predictive power outside the sample. The conservative lower bound is attractive because, firstly, it provides a preemptive indicator of the severe future bounces and, secondly, allows estimates of the low point to recover or decrease in magnitude as markets return to their starting conditions. This estimation technique is particularly useful for assessing the credit risk of mortgage portfolios in the context of the evaluation of statistical stress tests (Bogin et al. 2015).

4. DISCUSSION

Analyzing property price valuations is important for several reasons. Firstly, for private households. A change in the value of the property has important effects on the financial situation of a household, the subjectively perceived prosperity, and the spending behavior. Real estate prices have a direct and indirect influence on the consumer price index as well as inflation and inflation expectations. This has important implications for monetary policy and thus for the stability of the entire financial system. Thirdly, the stability of the financial sector must be taken into account. Mortgages and other real estate-related assets represent a majority of the assets on financial institutions' balance sheets. Consequently, the development of the real estate market has a significant influence on the health of the financial system.

Large parts of the current literature confirm that two variables have an influence: on the one hand the long-term interest rate and on the other hand the economic activity. However, there are already different views on how to measure economic activity. For example, house loans and house purchase prices could be used for this. Economic activity could thus be made measurable on the basis of two variables that are close in character to the real estate market. However, these variables are not able to cover all economic activity. An overvaluation of housing prices could also be pragmatically determined based on simple price-income or price-rent ratios. These procedures have proven to be quite resilient in backtesting. However, it should also be noted critically here that the entire economic activity is not taken into account or wrong conclusions could be drawn.

Furthermore, overvaluation of real estate due to exogenous macroeconomic shocks could lead to higher interest rates or a shortage of external credit supply. These shocks are regularly unpredictable, although increased physical and transition risks from climate change are more likely to be expected. Moreover, there is broad agreement that overvaluation of real estate prices could result from an endogenous, dynamic process: with increased real estate prices, private households subjectively feel richer and thus have an increased spending behavior. This in turn creates stronger demand and prices continue to rise. On the other hand, however, it is disputed at what speed the market reacts with appropriate adjustments.

The consideration of the real estate market at a national or regional or federal level can in principle be used to assess the overall economic situation. However, to review specific local situations to determine whether there is an overvaluation, much more detailed consideration is required, as there may be significant differences between urban and rural regions and economic development. Even within an urban area, there can be significantly different developments. Conversely, a highly differentiated regional approach could be used to conclude as to which regions are “riskier” than others.

Banks’ credit conditions could be influenced by the development of their existing loan portfolio rather than by the expectations of future fundamentals, and thus the development of real estate prices could influence bank lending. Thus, a positive feedback loop between real estate prices, mortgage loans, and bank profits is demonstrable. Banks are among the victims of the real estate crisis, but there is also evidence that banks could also contribute to the emergence of the problems. By providing credit, they contribute to the emergence of price bubbles. Should these bubbles burst, the banks are regularly heavily exposed and could suffer high losses.

In the current discussion, there is disagreement on how to reduce overvaluation with macroprudential instruments. This was exemplified by the example of the LTV ratio. While some studies conclude that there is no significant influence on real estate prices by an LTV ratio, other studies see this approach as an effective approach. There are no clear recommendations in the economic literature for the degree of activity and preventive effect of the central bank or banking regulators.

However, staying with the example of the LTV ratio, it could first be defined which other assumptions, variables or determinants should be included in an applicable

model. As a result, there are largely identical statements on the question of the lack of adjustments in real estate prices. In relation to the context, a reliable statement could be made, whereby the model would have to be limited in advance. However, generally valid statements on misalignment of property prices cannot be made.

5. CONCLUSIONS

Between 2010 and 2021 property prices have risen significantly. The development was not equally positive worldwide, but the economically prosperous regions and large cities in particular recorded above-average price increases. Since the beginning of 2022, however, the situation has changed significantly due to changing fundamental factors: nominal interest rates and inflation have risen, operations continue to be disrupted by the COVID-19 pandemic, and we are experiencing deglobalization due to the conflict in Ukraine. Due to the significant increase in real estate prices in recent years, it can initially be assumed that the current price level is above an equilibrium price. This could mean that there is currently an overvaluation in the real estate market.

The analysis of real estate price valuations is important. For private households, in order not to create subjectively wrongly perceived prosperity. For political decisions, in particular concerning the consumer price index, inflation, and thus indirectly to monetary policy. For the stability of the financial sector, mortgages and other real estate-related assets make up an important part of the balance sheets of financial institutions and thus these positions are exposed. Despite the limitations of econometric estimates of house price dynamics, the degree of overvaluation suggests that the development of the real estate market in recent years cannot continue unabated. It cannot be ruled out that there is currently an overvaluation.

In particular, two variables are used in several models to evaluate the real estate market. On the one hand the long-term interest rate and on the other hand the economic activity. However, different measurable variables are regularly used to assess economic activity, such as income, unemployment rate, housing loans, construction costs, and others. An overvaluation of housing prices could also be pragmatically analyzed based on simple price-income- or rental-return-ratios. These procedures have proved to be quite reliable in backtesting. An overvaluation of real estate due to exogenous macroeconomic shocks could also lead to higher interest rates or a shortage of external credit supply. These shocks are regularly unpredictable. Furthermore, there is broad agreement that overvaluation of real estate prices could result from endogenous, dynamic processes. With higher real estate prices, private households subjectively feel richer and thus have an increased spending behavior, which in turn leads to stronger demand and causes prices to rise further.

Furthermore, it should be noted that the real estate market is very differentiated. A reflection at a national or regional level may in principle be used to assess the overall economic situation. However, a much more detailed analysis is needed to review specific local situations, as there may be significant differences between urban and rural regions and economic development. Even within an urban area, there can be significantly different developments. Conversely, a highly differentiated regional approach could be used to conclude as to which regions are “riskier” than others.

Banks are among the victims of the real estate crisis, but there is also evidence that banks could also contribute to the emergence of the problems. By providing credit, they contribute to the emergence of price bubbles. Banks' credit conditions could be influenced by the development of their existing loan portfolio rather than by the expectations of future fundamentals, and thus the development of real estate prices could influence bank lending. Thus, a positive feedback loop between real estate prices, mortgage loans, and bank profits is demonstrable. Should a real estate bubble burst, the banks are regularly heavily exposed and could suffer high losses.

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