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Section 1. Study of art.

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The mystery hidden in the picture of an unknown artist — was revealed!

Abstract: The artistic fact revealed in relation with the fine art in the Qajar Period occupies an important place in the article. The main factors connecting the aforementioned issue are: the types of photography and painting. Here, the painting work of the artist recognized as “unknown” for the history acts as an object and the photo of Naseraddin Shah Qajar’s wife acts as a subject. I have provided a wide artistic — technical and historical analysis on the subject by conducting comprehensive research work on the claimed fact. At the same time, two material evidences were compared, similar and common features were grounded and a conclusion was made. Note: The investigated research refers to the Qajar Period (XIX century). The nuance (the portrait of an unknown woman) remained hidden for the history of fine art over centuries is studied by me for the first time and revealed through this article.

Keywords: An unknown artist, the great mystery hidden in the picture, Naseraddin Shah Qajar, the enthusiast of photography, the photo of harem woman, the portrait of a woman, Anes Al-Doleh, the work of painting; picture, bare-breasted

The work of an unknown artist created during the rule of Naseraddin Shah Qajar (1848–1896), the fourth Shah of a famous Azeri-turkish dynasty, that reigned in the territory of Iran in 1797–1925, in fact, had kept a big fact hidden for centuries. As a result of artistic — technical and historical investigations, I have witnessed such a great fact that neither this fact has been found in any source in the world of fine art up today, nor there has been someone who investigated and revealed this fact. So, the dark fate of the above mentioned picture which is known as “the work of an unknown artist — the portrait of woman” in the history of art has now ended. Regarding my doctoral thesis on art criticism, while taking an interest in the life and activity of Naseraddin Shah Qajar who considered the fourth ruler of Qajar

State, I tried to reveal his enthusiasm, tastes, interests and personal features. At that time, one of the nuances that mostly draw my attention was Shah’s harem (court ladies, maidservants) and the fact that he was an enthusiast of photo. The opening of a new discovery in the world of art just revealed through those photos...

It is known that an important place was dedicated to the painting type of fine art, including the types of decorative and applied arts during the reign of all Qajar Shahs. In particular, a special importance was given to painting during the rule of Fatali Shah (1797–1834). Famous palace painters of Fatali Shah Qajar were — Mirza Baba and Mehr Ali Mirza that they engraved Shah’s portraits on canvas with technique of oil painting. Such talented palace painters

also operated during the reign of Naseraddin Shah Qajar. It is not a secret that, Naseraddin Shah (1831–1896) was the enthusiast of photography. Taking photo-shoot of the women in his harem became a kind of his hobby. Even, he established a special palace workshop for a photo studio at his palace and most of time, he printed the photos taken by him at that workshop and kept them in an album. Though famous Russian photographer Anton Severyugin was the main palace photographer of Naseraddin Shah, it is necessary to mention local photographers such as Reza, Ahmad, Yusif and Abdollah. There were the photos of some harem women in an intimate form which were taken not by Severyugin, but by the Shah himself. At that time, they were hidden in a very reliable place. Those black and white photos are still preserved in the archive of Golestan Palace where Qajars lived (at the Center of Multimedia Documents).

It became clear to me as a result of research studies that in fact, the most beloved wife of Naseraddin Shah Qajar, Anes Al-Doleh (Fatima Sultan) was described in the painting picture entitled “A young lady with European taste” (oil paint) belonging to an unknown artist referred to the XIX century. The above mentioned work of painting with wooden frame in the dimension of 152×78 cm was most likely created on the order of Naseraddin Shah by presenting the photo of which the author was the Shah himself. It is interesting that two factors, both the picture and the author of the photo are mentioned as “unknown” in the history of art. However, it becomes clear to us from the face of the woman in the photo that she is the Shah’s wife and we came to a conclusion that of course, the author of the photo was Naseraddin Shah himself as the woman’s photo was taken in a position of naked chest. I have seen the above mentioned photo at the Center of Multimedia Documents of Golestan Palace during my investigations. There was written “Anes Al-Doleh” in the Persian alphabet with a black pen in the lower part of the photo. Though Anes Al-Doleh who was Naseraddin Shah’s main woman was a Georgian, but she was born in Mazandaran province of Iran. She was at her early ages in the photo taken in a position of naked chest. It should also be noted that there were several bare

breasted photo of Anes Al-Doleh, not only one and as it was not appropriate for the rules of Islam, it was not allowed to reflect and publish them in the media.

The woman’s head wear and hanging ornaments mounted on it draw the attention in the black — white photo. As well, necklaces on her neck are distinguished by their decorative nature. We see the same details in the picture of unknown artist. Even if we pay attention to the chest decorations of Shah’s wife, we can see a medallion hung on chaplets which there is also a round medallion in the decoration on woman’s chest in the picture. And the ear — rings hung on the woman’s ear whose medallion is described comprise a set with a brooch attached to her hair and some small ornaments in her clothes. The second detail with the highest probability which makes it clear for us that this is really the reflection of Anis Al-Doleh, the most beloved woman of Naseraddin Shah and just was transferred from the above mentioned photo — is the bare reflection of woman’s chest in the picture and the existence of decorations extending to chest and the beads starting from ear and turning around the jaw. We can note in terms of artistic analysis that the bare and small breast of the woman was described in a quite poetic manner in the picture. If we look attentively at the photo, we can see an arch behind the Shah’s wife. The arch of the same type is also found in the background of the woman described in the picture. The manner of sitting of Anes Al-Doleh, her glaze, manner of putting her hands (her left hand is on her right hand) in the photo, the elegant appearance of hands both in the photo and picture, her facial features (her joint eyebrows, eyes, nose and lip), hanging head and neck decorations, the wide bottom part of her skirt form the same compliance and unity with the picture drawn by an unknown artist. Only one different nuance is obvious — the description of the woman’s skirt as long and the woman herself as standing in the picture unlike the photo. The Shah’s wife dressed a wide, short skirt resembling the ballet skirts. This clothing style was characteristic almost for all court ladies of Naseraddin Shah. If we compare both evidences, we can see that there is a thin, lap lane around both of skirts. The shoes worn by them are similar in form, even we wouldn’t be wrong if we say

that they are same. And also, beaded cloth turned upward in the lower ends and arms of open-collar shirt of the woman draws the attention in the photo which the same clothing detail was described by the artist in the picture.

While looking this picture created in the style of Qajar's palace through the eyes of experts, we see that the lower part of the woman's tiered skirt gives the impression of a tulle fabric and straight, shapeless feet are noticed under the thin smear of color. Just as those straight, shapeless feet in the photo of Naseraddin Shah's harem lady. I suppose that this work of painting created by looking at the photo on the personal order of Naseraddin Shah Qajar had undergone several amendments before and after at the request of Shah. For example, painter's description of the woman in the photo not in a seated, but standing position, firstly describing her skirt as short, then hiding the woman's feet behind the long skirt was completely executed by Naseraddin Shah's personal desire. It becomes clear from restoration and expertise points of view that the lower part of the woman's skirt in the description was combines to the upper part as a patch afterwards. So, here, we came to the conclusion that the artist firstly described the woman's skirt as round and short as a ballet skirt, but later, Shah saw it and ordered to extend the skirt thinking that the spectator may know the woman in the picture. Of course, the artist — painter is subject to the customer's demands, in addition, if this customer is a head of the state... I even suppose that the recognition of the author as unknown is due to Naseraddin Shah. To my mind, Naseraddin Shah Qajar didn't want to show his beloved wife to the world in a position of bare breast in the picture and he ordered it only for himself. And it was described as the portrait of the woman "in a style of palace" belonging to an unknown artist. And the reality was known to the artist, Shah and our main character — the woman in the photo, Anes Al-Doleh... By this order, Naseraddin Shah brought an innovation to the fine art of the Qajar's time. As, neither before Naseraddin Shah, nor after him, no any Shah ordered the description of his wife as bare — breasted.

My opinions about the personality of the author of this painting masterpiece are divided into two

groups: either the above mentioned author is male, young artist or the author is a woman ... We can call this author as the first female artist in palace during the history of Qajars that my studies related to this fact still continue. However, both assumptions serve to the fact that the portrait was drawn not from alive subject, but only from photo.

So, my investigations showed that Shah didn't consider it a fault to take the photo of his harem women in a half-naked position and hide them in a reliable manner in the place, for this reason, he took the risk to make the artist to draw the picture of his wife on the canvas. However, he forgot one thing: a giant power like time. Time passed, the shah's era is over, he passed away, after a while, the Qajar dynasty came to an end. Though quite racy photos for that period were preserved and kept in the archive, they didn't evade the eyes of researchers and media. Even the photos of Shah's harem took in a position of bare breast and feet were disseminated among the public.

While coming to the similarity of the picture with its alive instigator, we know that artists are beauty lovers and worshipers of face. If they want, they draw everything beautiful. For this purpose, the author had painted Shah's wife as standing, tall, beautiful and exquisite style to conceal that the bare breasted woman was Naseraddin Shah's wife, and also for Shah's wife to look more pretentious. At the same time, the fruit of the artist's imagination was also added to the woman's clothing description. Although, he both let everybody notice the general image similarity and also hid it with some nuances. Just this approach was one of the first in the Qajar painting, generally, for the Qajar State. It is known that in reference to his individual characteristics, Naseraddin Shah was a person who was fond of making the firsts and owned a European taste.

I consider that this great mystery hidden in the picture was kept secretly for its time. The preservation and keeping secretly the bare — breasted photo of Shah's wife in the archive of the palace and its being hidden, the lack of the signature of the author of the painting work and the photo, not mentioning the identity of the woman described in the picture and the current government being subjected to the rules of Islam justify my thoughts.



“Nasreddin Shah Qajar’s wife —
Anes Al-Doleh’s portrait”. Oil paint;
152x78 cm. XIX century. An unknown artist



“Anes Al-Doleh’s photo”. The Multimedia
Documents Center of Golestan Palace

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Section 2. History and archaeology

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Legal aspects of Russian political agency in the emirate of Bukhara (cross over review)

Abstract: In article the agency in Bukhara is considered questions legal aspects Russian political. Including in article are studied question are connected with appointment of political agents and their office problems

Keywords: The emir, political agency, Karmana, V.I. Ignatyev, the qushbegi, correspondence, the letter, the governor general, the ministry, settlements.

End of the XIX century and the beginning of the XX th century is characterized by establishment of the embassies, diplomatic missions and consulates of the tsarist government in order to arrange relations with the countries of Asian region. After the establishment of Turkestan general governorship in order to enter into the relations with the countries of the region the diplomatic establishments were formed. The tsarist government had obtained the right of having its representatives in the territory of emirate under the agreement which was signed in 1873 [1].

It is worth to mention that until that period the problems and arising between the Bukhara emirate and the Tsarist Russia were settled between the Qushbegi of Bukhara emirate and the representative of the diplomatic unit of the Turkestan general-governorship [2].

The Russian political liaison officer and the clerks of the political liaison office were appointed by the order of the Ministry of foreign affairs (Tsirkulyar po vedomstvu innostrannih del) and their activities were organized according to the rules of the tsarist government [3]. The Russian political liaison office in Bukhara has fulfilled the following activities during its existence.

1. Unlimited and non appellated court activities in criminal cases: 2. Court in civil cases (in this

activity the maintenance of Russian court decisions, sending court calls, the activity linked with prisoners, interrogation), 3. The activity of notary department. 4. Distribution of passports in the framework of the consular activity and the sponsorship for the foreigners. 5. Collection of information about the emirate of Bukhara and Afghanistan in the framework of the activity of diplomatic department. 6. Sponsorship, covering of the Russian commercials and entering into the relations on this issue. 7. As a representative of emperor in emirate of Bukhara (meeting with emir of Bukhara and making observations, the organization of telegrams to the people, the preparation of the list of the people who should be offered gifts and the preparation of orders and IDs, according to the presentation of tsarist administrators the selection of those who will acquire the awards of the emir of Bukhara, the presentation of Russian and foreign citizens to the meeting with the emir of Bukhara). 8. The organization of the relations of various persons, society and establishments with the government of Bukhara. 9. Accordingly to the requirements of the tsarist government disposal of the calculations of the expenditure of the Emirate of Bukhara for the diverse activities. 10. The management of the Russian settlements in the Emirate of Bukhara. 11. The control of the activities of 6 banks operating in Old

Bukhara. 12. The censorship regarding the newspapers published in Bukhara, also of those plays in the scenes of theaters. 13. The control of the fulfillment of the directives of the ministry of Military regarding the displacement of the armed forces in the emirate of Bukhara. 14. The maintenance of the administration in the Russian settlement of New Bukhara, the control over the police, prison and household activity. 15. Direct administration of the Russian-local hospital located in Old Bukhara, women's sanitation unit, Russian-local education sites. 16. The maintenance of the calculation of the expenditure of the assets held in the reserve of the Russian political liaison office in Bukhara and etc.

The ministry of foreign affairs had related in a special way in to the problem of appointing the political liaison officers. Each political liaison officer from his appointment till his discharging had to obey to the typical diplomatic rules [4]. Furthermore, the person who has been appointed as the political liaison officer before entering to fulfil his obligations he had to meet with the group of tsarist and local statesmen and had to obtain from them the information and instruction regarding the situation in the region.

The letter of Minister of foreign affairs N. K. Girs to the governor general of Turkestan A. B. Vrevskiy dating from the May 4, 1890 expresses the statement of the appointment of the P. M. Lessar to the post of Russian political liaison officer in Bukhara and the request for the governor general to assist him. The fact of the acting of P. M. Lessar as political liaison officer is also expressed in the letter of N. K. Girs to the name of the emir of Bukhara dating from the May 2 [5].

The order of changing and dismissal of political liaison officers were only done due to the instructions of the Ministry of foreign affairs. The new appointee to political liaison officer was provided with the two letters of Ministry of foreign affairs. These letters were written according to the official and diplomatic rules, one of them were addressed to the governor-general of Turkestan and the second was addressed to the emir of Bukhara [6].

The letter sent to emir was written in official manner. In the letter of the minister of foreign affairs to the governor-general the main problems

were tackled. In this the requirement of the warning of the political liaison officer of the situation in the region and the policies undertaken in the region were conveyed. We can see the same case in the following event, according to the aftermaths of the instruction of the Ministry of foreign affairs the appointment of political liaison officer P. M. Lessar to the embassy of Russian empire in London, as his replacement the administrator of Asia department, Collegial secretary of sixth grade V. I. Ignatyev to the place of Russian political liaison officer in Bukhara in June 1895 [7].

As any other political liaison officers V. I. Ignatyev has arrived in the Bukhara station and expected the obligation of the political liaison officer, after that he was in the reception of the emir in Karmana. In this meeting the political liaison officer as a supplement to the letter of the ministry of foreign affairs to the governor-general presented the original letter addressed to the emir of Bukhara.

In this case the administrator of the political liaison office in Bukhara has sent to the Turkestan general governorship plan of the requirement of the events to be done by the diplomatic envoy upon entering to fulfil the job of newly appointed political liaison officer [8]. Before entering to fulfil the job political liaison office the following registries were organized: the treasure of political liaison office, the state property in political liaison office, hotel, entry room, kitchen, the room of interpreter, chancellery, and dining room. These registries are formalized during the time of change of political liaison officers by the newly appointed political liaison officer and the administrator of the political liaison office.

New political liaison officer had systematized the bilateral acts which included the documents and belongings, also the registries relating to the diverse aspects of political liaison office. The act consists of the information of the following five types. 1. The money deposits held in the cache of the political liaison office and in the bank accounts. 2. The quantity of post stamps which are used at spending consular fees. 3. The scale of deposit savings. 4. Encrypted codes, stamp, registry and the archive of Russian political liaison office in Bukhara. 5. The registry of state property in political liaison office.

Like the exchange of information between the establishments of diplomatic representations of the tsarist government the Russian political liaison officers also informed the representatives of establishments included into the system of Ministry of foreign affairs of the Russian Empire with the official letters after their appointment. In 1911 political liaison officer A. S. Somov, and L. K. Belyayev who entered to the fulfillment of the job of political liaison officer in February 1914, also informed about their appointment to the consuls of Russia working in foreign countries [9]. Consul and ambassadors in their answer letters to the A. S. Somov and L. K. Belyayev expressed their happiness from the appointment to the job of political liaison officer and willingness to assist with their help in order to conduct diplomatic relations.

The ministry of foreign affairs had followed the policy of periodical changing of the workplaces due to the requirement of diplomatic missions and consulates which are united in its system. This situation is settled according to the consequent directives and instructions of the ministry. The political liaison officers had to inform the emir's administration if such measures occurred.

Thus, Y. Y. Lyutsht in his letter to the qushbegi of Bukhara emirate dating from the July 17, 1910 has informed about his departure to special mission due to

the instruction of the Ministry of foreign affairs and was giving his responsibilities as the administration of the political liaison office to I. I. Reshetov [10]. The qushbegi in his turn had expressed his appreciation for being informed on the issue of the problems arising between the emirate and the political liaison office and on whom they had to refer.

It is worth to mention that, according to the documents the administrator of the Russian political liaison office had informed respectively the representatives of Russian elite in Russian settlements, the director of the State bank in Old and New Bukhara, military administrators of the Karki, Chardjou, Ter-miz about the appointed political liaison officer who was nominated for a certain period of time.

The correspondence of political liaison office with the representatives of emirate, specifically the communication with the chancellery of Qushbegi are serving as the prime source in studying the history of the emirate of Bukhara, but also in the study of the political liaison office holding the paramount place in the system of the ministry of foreign affairs of the tsarist government. Therefore, the plenipotentiary role of political liaison officer and the extent of his activities' structure have ascended him to the level of "unofficial governor" can be spotted from the correspondences.

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Section 3. Pedagogy

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Development of teachers college professional competence as scientific problem

Abstract: In the article it is found out the essence of concepts “competence”, “competency”, “professional competence”; the features of professional competences of teacher of college are certain; the ways of development of every marked competence are presented for development of general professional competence of teachers.

Keywords: Competence, professional competence, competency, college.

Actuality of problem. The process of reforming vocational education creates the need to review approaches to the educational process in colleges and crisis requirements for updating content and timing of training professionals make for optimizing the use of educational resources. In particular, competence studies in accordance with that a specialist must be ready to decide professional tasks become actually, on the basis of the formed fundamental knowledge and abilities, and also the special professional competences. Having regard to that the global market of educational services exists on principles of competition, a problem for modern home trade education a fight becomes for a graduating student that elects those educational establishments and in those countries, where the best terms are offered for studies, in a greater degree modern program's preparations of specialist, that promote his competitiveness at the market of labor. Accordance of maintenance of professional studies becomes an urgent problem, and accordingly — and the formed competences — to the real deserving employment

of graduating students opportunities. As a key figure of converting into educational industry is a teacher, becomes a necessity him permanent aspiration to development of professional competence, professional increase. In an aspect marked the problem of development of professional competence of teachers of colleges becomes actual.

The aim of the article is presented of the actuality of the problem of development of professional competence of teachers of colleges for reformation of the system of trade education.

A problem of development of professional competence of teachers of colleges is multicultural, as embracing the different aspects of influence on a teacher, stipulated by maintenance of educationally-qualifying descriptions of specialist, politics of educational establishment, and also personal reasons and resources for teaching. A scientific problem is meaningful in accordance with the increase of professional level of teachers of fundamental discipline in machine-building colleges, as on a background the wide spectrum of profile special-

ties of this industry fundamental disciplines are presented in each of them in the differentiated enough kind. Thus, teachers of the fundamental disciplines of machine-building colleges must be ready for the permanent search of new methods and forms effective for integration of maintenance of concrete fundamental discipline in the professional in general lines competences of future specialist.

Interpretation of the professional competence of teachers in scientific papers presented at professional efficiency aspects of educational activities (V. Anduschenko V. Vvedensky, I. Zimniaya); professional skills, growth (L. Danilenko V. Grinyova, I. Zyazyun, Volodymyr Oliynyk, I. Prokopenko) globalization and integration into the world educational space (Ovcharuk A., B. Flint, N. Razin); quality assurance (V. Matvienko). Scientists focus on the process of continuous development of professional competence of teachers in system of methodical work at school (Vladimir Oleynik, N. Kravtsov, V. Hellish, T. Sushchenko). A considerable amount of research devoted to the research of professional competence of the teacher training specialists in accordance with different skill levels and profiles: Medical Colleges (S. Buhalska); motor colleges (V. Demidenko).

The special meaningfulness the problem of development of professional competence of teachers acquires in relation to providing to quality of education in the system of colleges, where a necessity to integrate knowledge of subjects of studies in accordance with maintenance of both fundamental and special disciplines is, and also to create terms for motivation of teachers to permanent professional self-perfection. Research of concept "competence" is presented in the labors of V. Lozovoy, A. Hutor-skoy, S. Ulasevich. In particular, scientists determine the integrative competence because its source is the various spheres of culture and human experience [3], its functionality in the process of education and self-development [4], the possession of specific competencies, including personal attitude to them [5]. In understanding the essence of the concept of "competence" and close to it the sense of "competence" rely on the definition compilers National Education Glossary [2], and Alexander Tishchenko

and K. Yurieva [6], which distinguish the difference between these concepts.

Having regard to that the terms of vital functions of man are determined by changeability, and profession, as one of her most meaningful constituents is one of the spheres of self-realization, notice on a personality necessity to answer the requirements of the profession, maintenance and the forms of that also renovate in accordance with vital changes. Confirm the opinion, for example, by integration in our life of the computer systems, without abilities of the use not a single profession can exist that, thus, those specialists that made off educational establishments to the era of computerization must independently purchase a computer competence. Thus, we determine the importance of professional in any industrial continuous development of professional competence. In terms of college this problem is updated according to the isolation of competence to be updated in order for teachers with their professional education standards meet the new requirements of the labor market needs of students and others. Having regard to modern requirements to personality of the teacher, can define basic professional competencies updating of that affects the general professional competence. Yes, consider that most dynamic is an *informative competence* that allows for the teacher to carry out an educational process in accordance with the modern tendencies of science. Development of this competence can be carried out through activity of interest of teacher to professionally-scientific information, sourcing initiative in the process of the professional co-operating with colleagues, working of different informing resources. For modernization of going the technological competence of a teacher that needs development also, acquires near the comfort of studies of students of actuality, as modern students need the differentiated organization of educational process that would give an opportunity to combine studies and labor. Herein leans in opinion of V. Grinyova, that considers a modern necessity the correction of requirements to the necessity of the personal presence of students on employments. Such personal position a scientist bind to the experimentally well-proven efficiency

to realization of different types of the controlled from distance education in the educational process of high school, and also by the application of her elements in the higher forms of general schooling [1]. Important for support of professional level of teacher of college is him *methodical competence* that must develop also, in particular through bringing in of teachers to innovative activity, their activation in relation to the processes of presentation of own achievements and experience, in-plant training. Having regard to that one of the tasks of the methodical system of colleges there is an input of educational industry standards in an educational process, the questions of determination of ways of forming of professional competences become actual for students that certainly by the major strategic reference-point of formation of the future. In the aspect of it see development of professional competence of teacher of college as an aspiration to the creation of new integrated on maintenance the on-line tutorials directed to form the concrete professional competencies of future specialists. Such programs are created by interdisciplinary connections will allow in a greater degree effectively to use the educational resources (time, audience fund, wage-fund) of college. In addition, pedagogical and methodical mastery that confirms their professional level develops for the teachers-authors of courses. An important value is acquired here by the orientation of cyclic methodical commissions on the use of the integrated approach in the process of correction of maintenance of disciplinary courses, selection of important for professional competences graduating students of elements in every edu-

cational discipline, passing ahead consideration of questions of methodology of study of difficult divisions of on-line tutorials with realization of open model employments, forming for the teachers of new look to presentation of scientific positions of the discipline. Development is required also by the competences of teacher of college that find out his possibility to organize the comfort of studies of students: psychologically-pedagogical and communicative-organizational. Understand a Psychologically-pedagogical competence as a willingness of teacher of college to take into account the psychological factors of development of personality in an educational process and apply this knowledge within the limits of lining up strategy of pedagogical influence and support of student. Efficiency of development of this competence depends on the motivation of the teacher to effectiveness of own labor. Communication-organizational competence as the totality of the abilities of the teacher to organize and carry out the effective professional intermingling with students and in the interests of students (help to the students through organization of professional connections to get confession in a professional environment) must develop through aspiration of teachers to activity of professional behavior, system of encouragements and stimulation in the processes of professional self-perfection.

Thus, a problem of development of professional competence of teachers of colleges is actually for reformation of the system of trade, education, and her decision must assist the effective integration of the Ukrainian colleges in the system of trade education of the countries of Europe and the USA.

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The development of information-educational environment (IEE) in the regions of Russia

Abstract: The processes of innovation, their improvement through the implementation of new educational technologies are actual in modern education. Innovative technologies in education are associated with the organization of the educational process. The information educational system is discussed in the article.

Keywords: innovative continuous system of education, continuing education, modern information and communication technologies in education, information educational environment, electronic educational resources.

The processes of innovation, their improvement through the implementation of new educational technologies are actual in modern education. Innovative technologies in education are associated with the organization of the educational process and characterized by the assimilation the greatest amount of knowledge, enhancing the creative activity of students.

Modernization of the higher education system necessitates the search for new approaches and integrated approach in the educational process.

In the Concept of the Federal target program of education development 2016–2020 years approved by the decree of the Government of the Russian Fed-

eration on December 29, 2014 № 2765-p for listing the basic directions of realization of the program is written that "one of the most important problems of modern education is the process of required application of information and communication technologies in the educational activities and learning process for all types and at all levels of education. Today, higher education institutions have access to high-speed telecommunications Internet network. This, in turn, provides access to a single information database of knowledge to a single system of educational resources, digital libraries, and many other electronic information sources. At the same time, it should be noted that it is not a unified holistic

e-learning environment, which is an important factor in improving the quality of education. It is also necessary to improve the quality of existing public education resources, develop new directions and forms of education” [1].

In the conditions of informatization of education the development of both traditional theories of learning (active approach to learning, personality-oriented learning, problem-based learning, programmed instruction, algorithmization learning) and distance learning, “e-learning”, project-based learning method occurs.

Today the Internet offers great opportunities for the introduction of technology to build training courses with unlimited possibilities, suggesting the creation of high-performance systems that meet the most strict inquiry in needs of education. Interactive multimedia tools help to improve the effectiveness of training and high-tech means of collecting, storing and analyzing of information contribute to the effective control of the learning process [1–3]. Such forms contribute to the development of self-learning and self-managing skills, which leads to the democratization and humanization of the educational process.

The use of interactive multimedia learning systems enhances the dynamics and quality of the learning activities, the process of their implementation, as well as self-control of learning success. At this stage, interactive electronic educational-methodical complexes are an important tool for individual work of students; however, one can expect great results from the use of multimedia training systems both separately and in combination with traditional forms of learning. Innovative training complex focused on the acquisition of common cultural and professional competencies that enable to acquire knowledge as required independently.

The basis of the modern educational system is the high-quality information educational environment, in which the use of new information technologies should contribute to the solution of pedagogical problems.

The open education systems need to create an environment capable to integrate resources of various automated educational systems. It is known as the information educational system of open education. Educational systems of departments, faculties,

schools, training areas (specialties) can act as the AES (automated educational systems) in the higher education system.

Information resources of educational portals include not only educational and training materials, but the information about the structure and functions of educational institutions, information on the conditions of the educational services, professors, teaching staff and researchers, the electronic publication of books, academic articles, theses, information on the scientific and methodological conferences and seminars, and others.

The use of modern educational technology for teaching requires electronic educational resources (EER) for each discipline. The structure of the EER includes: instruction for students and teachers; teaching materials (theoretical course, practical course, laboratory practice, teaching materials, self-control materials, tests, examination tickets, additional materials, links to specialized periodical).

To e-learning materials are applied both traditional:

- completeness of the presentation in accordance with the direction standard;
- availability of presentation;
- scientific content;
- the logic and consistency of presentation and specific requirements.

In the case of distance learning technologies, the most popular educational technologies are case technology, Internet technology and telecommunications technology. Here the students are offered the EER as a specialized case studies of teaching materials, the purpose of which is to study in standalone mode using different types of media.

In modern conditions of informatization and education rates, implementing educational programs by EE, DET, expert should be not only the organizers of the training process, but also be able to build the content of the training sessions. In addition, it is necessary to create the educational activity monitoring system for students; this requires an individual approach, the use of modern methods and forms of learning and engaging e-learning resource.

University lecturer is both the author originator of the content of teaching materials in electronic

form, the developer of the technical component of their own EER and organizer-coordinator of the learning process, during which the distributed access to the bases of distance education systems occurs. The positive effect of this process is that the teacher is constantly improving taught courses, increasing creativity and his/her skills.

On the basis of intensive introduction of innovative distance learning there is a creation of a competing market of educational services. Which is important, because one of the problems of distance education is to provide high quality educational products educational services consumers in the peripheral as well as in the mountainous regions. For this purpose, it is necessary to expand continuously and improve the quality of distance education. Its form and content should meet the main requirements: the availability and

democratic education, eliminating all forms of discrimination in education. At the same time, another important requirement is that the education system of modern society should be respected: the continuity of education of citizens throughout life, i. e., "lifelong education".

Thus, the significance of modern education technology is the lesson aimed on the potential of the student, to exercise his artistic and scientific interests, to increase the role of independent work and responsibility for the growth of academic activities. Such approaches provide the basis of purposeful formation of students' professional holistic thinking as a basis for their future professional activity.

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Development of the art experience of teenagers by the ways of art synthesis

Abstract: In this article author interprets the problem of development of the art experience of young teens at the lesson of music, the effective methods of solving of the problem, which are based on synthesis of different art's kinds.

Keywords: the art's experience, young teens, synthesis of arts.

Art is able to transmit the spiritual experience of humanity in its figurative and emotional form. The source of initial art impressions is communication of a child with surrounding world, in family, institutions of a preschool and elementary education. In this way, a child has a certain art's experience in teen's age. Unfortunately, when there is no purposeful educational work (and in educational institutions) the art preference of children develop spontaneously. More often it happens within different form of mass culture, which doesn't have high art level. The urgency of this problem is based on contradiction. On one hand — we can see growing spontaneous impact of mass-media, factors of surrounding cultural environment on consciousness of teenager, on the other hand — we can observe the absence of purposeful educational work for forming art experience of teens at the lessons of music. The author of article proposes to solve this problem in searching of the methods, which can positively impact on development of art's experience of teens at the lessons of music in secondary school.

Firstly we need to turn to solving this problem in research's articles and publications. The problem of different aspects of problem art-esthetical experience of a personality was interested for such foreign and Russian researchers as B. V. Asafiev, A. N. Leontiev, B. M. Teplov and others. [1; 2; 3; 8]. At the same time there is no the single point of view for understanding the term "the art's experience of a personality".

Digtyar N. N. considers the art's experience as personal formation, special kind of esthetical experience, the result of art-esthetical activity of a personality, which forms the spiritual-practical nature of a person [3]. The author defines following constituents of art's experience: existence of art's interests of a personality; development of emotional and sensual sphere; value relation to pieces of art; art knowledge, skills; the experience of a creative activity.

On a Gorbunova M. A.'s opinion, the art's experience is dynamically developing unity of figurative and sensual property of personality (esthetical perception, esthetical relation, feelings and emotions), skills, and positive relation to the art in the result of direct interaction with the world of art creativity [2].

According to analyze of different definitions of the term "the art experience" with its constituents, the author can clarified the term "the art experience of teens" which can be treated as a developing personal formation, which is based on unity of art knowledge about different kinds of art, emotional tenderness by their perception, wish to communicate with works of arts and positively relate to their value. According to refined definition and constituents of art experience, the author identified its components: informative, figurative and sensual, evaluative and creative.

Different kinds of arts and their synthesis impact on the development of art experience of a personality. We can see this statement in scientific works by researchers, teachers, who emphasize the importance of multi-art approach in personality development. (E. P. Kabakova, L. G. Savenkova, N. G. Tagilceva, B. P. Usov) [6; 7]. A lot of teachers-musicians work on integrative classes which are based on synthesis of arts for development of different qualities of children and teens at the musical lessons and musical classes. (N. V. Bivsheva, E. S. Dolgopolova, I. V. Mazina, O. M. Sergeeva) [2]. However, the purpose of musical classes is not connected with the development of right art experience; this is why the methodical bases for purposeful solving this problem aren't researched enough.

The process of the development of the art experience of teens shall be justified according age psychological features of children of this age, which impact on this process. Also we need to pay attention to essence of the definition "synthesis of arts" which is treated by most of authors as mutual contact and influence of various kinds of art to each other in the process of their historical development.

Such age features of young teens as motivation to self-expression, including the need of verbal expression of their feelings, open-mindedness, motivation to independence impact on the development of their art experience [4; 5]. Communication as a lead type of activity in this age, plays determining role. Communication with different kinds of arts at the lessons of music can positively impact on the development of art experience of teen, i. e. on development his (her) sphere of values by identifying the basic meaning and

universal values which are inherited in the various works of art; on the development of creative industries students because of their expression in creating artistic and creative products; for the development of figurative and sensual spheres through perception, comparison and analysis of different kinds of art; on the development of cognitive sphere of teenagers through the acquisition of knowledge about the different kinds of art, their specifics, history and others.

For developing of art experience of teens at the lessons of music, the author revealed methods which have a positive influence on development of specific components of this kind of experience, which was talked about before. For developing of cognitive component we can call the vocabulary enrichment method, the method of using of other kinds of arts for characteristic of epoch, time of creation of music, testing method and the test development method. For developing figurative and sensual component we can call following methods — the method of emotional “setting”, the method of “musical graphic”, the method of comparison of art images of different kinds of arts. For developing component of values of art experience of teens we can use such methods as heuristic work with the plot, comparative analyze of two (or more) arts in one art work. For developing of creative component we used such methods as video-method, the method of collage, the method of comparison of sound and colour.

Turn to description of some methods and features of their using through creative tasks for teens.

For example, the method of heuristic work with the plot of some art work, which we use for developing of component of values of art experience. This method promotes expansion of personal numbers of subjects and images of teens, It forms their own values. For its implementation we need setting to the perception of art work and “growing” plots in children variants and improvisations.

Implementation of this method can take two stages: first — perception of art, its main idea and value. After that children get a task to create a plot, tale, continuation of the plot. The second stage — children show this plot as theatricality.

For developing creative component of art experience we can describe the methods of video and collage.

The method of video suggests dynamic change images on the screen with a music sound's background. It allows to join together musical intonations and visual images. Teacher needs to have professionally made videos on some musical works or videos about some composers or performers in his record library. Implementation of this method can take two stages: firstly teacher shows the video, which is based on different kinds of arts, and after that children make video on the same musical work themselves. They chose works of architecture, paintings, portraits, reproductions of ballet which are actual to music. It's important if children can feel unity of musical and visual images.

The method of collage is the projective method and represents intelligent design of a visual image of a set of details on the proposed explorer theme. The author — P. Picasso. Implementation of this method can be performed in two variants. First — children get a subject “synthesis of arts” and they chose the slides from different art work which are united by one subject (for example Human's relationships in art”). The plot must be seen in these slides.

In general, the author can say that methods which are based on art synthesis allow to develop art experience of teens, i. e. to percept and analyze, compare images in different kinds of art, make image of personages in one kind of art deeper thankfully additional associations from other kind of art, and motivate to create their own images in art-creative products.

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Section 4. Political science

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The American-Chinese “Cold Economic” War

Abstract: the article is devoted to American-Chinese relationships in trade and investment spheres. There are comparisons of huge American and China’s trade blocks (such as One Belt, One Road vs. TPP and TTIP). Conclusions of the article are made in long-term prospects.

Keyword: China, the USA, trade blocks, TPP, TTIP, One Belt, One Road (OBOR), AIIB.

Today we are witnessing some new Cold War which takes place in American-Chinese relationships. In contrast to former Cold War (between the US and USSR) the current global confrontation is focused on issues of the international trade, not an arms race. Chinese government (unlike Soviet leaders) doesn’t create any alternative system — it plays according to Western rules.

China’s economy is one of the most powerful in the modern world. Moreover, it’s connected with American economy very tightly. Thus a possibility of a direct war conflict between China and the US is almost out of the question. Therefore both sides wage the non-military war in economic sphere on the territories of other countries. The unions of American and Chinese allies have the shape of new trade blocks.

The Asia-Pacific region has comprehensive, not only economic importance for both competing sides. China is located here; the US considers the region as a sphere of its integral national interests. Moreover, in his article published this May in *Washington Post* Barack Obama said that “Today, some of our greatest economic opportunities abroad are in the Asia-Pacific region, which is on its way to becoming the most populous and lucrative market on the planet” [1]. Thus creation of a new trade block close by its strongest economic rival is of utmost importance to Americans. As a result, the US-led Trans-Pacific Partnership (TPP), a trade agreement which

united twelve Pacific Rim countries, was signed on 4 February 2016 in Auckland, New Zealand [2]. The signatories are the US, Canada, Australia, Japan, Singapore, Malaysia, New Zealand, Peru, Mexico, Chile, Vietnam and Brunei. The countries were moving towards the agreement during the past seven years, that means the negotiations were neither easy for the US, nor for any other country of the deal.

In the same article Mr. Obama also said that, “This past week, China and 15 other nations met in Australia with a goal of getting their deal, the Regional Comprehensive Economic Partnership, done before the end of this year” [1]. It means that China makes efforts towards some cooperation between its neighbors. It’s notable that the core of the trade block consists of ASEAN-associated countries (Vietnam, Singapore, Malaysia, Brunei, Myanmar, Thailand, Philippines, Indonesia, Laos and Cambodia). Japan, South Korea, Australia, New Zealand, India and China are also members of RCEP [3]. It means that some countries try to play on both play fields. However, at the same time five other regional countries (South Korea, Philippines, Thailand, Indonesia and Taiwan) made open statements about their wish to join to TPP [4].

These facts mean that both sides make efforts to push their interests in the region. But these actions and counteractions of China and the US can be characterized as a “soft interosculation”. Neither the US,

nor China have warm sentiments to each other. But they are compelled to coexist in the Asian-Pacific region in the state of “neither war, nor peace”. Contradictions between the US and China remain significant, but no side wants to provoke another to make any sharp moves for fear of a blow back, connected with the tight interaction between their economies. Moreover, at least by word of mouth the US in the person of John Kerry, the current Secretary of State, invites China to join TPP [5].

But at the same time in the conclusion of his article the President of America marked that “The world changed. The rules are changing with it. The United States, not countries like China, should write them” [1]. However, this statement was gently characterized by the Chinese side as “very ambitious but unlikely to be fulfilled”. The deputy of the Chinese Ministry of Foreign Affairs also said that the TPP and RCEP could become complementary structures in the Asia-Pacific region [6]. It also confirms a thesis about the avoidance of harsh steps.

This contradiction can be estimated as teasing the competitor which tries to choke you to death in a hug. On the one hand, the US is forced to be careful with China. But on the other hand, it must demonstrate force and confidence in the international community’s opinion.

But the Asia-Pacific region isn’t the only battleground of the current American-Chinese economic war. They also fight in Africa [7] and this struggle deserves a separate consideration. But another Chinese project presents the highest threat to the American global dominance. It’s the One Belt, One Road (OBOR) initiative. It was suggested by the Chinese President Xi Jinping for the first time in 2013 during his official visit to Kazakhstan [8] and became the official conception in 2015.

The project consists of two parts: the oceangoing Maritime Silk Road (MSR) and the land-based Silk Road Economic Belt (SREB) [9]. The main goal of the deals is to unite Asian continental countries (first of all China’s nearest neighbors, such as Kazakhstan, Russia, India, Pakistan and Iran) on the basis of economic cooperation and trade and investments partnership. The OBOR project is very important to Beijing’s strategists because they need to

raise economies of the internal continental Chinese provinces which are very poor (especially in comparison with rich Chinese seaside region). They will try to stimulate domestic demands in China in that way and, at the same time, to strengthen their political and geostrategical influence in the Heartland.

The project has great scale and prospects. It can unite a lot of Asian countries and Chinese leaders have established financial institutions for maintaining and strengthening the OBOR: the Silk Road Fund [10] and Asian Infrastructure Investment Bank (AIIB) [11]. Moreover, some European countries (such as the United Kingdom, Germany and France) also became cofounders of AIIB [12]. It means that this China-initiated Bank has found global scale.

The facts make a threat to American global dominance. However, the economic union of Asian nations is not the worst for the US. The worst for it, in the long-term, is the final aim of the OBOR — the UN markets.

At the same time American government is trying to conclude Transatlantic Trade and Investment Partnership (TTIP) treaty with the leaders of the UN. This means conforming to American interests which lie in closing of European economics from their Chinese, Russian and Turkish partners to strengthen American economy, as well as political influence in Europe. And current penalties against Russia also consent to this aim.

But concerns over TTIP are rising in Europe. Lots of people are discontented by the treaty because according to TTIP conditions European high standards in spheres of the environment and food safety must be moderated in favor of big American business [13]. In light of this and other reasons Britain has declared its exit from the UN [14].

Thus, current confrontation between the US and China has global scale and concerns a lot of countries in the world, both in Asia and Europe. Herewith American initiatives (especially in regard to Europe) face obstacles represented by the European lobbies and public opinions. Although in the current conditions the position of the US is stronger than that of China, in the long-term prospect China has advantage because of the fact that the US have so far not taken effective economic containment measures

against its most dangerous economical competitor. At the same time China creates new effective regional economic integration mechanisms, which are interesting not only for its nearest neighbors but for European countries too. This state of affairs is a

serious challenge for American dominance — the most serious from the collapse of the USSR and the end of the previous cold war. If the current trends don't change, now time for a new system of international relations will come.

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Section 5. Sociology

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Social capital as the factor of societal transformations in post-communist societies

Abstract: paper deals with the analysis of the impact of social capital on the democratic transition in countries of post-Soviet Eurasia. Social capital is considered as a multidimensional concept with generalized trust, interpersonal trust, confidence in social and political institutions, organizational membership and social norms considered as its main components. The data used for the analysis comprises from the World Values Survey wave 6 (2010–2014), with Armenia, Azerbaijan, Belarus, Georgia, Moldova, Kazakhstan, Kyrgyzstan, Russia, Ukraine and Uzbekistan being included into the analysis. Multivariate analysis is used to define the domains of life and spheres of public life which are affected by social capital.

Keywords: social capital, generalized trust, institutional trust, post-Communist transformations

Since the last three decades, social capital as the theoretical concept and the subject of empirical research has been possessing one of the central places in social science. According to the definition of the World Bank, “social capital brings together institutions, relationships and norms that shape the quality and quantity of social interactions in the society” [1]. Increasing interest to the concept of social capital is linked to its claimed extensive potential in explaining phenomena and processes of social life: a number of studies have confirmed importance of social cohesion for country’s sustainable socio-economic development [2, 4]. Social capital has received special attention due to its significant impact on the economic perfor-

mance and development of the national economy system [3]. Social capital enhances political involvement of citizens and facilitates implementation of collective action within the communities as well as contributes to a more effective cooperation of actors of the political system [5]. Some studies have proved the positive effect of social capital to reduce crime and to improve the health of community members [6].

The aim of this paper is to analyze the level of social capital in Belarus, Ukraine, Georgia and Russia, Moldova and other CIS countries and to study the effects of different forms of social capital for the development of societies in transition, in particular their economic and political system.

The idea of social capital goes back to the concepts of economists Adam Smith, David Ricardo, Karl Marx as well as sociological and political theories of A. de Tocqueville, Emile Durkheim, Max Weber, Georg Simmel. Development of “social capital” as an independent and coherent sociological concept started in Western sociology in the 1980s in the works of Pierre Bourdieu. Subsequently, the concept of social capital has received a complete review in the works of J. Coleman, R. Putnam, and F. Fukuyama. The works of these “classics” of social capital theory inspired further development of this concept by J. Sensenbrenner, S. Knack, P. Keefer, M. Woolcock and others. Sources of social capital are discussed in detail in the works of A. Portes. The greatest contribution to the study of the structural nature of social capital has been made by M. Grannovetter, R. Burt, N. Lin who represent the network analysis tradition. Essential contribution to the analysis of social capital and its effects for national development in post-Soviet countries has been made by R. Rose and C. Haerpfer who analysed the influence of social capital on social and political transformations, public health and population well-being [7].

Analyzing social capital in transitional societies, and R. Rose and C. Herpfer noted that Communist system encouraged creation of informal networks and connections between people which at the same time served as a mechanism to substitute functions of formal institutions [8]. The legacy of the communist system for the social capital development in post-Soviet societies was proved to be dual. On one hand, it facilitated establishment of high levels of interpersonal trust and extensive horizontal networks. On the other hand, the level of confidence in formal institutions, especially those represented by public and state bodies, remained very low, which negatively affected development of formal social capital in the CIS countries in the era of independence.

Period of reforms in post-Soviet countries in the 1990s also had an ambiguous impact on the level of social capital in these societies. Specific feature of the post-Communist transition is in its threefold nature: this was not only political transformation of the totalitarian regime into a pluralistic democ-

racy, but also transformation of the state-planned economy into the free market economy, as well as the transformation of the authoritarian societal system into a civil society with free associations. The period of transition, accompanied by a series of social, economic and political crises, contributed to a greater individualization and isolation of individuals which also prevented development of trust and social capital.

In the current research *social capital* is defined by the authors as a set of qualitative characteristics — norms, regulations, social networks and trust — that increase the effectiveness of social interaction and social exchange. Like other forms of capital (cultural, financial), social capital is a cumulative resource: the emergence of these characteristics is associated with the historical and cultural development of the society. Positive dynamics in the level of social capital is associated with establishment of new or modification of existing social norms, change in the level of confidence in social and political institutions, emergence of new types of free associations.

Current research is considering various forms of social capital differentiating between *bonding* and *bridging* social capital as well as *formal* and *informal* social capital. Informal social capital refers to the degree of attachment (or inclusion) to the social environment of the individual and is determined by the size and density of social networks (the existence and nature of the relationship) and the level of interpersonal trust (trust in a narrow circle of family, friends and personal acquaintances). At the group level, informal social capital characterizes the degree of cohesion of the group. Formal or vertical social capital is characterized by inclusion of the individual or a group into the broader social context — social structure of the society, and is determined by the level of institutional trust, membership in organizations and free associations, acceptance of existing group or community social norms. Two forms of social capital — interpersonal trust and membership in organizations — are borderline forms and can be attributed to both the formal and informal social capital. The determining factors in this case will be the semantic loading which is imposed on the category of trust, as well

as membership in organizations (entirely voluntary, mandatory or actively encourage the norms of public morality).

Main analytical method applied is multivariate analysis which allows to study the effects of different forms of social capital for societal development. Social capital is considered as a multidimensional phenomenon; a set of indicators is developed to measure its different components (*independent variables*): generalized trust; interpersonal trust to inner circle; interpersonal trust to outer circle; confidence in social institutions; confidence in political institutions; organizational membership; social norms. As *dependent variables*, we will use a set of indicators from the 6th wave of the WVS that characterize political, economic and social development of countries in the opinion of their population: level of happiness; subjective life satisfaction; self-reported health status; economic well-being; constitutional state; democratic political system in the country; civic participation of the population; as well as some objective indicators: GDP per capita (World Bank); Government Effectiveness (Worldwide Governance Indicators); Control of corruption (Worldwide Governance Indicators).

Main findings of the analysis indicate that informal or bonding social capital is prevailing in post-soviet societies. The levels of trust towards family members, neighbors and members of the community (3.2–3.3 on a 4-point scale) are much higher than trust towards strangers (1.8–2.1 on a 4-point scale) and institutional trust (2.3–2.6 on average on a 4-point scale). Higher level of trusts towards family and community members is a trend relevant for many world regions, however, the big gap in trust towards the inner-circle and generalized trust to people is a specific feature of the post-Soviet culture. This contributes to higher social cohesion of communities and small social groups, however, obstructs development of formal or bridging social capital

which is important for development of the solid societal system. It is proved that organizations and associations representing interests of citizens and therefore occupying the “intermediate” level in the society between the citizens and the government, are very weak and the so-called effect of “hourglass society”, as described by R. Rose and C. Haerpfer, continues to exist in post-Soviet societies nowadays.

Informal social capital has positive correlation with population life satisfaction (.044) and the feeling of happiness (.058); it also contributes to conventional political participation of citizens (.098). At the same time, the negative impact of stronger informal networks and community cohesion in post-Soviet societies is observed for the GDP growth (–.137) and development of the constitutional state (–.034) and could be explained as the consequence of still existing practice when informal social networks are used to substitute or facilitate public services. Generalized trust the opposite has positive correlation with GDP level (.127), control over corruption (.115) and efficiency of government work (.181). Institutional trust has the biggest impact on development of the constitutional state (.402) and democratic government (.421). Influence of social capital on economic development in post-Soviet societies, comparing to the developed western economies, is much lower.

Inclusion into formal networks, non-governmental organizations and free associations, has a positive correlation and therefore positive contribution to the most domains of individual's life: the level of income (.099), happiness (.071), life satisfaction (.063), health (.056). At the societal level, there is a positive correlation between organizational membership and establishment of the constitutional state (.037), democratic government (.030). Organizational membership has positive correlation with unconventional political participation (.125) which is important for development of civic culture and democratic political system.

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Section 6. Philology and linguistics

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The unequal power structure between Holmes and Watson in “The Final Problem”

Abstract: The aim of this paper is to investigate the mutual relationship between Sherlock Holmes and Doctor Watson in “The Final Problem” in order to prove that the former takes the dominant position over the latter which results in serious misunderstanding of Sherlock’s intentions on Watson’s part. The study focuses on the psychological perspective of their conversations showing that the uneven power structure between the two can be explained in the light of Grice’s Maxims and Cesare Lombroso’s crime theory.

Keywords: the Gricean Maxims, crime psychology, Sherlock Holmes, communication.

“The Final Problem” written in 1893 was originally planned to be the very last story featuring Sherlock Holmes. Sir Arthur Conan Doyle had intended to finally kill Holmes so that it would allow to “save my mind for better things” [3, 300]. He felt that he — as an author, at least — had been making a massive step in the wrong direction and his development as a writer had been non-existent and stagnant. However, knowing that killing the hero who single-handedly took his popularity to new heights would result in him receiving heavy backlash from outraged readers, he let Holmes die a winner, having killed “The Napoleon of crime”, the infamous professor Moriarty. The Moriarty conundrum has long been discussed among researchers; aside “The Final Problem”, he makes only one other appearance in the series: “The Valley of Fear” written after “The Final Problem”, although the action takes place before the events in the aforementioned story. Moriarty is also occasionally mentioned in five different stories, but he does not make a direct appearance in any of them. This rather oblique and vague portrayal of Holmes’ arch rival has resulted in a plethora of theories concerning the real identity of Moriarty. In this paper we shall return to one of them, but the main goal

of this essay is to examine the relationship between Holmes and Watson on the basis of social psychology. I will refer to some concepts of this particular branch of psychology in order to explain Watson’s lack of trustworthiness in connection with the idea of hierarchy in groups. In this paper I will also try to outline the instances in the story when Watson and his narrative are deeply flawed as far as objectivity is concerned. Moreover, I will prove that Doyle portrayed Watson as an unreliable narrator in order to make Holmes’ return in “The Adventure of an Empty House” more credible.

“The Final Problem” is, as the vast majority of the original canon stories, narrated by Watson. He begins his recollection by admitting that he had never really intended to have written the story. It was only due to, presumably, false accusations which were detrimental to Holmes’ legacy and, on a more personal note, were hurtful to Watson himself as Sherlock’s apprentice and friend. In fact, he even feels forced to do so:

It is with a heavy heart that I take up my pen to write these the last words in which I shall ever record the singular gifts by which my friend Mr. Sherlock Holmes was distinguished. (...) It was my intention

to have stopped there, and to have said nothing of that event which has created a void in my life which the lapse of two years has done little to fill. My hand has been forced, however, by the recent letters in which Colonel James Moriarty defends the memory of his brother, and I have no choice but to lay the facts before the public exactly as they occurred. I alone know the absolute truth of the matter, and I am satisfied that the time has come when on good purpose is to be served by its suppression [1, 469].

Moreover, Watson willingly and voluntarily admits that he was deeply and cordially attached to Holmes. Such expressions and phrases as "a heavy heart", or "the very intimate relations which had existed between Holmes and me" [1, 469] doubtlessly show that Watson did carry an emotional charge for him, and hence his reminiscence seems incoherent and somewhat tainted by the personal attachment with Holmes.

After giving reasons why he decided to share his thoughts with the public, Watson flashbacks to the evening of April 24th when he recalls one of his last encounters with Holmes. They engaged in lengthy conversation during which Holmes violates some of the Gricean Maxims. In 1975, Paul Grice established the cooperative principle which may be divided into these four maxims:

The Maxim of Quantity: make your contribution as informative as is necessary;

The Maxim of Quality: make your contribution one that is true; be truthful;

The Maxim of Relevance: give the appropriate type of information;

The Maxim of Manner: be clear and unambiguous [2, 46].

The flouting of the Maxim of Relevance seems to be taking place at the very beginning of their interaction:

"You are afraid of something?" I asked.

«Well, I am.»

«Of what?»

«Of air-guns.»

«My dear Holmes, what do you mean?»

«I think that you know me well enough, Watson, to understand that I am by no means a nervous man. At the same time, it is stupidity rather than courage

to refuse to recognize danger when it is close upon you. Might I trouble you for a match? [1, 469–470]

The questions asked by Watson are not answered sufficiently, as he is clearly confused by Holmes' equivocal answers. Not only does Holmes manage to disorient his partner, but he also manages to completely and flippantly change the topic of their dispute. We are inclined to believe that by replying "Of air-guns" to Watson asking him whether he was afraid of something Sherlock does not behave in accordance with the Maxim of Manner. Furthermore when Watson wants Holmes to elaborate on his seemingly inappropriate statement Sherlock once again avoids answering it directly and blatantly shows he is not interested in giving a proper response. Stating that Holmes is not a nervous man is by no means helpful in keeping the conversation going. Rather, it completely derails the original topic. Here we are of the opinion that Holmes did not obey the Maxim of Quantity and Relevance. And this was not a single occurrence, as a very similar sequence is presented shortly afterwards:

«I must apologize for calling so late,» said he, «and I must further beg you to be so unconventional as to allow me to leave your house presently by scrambling over your back garden wall:

«But what does it all mean?» I asked [1, 470].

These unclear innuendos and understatements have a considerable amount of impact on Watson's actions and way of thinking. He might know what the goal is, but the means of achieving it is a case of *ignotum per ignotius*. According to Raven and Rietsema [7, 189–190]), group objectives and the ways of their realization ought to be stated as unambiguously as possible, otherwise it poses a threat to its members, especially those of lower position.

The subjects of Raven and Rietsema's experiment were said to have felt uncomfortably when they were not successful in their assignments. We do encounter an instance of it when Watson is surprised by Holmes' confronting him disguised as an Italian priest:

I turned in uncontrollable astonishment. The aged ecclesiastic had turned his face towards me. For an instant the wrinkles were smoothed away, the nose drew away from the chin, the lower lip ceased to

protrude and the mouth to mumble, the dull eyes regained their fire, the drooping figure expanded. The next the whole frame collapsed again and Holmes had gone as quickly as he had come.

“Good heavens!” I cried; “how you startled me!” [1, 475]

Watson did not recognize his partner and, admittedly, he is not given enough information by Sherlock to be well-versed in his plans. Watson was unaware of the fact that Holmes would test him in such a peculiar way. Sherlock explains that he did that because “every precaution is still necessary”. Once again he resorts to ambiguity as Watson is immensely confused at this statement, which is yet another violation of the second maxim. Furthermore, an individual not being properly acquainted with ways of solving a group task can result in serious detriment with regards to his effectiveness in doing so. Not only is Doctor not familiar with Holmes’ plans, but also he is openly discouraged by Sherlock to continue interfering with what appears to be a deathly duel between Holmes and Moriarty:

I think that you had better return to England, Watson.”

“Why?”

“Because you will find me a dangerous companion now [1, 477].

Watson is portrayed here as a person whose position in social hierarchy is not on par with the remaining two. He does not oppose to that suggestion, knowing that if the leader implies he is not able to help him, he would be nothing more than a mere obstacle. Using the forenamed terminology we might state that his social prestige is below that characterizing Holmes and Moriarty, whom Watson considers to be Sherlock’s equal. How is that achieved? One can say that Doyle portrays Professor Moriarty in accordance with Cesare Lombroso’s concept of anthropological criminology. Lombroso implies that there is a thin line between genius and insanity, stating that the bulk of artists, philosophers or writers were victims of major defects as far as physiognomy is concerned. In his primary work, *The Man of Genius*, he lists such renowned personas as Schopenhauer, Comte, Schumann, Monti, or Swift [3, 7]. While he states that not every genius is a criminal

as a rule (and vice versa), he also explains why the presence of genius is not mutually exclusive with being deranged. In accordance with Lombroso theses, Doyle portrays Moriarty as a person having traits characterizing both criminals and geniuses. When describing Moriarty to Watson in depth, Holmes says: “But the man had hereditary tendencies of the most diabolical kind” [1, 470–471].

In a chapter called “The influence of race and heredity on genius and insanity”, Lombroso [5, 133–150] argues that degeneration, as opposed to genius, is fully handed down from generation to generation. In many cases its power seems to be getting stronger with time. In that chapter, Lombroso implies that rarely is insanity a result of bad education, adding that it is much more common for a maniacal child to have parents with extraordinary intelligence than the other way round. We may also observe that Holmes’s description of Moriarty is characterized by numerous periphrases and unclear similes, and this is what makes Watson even more flabbergasted at the whole situation. Thus the third maxim proposed by Grice is violated, as Holmes fails to obey the principle which pertains to avoiding “unnecessary prolixity” [2, 46].

Then, while discussing Moriarty’s physical appearance, Holmes adds:

He is extremely tall and thin, his forehead domes out in a white curve, and his two eyes are deeply sunken in this head. He is clean-shaven, pale, and ascetic-looking, retaining something of the professor in his features. His shoulders are rounded from much study, and his face protrudes forward, and is forever slowly oscillating from side to side in a curiously reptilian fashion [1, 472].

Firstly, Lombroso points out that skulls of the ingenious were beyond the norm. He points out to their unnatural proportion of the face-width to the width of the skull and jaw [6, 336]. Judging from Holmes’ recollection, it becomes evident that Moriarty’s skull seems rather anomalistic. Further, Sherlock states that Moriarty’s features conjure up a picture of the professor in his mind, but that was even before he had a chance to talk to him, as if Holmes intuitively knew that Moriarty possessed an extraordinary mind. Doyle also highlights Mo-

riarty's inhuman mien which, to Lombroso, correlates with various neurophysical disabilities. In addition to that he writes that geniuses are well-aware of their powers and think highly of themselves; but at the same time they are not overconfident and are not conquered by hubris, which is what Lombroso believes to be the dividing line between genius and madness. He believes that excessive arrogance seizes minds of the disordered and characterizes the deranged, but not the talented. Moriarty addresses Holmes by calling him "sir" or "Mr. Holmes", and — as Holmes admits — he speaks like a true gentleman, Holmes concludes at the end of their conversation: "You have paid me several compliments, Mr. Moriarty" [1, 473].

However, after this exchange of pleasantries, Moriarty shows his darker side and he hisses and snorts at Holmes uttering angrily the following words: "I can promise you the one, but not the other," he snarled, and so turned his rounded back upon me, and went peering and blinking out of the room" [1, 473].

Shortly afterwards, Holmes acknowledges his twofold nature: "His soft, precise fashion of speech leaves a conviction of sincerity which a mere bully could not produce" [1, 473].

This balance between cold-blooded calculation and frenetic spirit makes him, using Lombroso's terminology, an insane man of genius [5, 103], and — to Holmes' mind — by far the toughest opponent he has ever faced: "Never have I risen to such a height, and never have I been so hard pressed by an opponent" [1, 473].

Despite the newly-acquired knowledge the goal of the mission remains a mystery to Watson. He is aware of the fact that Moriarty is a dangerous criminal whose actions must come to an end but he only knows as much as Holmes wishes him to know. Moreover it is Holmes who comes up with the whole plan, and Watson has no impact on its

execution. This does not seem to be in consonance with Grice's conversational model, because he believes the contributions of both participants ought to be mutually dependent [2, 48]. In the story it is Watson who is entirely dependent on Holmes, while for Sherlock Watson's involvement in the plan is not essential to its realization. We may also add that Holmes does not avoid obscurity of expression, which is a violation of the first maxim proposed by Grice. Interestingly, Holmes' stating that Moriarty is at least an equal to him makes Watson feel uneasy about the likelihood of success of their mission.

In this essay I have shown that Sherlock Holmes and Dr Watson form a team in which the hierarchy is clearly defined and there is a distinct division between the group leader and his subordinate. Holmes, although by no means inimical to Watson, is being shown as a leader focused on reaching his objectives. To achieve that he resorts to intentional confusion of the other group member, Watson. This is also exacerbated by a multitude of violations of conversational maxims. The nature of Watson's confessions makes him a gullible narrator, prone to overestimating the significance of emotions and feelings in comparison with reason. Doyle presented Watson in such a faltering manner in order to lessen the authority of his, so that the potential resurrection of Holmes would seem more convincing. It is also achieved by making Watson dependent on Sherlock whose vague statements and seemingly erratic behaviour displayed on numerous occasions lead Watson astray time and again. By creating an enigmatic persona of Professor Moriarty Doyle exposes Watson as an unreliable narrator all the more, as Watson thinks of him as inferior to Holmes; thus when he is confronted by a person who is highly respected — and even, to some extent, feared — it is understandable that he will not be able to analyse the situation properly.

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Section 7. Economics and management

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Best practices in the management of procurement and suppliers, as an important factor in the management of the project

Abstract: Procurement Plan identifies the products to be procured from external suppliers, timelines and methods of procurement.

The plan presents an overview of the external supply market, giving the confidence to the shareholders that the products are currently and actually on the market and appropriate suppliers are willing to provide it within the timeline and budget constraints.

The procurement plan is important not only to identify the list of products, but also insurance markets, terms of delivery, tendering procedures and preferred suppliers.

The project manager on the basis of procurement Plan and selection of products, services and suppliers drafts the supply agreements (contracts). Implementation of these processes is very important not only for the reduction of material costs but time costs also, providing quality goods and services and in the end make it easier to achieve success of the project.

Keywords: procurement, product, services, supplier, contract, manager, plan, project, Selection, negotiation, implementation, etc.

The first step towards determining the procurement plan is to identify products that will be sourced from outside of the organization. Also we need to specify the purpose of each product and the justification for its procurement from abroad

against taking it from within the business.

We list and describe the products to be obtained from the external market. Assign a number to each product (no/id), determine the quantities required and the budgeted cost of each. See table1.

Table1. – Procurement Requirements

Product	Description	No./ID of product	Quantity	Budget
1	2	3	4	5
Computer Hardware	Computer specification Intel's latest PC version includes: • screen (monitor 19') • Computer Unit (the latest Intel processor) • Accessories (keyboard, mouse) • The latest operating system of Windows • MS Office software kit	CH 1	Sum	

1	2	3	4	5
Raw materials	Construction materials, including: • Skeletons for walls • roof materials • Cables, wires and electrical switches	RM1	Sum	
Consultancy services	General consultancy services, including: • Assurance of audit quality • Management of the project office • Bookkeeping Service	CS1	Sum	

We define the purpose of each product as shown in Table 2.

Table2. – The purpose of the product

No./ID of the product	Product	Purpose
CH 1	Computer Hardware	To enable project managers and administrative staff to supervise the project by registering and following progress against the project plan
RM 1	Raw materials	To physically build results to be produced by the project
CS 1	Consultancy services	To create confidence that the project will achieve the timeline, cost and quality objectives through regular review and reporting.

To give a sound justification why the above products should be obtained from external suppliers towards obtaining them from within existing business, justification must be provided for each product, commodity or service.

Conducting a market research is critical to ensure that they are ready to deploy needed products, at the right price and at the right time. Questions such as “Which products are available?”, “Will those meet the demand?” And “Are suppliers able to deliver the product at the right price and within the deadlines required?” All must be answered before the procurement plan is completed.

It is important to assess the market conditions, by studying its current environment and trends.

Besides research and assessment of the market we should evaluate the available products in the market. For this reason, a quick view of current suppliers and products available in the market is needed, in order to build trust to shareholders that there are available potential solutions to meet project requirements.

A table of procurement can be built including activities required to select a preferred supplier, to deliver the required products and to review the performance of the supplier.

We list any assumptions made during the procurement planning process. For example, it can be assumed that:

- procurement requirements will not change;
- There will be no change in the market price;
- The number of current suppliers will be available during the tendering process.

Enumerate any risk identified during the process of procurement planning. For example:

- Procurement requirements cannot be defined in important details;
- The methods used to review supplier performance may not be adequate;
- Resources allocated to undertake a review of the supplier could be not properly qualified.

Suppliers contracting

The usual method of selecting the preferred supplier (suppliers) is to carry out a formal tender management process. This is a method by which potential suppliers are identified, evaluated and selected to ensure the products (goods or services) for the project. This process involves the creation of several tender documents which describe the project's procurement requirements and information required from suppliers on the basis of which, a decision on the preferred supplier is made. The bidding process is carried out to ensure that the selection of preferred suppliers is

done in an impartial and fair manner. The procedures are for the private sector and not for the public sector, as in this sector procedures are legally better defined.

Specifically for the contracting of suppliers detailed procurement table No.3 is used, as follows:

Table3. — Detailed table of procurement

No.	Task Name
1	Draft tendering documentation
2	Release a request for information (RFI)
3	Document the statement of work (SOW)
4	Document the request for information
5	Issue the tendering documents
6	Take and evaluate tender responses
7	Select a tender qualification list and notify suppliers
8	Release a request for proposal (RFP)
9	Update the statement of work
10	Document request for proposal
11	Release of tender documents
12	Gather and evaluate tender responses
13	Select the preferred tender and notify suppliers
14	Release the contract
15	Document the supplier contract
16	Negotiate the supplier contract
17	Sign the supplier contract
18	Start contractual obligations
19	Complete the tender process
20	Deliver products
21	Deliver goods
22	Deliver services
23	Review suppliers
24	Perform supplier review I
25	Perform supplier review II
26	Perform supplier review III

This tendering process should be carried out whenever it is required a product from outside the project and the selection of a preferred supplier is required. The process is initiated immediately after the approval of the procurement plan, from the procurement manager of the project.

Without any formal tender process, it may not be possible to show that the method by which they were selected preferred suppliers was rigorous and impartial. The tendering process is interrupted only when preferred suppliers are selected and supplier contracts are formally written.

The first step towards contracting of the preferred suppliers, is to determine the process by which will be selected.

The purpose of the tender process is to guarantee a clear, strong and impartial selection process of preferred suppliers for the purchase of the product for the project. In summary, the bidding process will be undertaken by the project through the implementation of three key processes:

- issuance of RFI (request for information);
- issuance of RFP (Request for Proposal);
- issuance of the contract.

Map of processes and procedures required to select a preferred supplier for the project are as follows;

- "statement of work " document (SOW);
- request for information document (RFI);
- Issuance of tender documents (RFI and SOW);
- Gathering and evaluation of tender responses,

- Selection of the tender qualifying list and notifying suppliers;
- Issuing the RFP (Request for Proposal);
- Updating the document of request for proposal (RFP);
- Issuance of tender documents (RFP and SOW);
- Gathering and evaluation of tender responses;
- The selection of the preferred tender and notification of suppliers;
- Issuance of the contract, the supplier contract document;
- negotiate the supplier contract, signing of the supplier's contract;
- Commencement of contractual obligations.

Tender responses are evaluated. After the response period of the tender has expired, procurement manager unites responses received from suppliers from the list of qualifications and records the details of their company in the tender register. Tender responses then are formally assessed using more detailed criteria than those used during the evaluation process of RFI.

The final phase of the tendering process is the supplier contract negotiations. The contract forms the basis of the relationship and specifies the terms and conditions of delivery of the product for the project. Following procedures are undertaken:

- document of the supplier contract;
- negotiate the supplier contract;
- sign the supplier contract;
- Start implementation of contract.

Responsibilities, the terms and conditions stated in the contract start to apply. The contract is deposited and a process of supervising the delivery of the product from the supplier is initiated.

It is important to determine the exact role of the various players in the bidding process and in particular the procurement manager and project manager. Procurement Manager is responsible for managing the entire process of tender management of the project. Project manager acts as a checkpoint to ensure that the management process of the tender is efficiently and impartially undertaken.

For the management, evaluation and documentation of completion of the tender process, the following documents are drafted:

Statement of work (SOW), which defines the procurement requirements of the project in sufficient detail to enable a potential supplier to determine if they can meet these requirements.

Request for information (RFI) which gives a brief summary of the project objectives, scope, results, main stages, general types of the product to be taken from outside the project and the reasons why should be taken there and the requirements to be fulfilled by suppliers in order for them to become the preferred supplier for the project. A RFI is a document issued by a project for a wider group of potential suppliers to enable them to describe how they will meet the procurement requirements of the project, as documented in SOW. Suppliers provide summarized information regarding: the size of their company, industries; Offer, product, training, documentation, support, approach, timeliness, prices. RFI is issued together with SOW to enable interested suppliers to understand the procurement requirements and give them the means of formal registration of interest in supplying the product to project.

Request for proposal (RFP), which requires a detailed proposal from each supplier, describing how he intends to meet procurement needs of the project. RFP is very similar to the RFI. The key difference is that the RFI seeks summarized information from each supplier to select a list of qualifications from potential suppliers, while the RFP requires a detailed proposal from each supplier to enable the project team to select a preferred supplier.

Supplier contract; is an agreement between the project team and supply company ("supplier") for receiving a variety of products designed to meet the procurement requirements of the project. Supplier's contract is a legal document used as a basis on which payments are made to the supplier during the procurement cycle. The contract specifically stipulates:

- products (goods and services) to be provided by the supplier;
- Responsibilities of the Project and the supplier in getting the products;
- Contract review highlights to assess the performance;

- The price of each product received;
- Billing and payment processes;
- Applicable Terms and Conditions.

Supplier's contracts should be used whenever requested a formal agreement between the project and a preferred supplier in receiving of the product. A supplier contract usually is documented in the final stage of the bidding process, after supplier proposals RFP are received and the preferred supplier is appointed. After approval of the supplier contract, the process of procurement management is initiated to monitor and control the supply of the product for the project.

Supplier contracts typically is written by the procurement manager and approved by the project manager or sponsor. Without the formal supply contract, it will be legally difficult to manage supplier performance. A written supplier contract will reduce performance management issues by specifying the duties and responsibilities of both parties to ensure that the procurement of the product is efficient.

In the supplier contract the following are described:

- The purpose of this document which clearly attributes responsibilities of the supplier and the project team to meet the requirements set out in the statement of work (SOW);
- The receiver group of the contract is identified;
- Definitions of key words used in the document that have potentially vague meaning are provided;
- The results that will be produced by the supplier to meet the requirements are clearly described;
- Lists products that will be given by the supplier for the project team and for each, the product is described;
- Identifies the level of training that will be provided by the supplier for the project team by describing: products that will require training, training

method, level of training and number of trainees;

- Determine the documentation that will be provided by the supplier for the project team;
- Gives a detailed timeline for delivery of products for the project;
- Describes responsibilities of project supplier in producing and getting the required products;
- Lists responsibilities of the supplier for fulfillment of the contract;
- Lists responsibilities of the project team;
- Defines procedures of performance review of supplier during the procurement process, setting a time limit and responsibilities of the parties;
- Identifies the prices to be paid for each result provided by the supplier, specifying the process of billing and payment;
- Identifies with what degree of sensitivity should be treated this information related to the contract by the supplier. For example: During the course of this contract confidential information can be obtained which is relevant to business, the project or customers. The Parties agree to keep this information strictly confidential at all times, even after the project has been concluded. It shall not be used or attempt to use it for personal benefits or for the benefit of any third party. Confidential information may be published only to the extent that such disclosure is necessary to execute responsibilities under this contract. This does not apply when the information is legally required to be published or made available and known to the public;
- The contract has to determine the conditions and processes that allow each party to terminate it, the terms of notice, payments etc;
- Describes the process of resolving disputes by means of negotiations, arbitration, judicial processes, and any indemnity clause demanded by each party of the contract.

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Section 8. Science of law

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Insurance claim in administrative disputes resolution

Abstract: To write an article about the institution of insurance claim litigation in administrative judgment, we must also tackle a comparative overview regarding the provision of the claim in the trial of civil cases, harmonized with unifying judicial practice. To have a broader approach, we can not simply refer to any specific provisions of law (No. 49/2012), which regulates the procedural vehicle insurance claim [1]. This article is intended precisely to address first the concept of insurance claim, secondly insurance claim in the judicial process and administrative/types of security measures of the lawsuit, and finally comparative overview of insurance claim in the judicial process administrative and civil as well as the unification of jurisprudence in relation to the provision of the claim.

Keywords: Securing the lawsuit, the types of security measures of the lawsuit, administrative dispute, suspend administrative act, warranty, non-final decisions, civil disputes, administrative courts, administrative activities etc.

Insurance claim

The insurance claim is a security system of judicial procedural institutes, a procedural tool, temporary, dictated by emergency circumstances, which may be requested by any party litigant in a judicial process. Given that, a court decision brought the late effects of time, to be executed after a court decision, should have taken final form, for the plaintiff, from the time of filing of the petition until the conclusion of the trial, can serious consequences come and irreparable actions of the defendant, was necessary a procedural tool for them coming to help the violated rights of the plaintiff. Insurance claim, is taking emergency measures to prevent the arrival of serious consequences. Because of its emergency nature, this request is examined in an expedited way, with in 5 days of the filing of the application. Insurance claim consists of maintaining the previous situation, before the birth of the dispute, but on condition that not be the same with the suit research facility. Taking temporary measures to secure the insurance claim seeks «to keep

the situation as it is», or «frozen» until we resolve this conflict, which, for the nature of the case, must be achieved through a prompt and relatively simple, caring, anyway, to respect a standard acceptable to due process of law [2]. Even the European Court of Human Rights has so defined security system measures the suit, *as measures intended to preserve a situation of fact or law, with the aim of protecting the rights* [3]. To ask the Court of Appeals insurance, there certainly should be some conditions which lead to the necessity to take measures for securing the claim. Given that, rejecting an administrative act before the Court, does not suspend the execution of the act, the claimant is a need to be protected from the serious damage that can eventually vine as a result of its implementation. Law No. 49/2012 “On the organization and functioning of Administrative Courts and administrative disputes” under Article 28 and Article 33 thereof, provides procedural means of securing the claim, its purpose, terms and conditions for its deployment, implementation, application,

change and decrease of the amount of insurance. Under the provisions of Law No. 49/2012, insurance claim is required in cases where there is the possibility of the arrival of incurring serious and irreparable damage arising from the execution of administrative action [4]. Insurance claim has a particular, which differs from other procedural provided by procedural law, since it gives the opportunity to exercise this requirement even before the establishment of the claim, provided that the insurance claim be filed within 10 days from the time Court decides to allow the insurance claim. Demand for insurance claim can also be made at any stage and level of judicial review, until the decision has not taken final form. Conditions that must exist to require insurance claim [5]: There is a reasonable doubt, based on the paperwork, for the potential to cause a serious damage, irreversible. No seriously undermined public interest. So, the law requires that the above conditions exist, then the possibility of incurring serious and from taking this measure is not a threat to the public interest. Given that, in administrative disputes are before the case when one of the litigants is a public body, and it is precisely acts issued by these bodies which are subject to dispute, and for this purpose the legislator has looked reasonably determine that one of conditions must fulfill to secure the lawsuit, is seriously upholding the public interest. In the second condition, the legislator had in mind the *principle of protecting the public interest and the rights of private persons, as well as that of proportionality*. So by putting the insurance claim from the Court, it suffices that the public interest in not a threat, which means that the extent of “serious” violation of public interest, it is left to the discretion of the judge who reviews the application, that what he considers the infringement serious public interest. This legal vacuum, leaves room for discretion, when setting a security measure seriously violates public interest insurance claim. Also, one other condition, which the legislator has left entirely in discretion court, is the case when the court deems necessary given a guarantee by the plaintiff, for eventual damage that may be caused to the defendant insurance claim. The granting or refusal of a security measure is subject to the discretion of the court [6], which eventually carries the risk

of infringement of the rights of litigants. However, the decision to secure the lawsuit, remains an intermediate decision, which is not intended to provide the foundation final settlement.

Types of security measures to insurance claim

Demand for insurance claim, consisting of: Suspension of the implementation of the administrative act, administrative contract or other administrative action. Also taking other measures appropriate by the court in cases where only the suspension does not provide adequate protection. Given that, in an administrative judgment, examined administrative disputes having as object administrative acts, administrative action or administrative contract, which have mandatory execution [7] (in special cases immediate, the legislator has foreseen the possibility that the plaintiff, inter alia, require the suspension of the implementation of the act/administrative action which is opposed). In order to harmonize the Code of Administrative Procedure law No. 49/2012 “*On the Organization and Functioning of Courts and disputes Administrative Administrative*” legislator drafted a new Code of Administrative Procedure, namely Law No.44/2015, which It entered into force in May 2016. in Article 180 of the law No.44/2015 is expected suspension of execution of the administrative act, when something such competent court decides that is considering the administrative dispute [8]. Turning to insurance claim under the law No. 49/2012, it shows that the legislator has not provided so exhaustive kinds of security measures of the claim, not restricted to taking the opportunity to claim the measures other than those of provided by article 30 of law No. 49/2012.

Although the placement of insurance claim is an intermediate decision, temporary, it does not mean that during the review of the dispute, the Court has no right to change or revoke this measure of securing the lawsuit, given by her. From the moment that the Court of Appeals decides on security, it largely at the request of the parties or, in the case when the circumstances change dictated taking this decision, the Court may revoke or vary the decision to secure the lawsuit. So it is not intended that until judicial process is complete and the decision to have taken final form, the decision to take the measure of

security continues to remain in force, but a special law provides the possibility of revoking or changing the type of measure. Request which is made by the parties or by the Court, when the circumstances/conditions laid down in Article 29 of Law No. 49/2012, have changed or no longer exist. Insurance claim, differs from other procedural tools, as against the entry of the decision of the court to accept or reject her, litigants have the right to exercise a special appeal against the decision of the Court of Appeals for the provision, in the highest court. So the decision of acceptance or rejection of an application for insurance claim, is not appealed together with the final decision, but the parties have the right to exercise a special appeal in a higher court within a 5 day period.

However, it is worth to note that the decision on the amount of insurance claim, in terms of constitutional adjudication and especially the right substantive that protects, is an intermediate decision, as he decides definitively on the subject of the request, which will It means that it is a decision variable, as may be amended or revoked whenever changing circumstances and conditions in which it is given.

Conclusion

Ensure the lawsuit as an important procedural tool, emergency, which although does not solve the case on its merits, the plaintiff guarantees or avoid further violations of the rights violated, also preventing the arrival of the most serious consequences. Insurance claim, is the measure that aims to save a situation of fact or law in order to protect the rights of the plaintiff. The civil trial, insurance claim, given in view of the decision's final. Insurance claim, is a decision between the court, which does not resolve the underlying issue, and may be amended or revoked, depending on changing conditions that have dictated it. Demand for insurance claim, there can not be the object, that the plaintiff has done research on the merits of the claim. Rating conditions for the establishment, modification or revocation of the amount of insurance claim remains in the discretion of the court. Each of the parties reserves the right to challenge the decision of the insurance claim through a special appeal, the higher court. Despite the duration of the judicial process, restoration of the violations, the failure of the plaintiff guaranteed further damages as a result of the suspension of the administrative act.

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Donation contracts by Albanian legislation

Abstract: The contract of donation finds its legal regulation in French Civil Code of 1929. Nowadays the donation contract is governed by the current Civil Code which expressly provides that title II, Chapter III, Articles 761–771, by the definition in Article 761, which states: “the donation is a contract by which one party transfers in ownership without compensation to the other party a certain thing or a real right, which she accepts.”

Keywords: contract, donation, donors, beneficiaries, revocation.

The donation is a contract that aims to help people and humanity to each other. By donating dress and act et legal intend to spend in favor of entities of different physical and legal groceries, funding financial base, other materials for carrying out activities on different health character, educational, scientific and other [1].

As a typical contract which expressly provided for by the Civil Code, the contract of donation epitomizes the spirit of kindness and humanity that characterizes. And precisely, the cause, which pushes the parties to enter this legal relationship by performing donation is precisely the desire to increase the wealth of the other, like that which, as in every contract, even to the donation contract needs to be accepted to produce its effects [2].

The donation contract is a civil legal relations regulated by our Civil Code expressly. So, the civil law norms envisage circumstances that give rise to civil legal relations, predict what conditions legal relations can be created, modified or abolished.

Such as civil legal relationship consists of three essential elements and essential for its existence: a) entities which establish the relationship between civil law; b) the object of civil legal relationship; c) the content of this relationship, which consists of rights and obligations of the parties arising from specific legal relationship. The contract of donation can be considered as a legal relationship having in the broadest sense of the word, which is nothing more than “*legal relationship by which one person (the debtor) is obliged to give something or to perform or not*

to perform an action given the benefit of another person (the creditor), and where the other person has the right to demand to be given something, or the performance or nonperformance of the act.” [3].

The object of the contract of donation usually rights and obligations of the parties managed on a particular subject, without which the legal relationship itself will not make sense, would not be created and exist. In this sense, the object of civil legal relationship and in particular donation is anything on which address subjective rights and legal obligations corresponding to people as subjects of law have in this relationship [4].

If you will rely on the definition provided by the Civil Code of ours, we can say that: “*The donation is nothing but a contract by which one party transfers in ownership without compensation to the other party a certain thing or a real right, which she accepts*” [5].

So that we have to compete donation two elements: a) the subjective element to enrich the beneficiary will or spirit of generosity, known as *animus donandi*; b) target-element depletion of donor corresponding to the enrichment of the beneficiary at the same time.

The subjective element consists of <the spirit of kindness and generosity”, or better known as “*animus donandi*”, which express above all the lack of a legal obligation or moral and just. Even if it is a gratuitous donation contract, generosity is also present although donor carries legal action being launched from the recognition or consideration of the merits of the beneficiary or the desire to show gratitude by

giving a special reward. If lacking *animus donandi*, action can not be classified as a donation, but also required a motive which constitutes personal and concrete impulse to the donor [6].

But since we are dealing with a donation is not enough just *animus donandi* subjective element, but that this action should be characterized and target element. According to the target element, the donation should lead to increased wealth beneficiaries and reduced property donor, and the donor do this voluntarily, without being forced by any other cause [7].

Analyzing the contract of donation, vemi note that the legislator treats and considers donation as a mutual legal action [8].

For the relationship that arises as a result of the donation contract, like any other legal relationship, there are two parties, the donor in debtor position of this relationship, and the beneficiary of the obligation, as the creditor. As a result of the contract and based on the effects that it brings to the parties, the element of real property eventually passes the donor to the recipient of the donation. Donor obligation to transfer ownership of the object corresponding to the right of donation recipients to gain ownership of this item. The contract of donation is the real contract, which is concluded and brings its effects on the moment when the thing delivered to grant recipient [9]. The real character of the donation contract consists in the fact that it requires the perfection of delivery of the thing from one party to another and form of contract can not be amended by agreement of the parties, turning it into a consensual contract [10].

Another issue of contention but which is related to the legal nature of the donation contract as a contract real, it has to do with contracts donations which are subject to transfer without compensation ownership of real rights on items (Article 761 of the Civil Code) [11]. In this case it is clear that we can not talk to a donation contract with real character, it would be meaningless to speak of the delivery when the material scope of the contract of donation are real rights on items. It is quite understandable that the donation contract with the object of gratuitous transfer of ownership of real rights on items is a consensual contract, then the moment of conclusion of

the contract is the moment when the match wills parties, donor and recipient.

At about this moment held the same attitude and the United Chambers of the Supreme Court in the unified decision. The decision included in the group of real rights, which can be transferred through the donation contract, the right of first refusal and that of compensation [12]. Panels States Supreme Court concluded that: “*The contract of donation of the right of first refusal of the former owner (his heirs) and the donation of the right to compensation for items that can not be returned, in terms of the law “On Property Restitution and Compensation of former owners”, considered consensual contract. Put more succinctly that it deemed connected, as long as the donor is expressed in the form required by law, the willingness to make the donation and the recipient of the gift, in this form, have expressed willingness to acceptance of the gift.*”

Regarding these two rights which pass through the donation they do not contradict the Civil Code, which in Article 762 stipulates that “*donation may constitute only real current donors.*” In this case we are not dealing with the real future donors but we are dealing with a fortune already his, as this asset existed at the time of opening the inheritance and has become effective with the entry into force of Law no. 7968, dated 15.04.1993, on the basis of which the Commission decision was taken property. This object is not determined by its volume but is determined in time. So, the contract of donation of pre-emption right of the former owner and that of donation of the right to compensation for items that can not be returned, considered consensual contract. So, we can say that if the object of the contract of donation are real rights, the contract of donation will be a contract consensual and considered in the moment of expressing the will of the parties in the form required by law, without the need of delivery of the thing, unlike the character of this contract when the object is immovable property. The donation contract is concluded at the moment in which the person who made the offer (*the donor*) has been informed about the acceptance of the other party (*the beneficiary*). So, an important element that is explicitly required beneficiaries

to receive it, because no one can be forced to accept a right against his will. This acceptance must be expressed and can be given in the same act of donation contract or in a subsequent act, which must have the required legal form depending on the subject of the contract [13].

Conclusions

In conclusion, the consistency of wills of both parties, donors and beneficiaries, is one of the essential conditions for the validity of the contract as at the moment in which the parties can not agree on signing the contract, it does not bring any effect.

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Discussion on the right of equality in China's Constitution

Abstract: Although equality has been incorporated into the constitution of China PR, there are still many problems on this issue in China. Owing to there is no official interpretation on relevant articles in Constitution, the connotation of the right of equality in China's Constitution remains a source of debate in the academic community. With development of market economy, the protection of this right need to be improved. This essay indicates the connotation and manifestation of this right in China today, then analyzes the obstacles and problems in this issue, and offer some proposals on how to improve the protection of the right of equality in the end.

Keywords: Right of equality, Constitution, Protection.

Although "Equality" is a common word in the field of jurisprudence, it embodies the "spirit and life" of the law. If there is the lack of the concept of equality, our law will become the "jungle law", which means "*the strong prey on the weak*". As one of the main values and the basic principles in contemporary society, "equality" is the core of legal justice and judicial justice. Simply speaking, equality means "the status of people or things are in an identical criterion and level; and are equally treated". As one pillar of human rights, "equality" developed constantly in the long history of human civilization and became a powerful weapon of resistance to autocracy, dictatorship and oppression. Since modern times, with the naissance of "Democratic" countries, "Equality" was recorded and recognized in constitutional law, and became a constitutional right. However, owing to the different constitutional theories and practices in various countries, the connotation of equality is endowed with different meanings. As a socialist country, although there are relatively sufficient stipulations of the right of equality in Constitution of the People's Republic of China, the right of equality in China still meets many challenges in practice. In spite of "every citizen shall be equal before the law" has been recognized in current Constitution, there are still defects in legislation and judiciary in China.

1. The Connotation and Manifestation of the Right of Equality

As a simple and important conception, like many jurists pointed out, "Equality" is a complicated concept with full of ambiguity and a Protean face.

1.1 the Evolution of the Right of Equality

The concept of natural law of ancient Greece Stoics incorporates "the principle of equality", that is "everyone is equal in essence". They object to discriminatory differential treatments based on class, race, and wealth etc. [1] The bondage of traditional hierarchical system of ancient Greece is broken by the principle of equality of Stoics. Their propositions expand the application of equality to all including slaves in ancient Greece for the first time [2]. Based on Stoics Cicero expands the application of the principle of equality to the people who are living in the Rome conquered territory. This idea exists in Romans' legislation. Based this idea they create the legal system, which is conformable to the development of commodity economy. The evolution from "ius civile" to "jus gentium" reflects that development. As for ancient China, Confucius believes that "if the distribution of wealth is fair, there will be no poverty (盖均无贫)". His equality notion is based on the equalitarianism and cosmopolitism. This understanding and practice of equality from the position of equalitarianism profoundly influences the later generations of Chinese.

With the development of Renaissance, Religion Reform, and Recovery of Roman Law in Europe, people's mind is emancipated. By virtue of personal interests Hobbes shifts the foundation of equality from the outside objective order to people. Enlightening thinkers then claim "the concept that human rights are endowed by heaven" and think that the freedom and equality of human beings are "heaven-born". United States Declaration of Independence (1776) stipulates that "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights". France Declaration of the Rights of Man and of the Citizen (1789) provides that "Men are born, and always continue, free and equal in respect of their rights." With regard to Modern China, influenced by Chinese traditional ideology and western modern notions, the distinct view of equality is formed in modern Chinese reform thought, for example based on the natural theory of humanity, Kang Youwei suggests "equality of human nature"; Liang Qichao thinks that monarch and people are equal in personality because of both of them are subject to heaven, and then establishes the basement of Chinese "Civil Rights" theory [3].

1.2 The Connotation of the Right of Equality

The origin and development of the right of equality are simply examined in the above paragraphs. How to understand the connotation of the right of equality in contemporary China and in the process of composition of the socialist system of laws with Chinese Characteristics should be examined. I like to think of the connotation of the right of equality is human rights. Firstly, as moral rights, human rights mean: "the freedom or qualification which people should deserve as human beings [4]". In this sense, "as human beings" contains the requirement of "equality", because in this context "human beings" includes everyone in the real world. Article 2 of *Universal Declaration of Human Rights* stipulates that:

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international sta-

tus of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

Thus the universality of human rights can be seen, and the universality of subject of human rights requires equality. "The essence of the universality subject of human rights is the equality of subject of human rights [5]".

Furthermore, there are two kinds of inequality in Jean Jacques Rousseau's view: one is the physiological and innate inequality, which is mainly caused by differences in age, mental status, and health condition; another is the spiritual and political inequality, which originates from a particular kind of custom, manifesting as various prerogatives resulting from the detriment of others. On the former, although it is related to interests, owing to arising from natural conditions, it is not optional and cannot be morally judged, that is to say "it is not a 'whether should or should not' question"; while for the latter which is caused by the free and conscious activities of people, is the interest relationship among people. Hence, it can be morally judged and is optional, that is "it is a 'whether should or should not' question". The inequality in institution (politics) will deepens the harms caused by the physiological and innate inequality. Therefore, human rights are not only due rights, but also should be equally enjoyed. When there is inequality in specific rights, people should have rights to demand equality.

Finally, as a kind of basic human right, right of equality requires that countries should undertake obligations of protection and relief. When it is lacking or harmed, government is bound to take measures to protect it. The right of equality stipulated on the constitution including two parts, the former means that countries should equally protect the enjoyment and exercising of rights, that is "everybody is equal before the law"; the latter means that "the disparate treatment of governments" should be prohibited, namely "prohibition of discrimination" and "objection to prerogative". Both of the two parts are indispensable to the right of equality. The former is easy to understand, but the latter is more important, because it is critical to define the connotation of this right and implement the guarantee of this

right. On one hand, as the intrinsic core of the right of equality, prohibition of discrimination emphasizes “indistinction (indiscrimination)” and “proportionally”, that is “everyone should enjoy equal treatment” and “pay attention to the difference between different categories”, because “the indiscriminate equality without distinction for all people is inequality” [6, P. 86–87]. On the other hand, the outward manifestation of the right of equality is the objection to prerogative, because prerogative is regarded as a blatant challenge to equality and the public enemy of rights. Equality cannot blossom based on the soil of prerogative, therefore, “the realization of equality must manifest as no tolerance to the prerogative” [6, P. 88].

1.3 The Pattern of Manifestation of the Right of Equality

In accordance with the constitutional theory of equality, integrating the different scholars point of view, I think that there are three patterns of manifestation of the right of equality: nominal equality, substantive equality and equality of outcomes. Firstly, nominal equality means that countries admit that all people are equal before the law, and give them equal treatment in the legal rights and obligations, and prohibit discrimination caused by disparate treatment. In other words, everybody in society should be given identical opportunities. When in the face of two similar or same objects, there should not be different outcomes, except there are justified reasons. Nominal equality directs at obvious and immediate discrimination, for example the phenomenon that people should be compensated differently in compensation for death past few years ago in China, because of their identity. To a certain extent, in today's market-oriented economy, the nominal equality is the equality of opportunity, that is any members of society with the same level and ability should stand on the same starting line in competition. Furthermore, the substantive equality means that considering the difference between individuals, the development of individuals and realization of rights should be equally protected in essence. The core of substantive equality is that admitting differences between individuals, in light of these differences, governments should treat them

disparately, but this kind of “distinction” should be limited within a reasonable range. The substantive equality is aimed to indirect discrimination, as previously stated “the indiscriminate equality for all people is inequality”. Sometimes some seemingly neutral and equal measures, may damage interests of someone or a certain kind of people. The substantive equality considers the issue starting from the results of phenomenon, and questions practices which leads to the result of inequality [7]. Finally, equality of outcomes means the outcomes which people acquires in social life are identical. There are no differences in outcomes caused by distinctions in the natural endowments. Therefore, it is a kind of absolute equality. Some detours in the economic development of China indicates that it is not good for the social and economic development in China, such as “communal pot”, “iron bowl” and so on. These above mentioned three patterns of equality, plays different roles in the development of society institutionally. As a supplement to nominal equality, substantive equality is of great significance, particularly in the field of vulnerable groups protection. As Rawls emphasizes, society should shift more income and wealth toward “the least-advantaged class” in order to realize substantive equality, thus realizes social justice as much as possible. Despite substantial equality requires the equal distribution of good, not all of goods should be incorporated into this kind of examination [8, P. 60.]. Nominal equality in particular equality of opportunity, develops together with maturity of market economy, therefore, the right of equality in China should be positioned in “nominal equality”. “Substantial equality” should be regard as the complement, meanwhile “equality of outcome” should be given consideration.

2. The Implication of Article 33 Section 2 in Constitution of the People's Republic of China

2.1 Whether Article 33 Section 2 includes the equality of legislation

The right of equality is particularly reflected in Article 33 Section 2 of the Constitution of China, “All citizens of the People's Republic of China are equal before the law”. Conceptually “equal before the law”, means that all citizens equally exercise rights and fulfill obligations. Extralegal privileges which originates

from the differences of class origin, identity, career and so on, should be prohibited. Viewing from the constitutional principles, it means all citizens are equal in judiciary, that is equal in implementation, enforcement and application of laws. “Equal before the law” also means that the legal capacity of citizens conferred by law are equal, namely citizens under the same conditions should be provided with same entitlement [8, P. 233]. Furthermore, “equal before the law” means that “the equality to implementing laws”. Judiciary authorities and administrative organs should not discriminate anyone in the application of the law, and must make judgements on the basis of laws. Legal norms should be equally applied to all people, in other words, all citizens should be treated impartially in law [9, P. 241].

On the other side, the form of expression of equality in the current constitution in China is greatly related to “the class theory” which prevailed in theorists in the early 1980s when the current constitution was established. Under the influence of the aftermath of the cultural revolution, the mainstream view at that time is that everybody is that “equal before the law” is only a matter of the equality to implementing laws, without the equality of legislation [9, P. 244]. Although the notion of legislative equality has gradually been accepted by academic community, and suggested by many scholars, owing to there is no interpretation made by Standing Committee of the National People’s Congress, how to understand this article and whether it includes “legislative equality” are still in dispute [10]. What is called “the equality of legislation” is that the content of the national legislation should reflect and implement the principle of equal treatment, and should not carry out differential treatment without justification and rational basis, in other words, the content of disparate treatment to citizens should not be incorporated into laws, regulations, rules and other normative documents.

I think that the implication of this article should contain “legislative equality”. In the first place, under the prosperous market economy in current China, many problems existing in reality cannot be solved by the class theory. At the present time, with the further emancipation of ideology, the political

atmosphere in China becomes relaxing. The class theory is gradually faded away under this situation, in which the economic construction has become “center” thoroughly, and “class struggle” has become the past. Since the beginning of the 21st century, the appearance of new notions such as “people-oriented”, “harmonious society”, “transparency in legislation”, indicates that the government is inclined to encourage citizens to take part in political affairs and legislative process in good order. The decision of the fourth Plenary Session of the 18th Chinese Communist Party Central Committee states clearly that principle of openness, fairness and impartiality must be incorporated into the whole process of legislation, and the legislative mechanism should be improved by increasing the timeliness, systematism, pertinence, effectiveness. Under this background it is unreasonable to still persist in the so-called original meaning and confine to “the equality to implementing laws”.

Furthermore, “all people are equal before the law” is a crucial principle of socialist legal ideology, which should be put into practice fully in the legislative, executive and judicial aspects. Especially the legislative equality is a preliminary question. Without it the equality to implementing laws is only a castle in the air, because legislative equality is the premise of it [11, P. 1]. “Only the content of laws is equal, the implementation of laws will produce equal influence; in contrast if the content of laws is unequal, the application will strengthen the inequality [11, P. 77]”. As Francis Bacon said: “One foul sentence does more hurt than many foul examples. For these do but corrupt the stream; the other corrupt the fountain.”

Moreover, analyzing from the text of the constitution, it is difficult to reach the conclusion that the constitutional right of equality does not embrace legislative equality [12]. The Article 33 of Constitution not only establishes “all people are equal before the law”, but also stipulates that “every citizen is entitled to the rights and at the same time must perform the duties prescribed by the Constitution and the law.” In accordance with this rule, every citizen enjoy the basic rights provided by constitution, therefore, legislators should be constrained by the constitutional

right of equality [13]. Constitution as the highest law of the land, is the formal source of other laws and the carrier of “rule of law”. If “the law” in “all citizens of the People’s Republic of China are equal before the law” contains “constitutional law”, laws made by all legislative subjects in China should be in compliance with the principle of equality established by constitution. These laws should not infringe the constitutional equality rights and be subject to judicial review of constitutionality. Therefore, the legislative equality is inherent in “all citizens shall be equal before the law”.

In addition, a realistic reason is that the infringement on the right of equality is mainly from legislation [14, P. 16]. Democratic system has already occupied dominate position in the world today, but the rights and interests of minorities are sacrificed in the decision-making process of this institution. Under the democratic system with the majority domination, how to protect the equal enjoyment of rights of minorities and individuals, becomes the core of constitutionalism. The restriction of public power and guarantees for individual rights manifest the constitutional value. As the paramount power in the society with rule of law, once the legislative power is not subject to principle of equality, it will cause more harm to human rights and the construction of socialist rule of law.

In the end, “legislative equality” has been the mainstream of the development of worldwide constitutionalism and the equality of citizens in legislation has already become a common understanding. After entering in the 20th centuries, continental European countries have begun to accept that “all people are equal before the law” incorporates legislative equality, in other words, the national legislative branch shall make no law in regard to the violation of “all people are equal before the law”. To sum up, it is necessary for us to reexamine the inherent meaning of Article 33 Section 2 of constitution in open mindedness and rational vision. “All citizens of the People’s Republic of China are equal before the law” should incorporate dual meanings, “legislative” and “implemented”.

2.2 Right or Principle

Whether “all citizens are equal before the law” stipulated in Section 2 Article 33 is a legal principle or

a fundamental right, there are three different views: “it’s a right”, “it’s a principle”, and “common theory” which means it is not only a fundamental right but also a constitutional principle. I think that “all citizens are equal before the law” is both a principle in constitution and a constitutional basic right. At first, the unfair treatment of government to citizens, is not only a violation of the principle of equality in the constitution, but also an infringement of citizens’ equal rights. As Duguit said, the origin of right of equality is everyone’s enjoyment of rights arising from their nature, and these rights should be equivalent. He further points out that the legislator should not make laws which damages the interpersonal equality, because this kind of laws is inevitably harmful to natural rights of certain people. Furthermore, scholars who consider it as a principle, think that “right” and “freedom” are used in regulations with respect to rights and freedom in constitution, in contrast, the Article 33 Section 2 is different. Therefore, it is a principle in constitution, in other words, it is a spirit which is extracted from various rights. This argument ignores the uniqueness of the right of equality as a fundamental right. Although unlike other fundamental rights with specific content, the nature of the right of equality mainly can be manifested in the relationship with other fundamental rights, the nature of the right is not hidden. It’s just a reflection of the different patterns of the existence of rights. In a sense, the establishment of the nature of the right of equality is the premise of establishment of the principle of equality. If this right only is construed as a principle in constitutional law, and not granted specific content of right, the value of this right may exist in name only [14, P. 221]. At last, if the right attribute of equality is overemphasized and the principle character of it is ignored, its effect may not be fully realized, and its guiding significance to other rights may be restricted. Frankly speaking, equality among human rights institution is always regarded as a general and fiducial right.

3 Problems in the Protection of the Right of Equality in China

The sharing of means of production of ownership is emphasized on in socialist human rights system, in order to eliminate the basis of inequality

and illiberality. Therefore, rights with the feature of equality constitute the principal value of the human rights of socialism, which caused by the feature of the equal sharing of means of production [15]. As a socialist country, the feature of human rights in our constitution should mainly indicate on the right of equality. Although “State respects and safeguards human rights” is definitely stipulated in current constitution, the above mentioned feature is not embodied in the relevant provisions in constitution, and there are various problems and challenges in the implementation of this rights. The equal ownership by the whole people of means of production stipulated in the general principles of the constitution, however, the protection of the rights of citizens is not completely equal, in brief the statement of economic institution in the general principles do not coordinate with the provisions of equality [16, P. 246]. Shortages in the protection of the right of equality in China are showed in these aspects:

3.1 The Inequality of Identity is the Greatest Obstacle in Realization of Equality in China

Identity is the status of a natural person in relatively stable social relations. People maintains many different identities in a certain society. These differences per se is not problem, the problem is that for the sake of a certain right the public authority differentiates the identity of citizens, and make relevant regulations on status, rights and obligations based on these differences. This is “an institutional arrangement” which results differential treatments in politics, economy and society etc. Since the 1950s, the household registration system and personnel files institution have been strictly implemented. As a consequence, members of society are grouped into for four types of identity. They are branded with the mark of identity at birth, which are gradually strengthened in their growth in different ways. Particularly the household registration system, reduces the choices of citizens in social life, and impedes the social mobility, because of its innateness. Therefore, it is a violation of the equality of opportunity. There are a variety of manifestations of the hierarchical differences of identity in China today, such as differences between urban and rural residents, between civil servants and ordinary citizens and so

on. The differences of identity represent differential social positions, difference on welfare, and disparity of citizens’ rights. With the further advance of the reform and openness policy, and the fast development of market economy, the dualistic urban-rural system in China is being broke step by step, at the same time the execution of household registration system is not strict day by day. Despite all this, the reform of household registration system cannot be accomplished in one day, because of the requirement of maintenance of normal social order and the balance of interests in different areas and industries. Moreover, identity is emphasized especially in traditional China. The identity consciousness is constantly strengthened and repeatedly accumulated, because of the long period of feudalism society. It has been incorporated into traditional Chinese morality as a part of traditional Chinese culture. In the meantime, it leaves a unique identity complex the cockles of the heart of the Chinese nation. For a long time, even under the same natural endowments, owing to the different identity hierarchy, efforts paid for entering into higher levels are different. In fact, the real problem behind some hot potatoes, such as regional discrimination, urban-rural inequality, is the distinctions in identity and status among different kinds of people [16, P. 81].

3.2 The Power-oriented Conception is the Obstacle

Equality of opportunity is the requirement of socialist market economy, in other words, the opportunity of choice and sufficient freedom should be given to every citizen. However, owing to the long-term planned economics system after the foundation of new China, individual rights are considered as scourge, and often become victims in the face of the public power. Under the comprehensive administrative power system deriving from planned economy, the social governance with the national power-oriented, emphasizes that individual rights unconditional conformance to national power and restricts right with power. This power-oriented position is an obvious violation of principle of equality. Under this position, departments with close relationship to government can gain numerous privileges. This is the reason why it is difficult to get rid of monopoly in

some industries. In addition, under the power and obligation standard, “some conveniences” may often be given to individuals who have close relationship with government and officers, which not only results corruption, but also harms the fair competition which is the crucial principle of market economy.

3.3 *De facto Inequality Represented by Disadvantaged Groups*

The citizen in “All citizens shall be equal before the law”, is an abstract human without regard to various social existences and social roles such as actual identity, status, economic conditions, and physical states. However, in reality people are not able to get rid of their social attributes, and are concrete and real. Therefore, without consideration of the social existences and social roles of people, “right of equality” cannot be fully realized. Owing to the nature endowments and surroundings, people in real-world is not equal in actual acquisition and utilization of opportunities. Therefore, the fundamental rights of a part of citizens only remain on paper. With the further advance of the reform in China, the social structure of China changes greatly. In the meantime, there are large vulnerable groups in China, owing to the constantly strengthened competition in the fast economic development. Since reform and opening up, measures have been taken to protect the legitimate interests of disadvantaged groups, but they still face the inequality in reality and their rights are more vulnerable.

For example, as one of the disadvantaged groups, women still face the inequality in reality. In spite of the authority attaches great importance to woman's rights, there are some phenomena of gender inequality in certain fields. Owing to the patriarchal notion in Chinese tradition and custom, and the existence of male-authority culture, there are still some gender inequality phenomena in society. Firstly, men and women are not equal in employment opportunities. Despite gender equality of employment is stipulated in the Constitution and Law of Labor and gender-based discriminations are prohibited, in fact there are a lot cases which indicates the inequality of employment based on gender is almost pervasive. For example, the possibility of rejection of female is higher than male. The prime candidates of layoffs

are women during the economic recession. Furthermore, the chance of promotion and senior position of female is not equal to male. For one thing, enterprises are fully autonomous in internal management, and the promotion and selection system in some enterprises is incomplete; for another thing, the physiological feature and family role of women is also an important reason why women are difficult to get promotions. In addition, the inequality of retirement ages indicates that there is a gap between the notion of gender equality in China and the international standards.

3.4 *Inequalities on Institutions and Norms*

As previously mentioned, the inequality in institution (politics) will strengthens the harms caused by the physiological and innate inequality. Some designs of government institution are indeed unequal. Firstly, the labor right is unequal. This right only belongs to the owners of urban households, in other words, the agricultural production of farmers is not identified as “labor”, as a result the labor right of farmers has not been established [16, P. 246]. Furthermore, there are differential treatments in right to education. There is a gap between urban and rural areas in educational investment. There is no clear statement about the obligation of investment of government at all levels in Article 44 of Compulsory Education Law. In the meantime, the financial authority is inconsistent with the authority of office. In spite of the gradual increase of investment of center government to compulsory education, owing to the historical outstanding loans, there is a gap between rural and urban [17]. The content of education is unequal. The system of key schools has been widely adopted in all types of schools at different levels for a long period. Not only schools are divided into “key” and “common”, but also the classes in schools are divided into “key” and “common”. Teachers, teaching contents and methods are decided based on such distinction on schools and classes, which is one of infringements to equal access to education [18, P. 104]. The Inequality of Educational Opportunity remains to be eliminated. The reform of National College Enrollment System is burgeoning in China today. Although a lot of unequally favorable policies have been eliminated, the

enrollment mark in different provinces are still different. Even if there is a privilege to undeveloped provinces, the gap of enrollment marks between some developed provinces is relatively great. "Same situations, Equal treatment" just as the Article 26 of Universal Declaration of Human Rights stated, "higher education shall be equally accessible to all on the basis of merit". Finally, there is double standard in the social security system in China. Although there are some detailed provisions related to this system in Constitution, this system in essence is a the urban and rural binary system [18, P. 247]. In spite of the development of new rural cooperative medical information management system and new type of rural social endowment insurance system, farmers are not outside of social security system, this system is still double-tracked. Although the subject of right to social security in constitutional law is citizen, the institution is still on the basis of residential status [18]. The new social security based on urban-rural integration represents the general trend in the future.

4. The Improvement of the Protection of the Right of Equality of Citizens

4.1 Institutional Innovation

Since the founding in 1949, China has made a great progress in the implementation of equality, however, there are still some deficiencies in the institution of equal protection. First of all, the household registration system should be reformed and the newly more equitable population management system should be established, instead of the dual urban and rural household registry system. As previously mentioned, the rural-urban identity difference is consolidated and the inequality of identity is strengthened by the household registration system, therefore the normal social mobility is impeded. All the time the household registration system has been a great obstacle to the integration of 'rural people' into city. Although they have entered into city in fact they are outside, because without the urban household registration they are in face of unfair treatments in job hunting, social security, marriage and their children's education [19, P. 18]. The gradual advance of the reform of household registration system, and the establishment of the system of resident permit in-

stead of temporary residence license are provided in *Framework about Some Important Issues with Respect to the Comprehensive Deepening of Policing Reform* adopted in February last year. Prospects for the system of resident permit is only slightly better, because the substantive problem of the household registration system is the huge difference on welfares adhered on household registration. Without the elimination of household registration, the problem of floating population administration cannot be really solved.

Furthermore, the specific legal institution related to the guarantee of right of equality should be established. As an important aspect of the right of equality, prohibition of discrimination should be enforced in specific practices. The establishment of Anti-Discrimination Law is beneficial to the implementation of this constitutional right. Many developed countries have enacted relevant laws which have achieved good results since 1960s, for example Equal Employment Opportunity Law in Japan and Sweden [19, P 19]. Despite the right of equality is not stipulated in constitution, there is a fully systematic anti-discrimination legal system in Australia. For example, in the light of types of discriminations *Racial Discrimination Act*, *Sex Discrimination Act*, *Disability Discrimination Act* and *Age Discrimination Act* are established at the federal level, and the comprehensive anti-discrimination legislations are enacted at the state level such as *South Australia Equal Opportunity Act*, *Queensland Anti-Discrimination Act* etc. The comprehensive legal system on anti-discrimination effectively makes up the relevant imperfection in constitutional law, and actually protect human rights of Australian citizens. By contrast, without especially substantial and procedural laws and regulations on anti-discrimination, it is difficult for victims to get relief by the judicial relief approach, even if in face of the obvious inequality. *Discrimination (Employment and Occupation) Convention 1958* has been ratified by China, which indicates that the construction of anti-discrimination legal system has been incorporated into the work schedules of legislative body and law enforcement agency in China. Employment Promotion Act adopted in 2007 stipulates that the discrimination based on race, nationality, religion, gender, disability, anamneses and identity etc. must

be prohibited. Because of historical and real reasons, discriminations in China are pervasive and serious, particularly in employment. It is really high time for the authority of China to legislate against discriminations. It is necessary to enact a comprehensive Anti-Discrimination Law in order to adjust social relations and deal with various discriminations. Although it is difficult to make a comprehensive law, it is necessary to make laws in special matters such as employment, education, gender etc. Anti-Discrimination Law is not only the essential process of the enforcement of the right of equality, but also the strong guarantee of the construction of harmonious society.

In addition, the constitution can be refined or revised where possible. On the one hand, "equal protection" provision should be incorporated into the constitution. If the difference of the identity of citizens can be determined by legislation, the "equality before the law" will merely be the equality among people with the same identity, and people with different identity will not be equal. If the enjoyment of a right is based on identity not citizenship, this right originated from identity does not belong to real human rights. Therefore, just as the Professor Chen Yanguang mentioned, there is an important part which is not incorporated into the constitution of China, that is principle of "equal protection" [19, P. 246] Merely the right of equality without equal protection, it is no doubt that this is a violation of right of equality. Article 26 of the *International Covenant on Civil and Political Rights* rules that "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law." It indicates that the right of equality should incorporate two implications, "equality before the law" and "equal protection of the law". "Equal protection of the law" can provide the constitutional justification for the anti-discrimination legislation in China.

On the other hand, the provision on prohibition of discrimination should be added to the constitution, in order to further enrich the content in Article 33 Section 2. Considering the national conditions, Article 33 Section 2 of the constitution can be moderately expanded. On the foundation of the existing provision add "any person should not be

discriminated or enjoying special privileges based on family background, religion, faith, nation, household register and other unreasonable factors". This provision can provide a more concrete constitution foundation for the anti-discrimination legislation. Moreover, in consideration of the accumulated traditional ideas with discrimination, and the real pressure in the discrimination in employment and gender, the establishment of the provision on prohibition of discrimination in constitution is beneficial to prevent the further pollution of discriminations in traditional culture.

4.2 The Improvement of Remedy System

"A right without remedy is not a right". As a fundamental right in constitution, without a comprehensive remedy system, the implementation of the right of equality will be affected. If the rights enshrined in constitution cannot be implemented in judiciary, the authority of constitution is impossible. It is often said that, judiciary is the last line of defense of social justice, and the role of it irreplaceable, therefore it is more important to enforce the right of equality in judicial system. As for China, the administrative procedure should be further improved, once the time is ripe, the Constitutional application with Chinese characteristics should be gradually established.

At the present, the improvement of administrative procedure is a most realistic and effective approach in implementation of the right of equality. The abstract administrative acts should be gradually incorporated into the scope of judicial review. Although "concrete act of administration" has been replaced by "administrative act" in the revise vision of Administrative Litigation Law, it doesn't mean that "abstract administrative acts" has been incorporated into judicial review. The reason of this revise is that many delegates and scholars pointes that, because the actionable range is enumerated clearly in Article 12, it is not necessary to make a distinction conceptually. In addition, the illegal normative documents are treated with a limited investigation as before in the new Administrative Litigation Law. The illegal normative documents cannot be repealed by court. If the effectiveness of such document cannot be terminated, the right of equality of citizens may be infringed. I suggest that

whether it is possible to incorporate some normative documents enacted by low level administrative subjects into the actionable range, and give the power to court to repeal them immediately. Under the current situation, it is impossible to incorporate all normative documents enacted by all levels of administration departments into the actionable range. The gradual strategy can be used, to begin with normative documents under the administrative laws and regulations, then with the development of society the range can be expanded. The huge shocks can be avoided under this gradual strategy.

The establishment and improvement of the Constitutional application with Chinese characteristics is the fundamental guarantee of the right of equality. As a fundamental charter, the content of constitution has guiding significances to department laws under it. It not only establishes the operating mechanism and organization form of government which is crucial to a country, but also the rights and obligations of citizens which is vital to everyone's daily life. Constitution should be applied to protect the right of equality, when all other laws are impossible to apply. Professor Zhang Qianfan thinks that the

constitution should come down from the altar, and enter into the daily life [20, P. 3]. Before it becomes "advanced" or "supreme", it must be an ordinary law and used to solve practical problems. [20] As a law, if the constitution cannot indicate vitality in judicial process, it will be a "dead" law in the end. Furthermore, the right of equality in the constitution with the specific characteristic, by virtue of other rights such as political right, property right, its effectiveness can be indicated, therefore, it cannot be comprehensively protected by merely ordinary laws. Considering the current situation in China, it is impossible to establish the constitutional litigation system, Constitution-Interpretation mechanism is a choice of history and reality.

Epilogue

"Equal concern is the sovereign virtue of political community-without it government is only tyranny." [21] As one of basic human rights, the real implementation of it, not only require government to establish this right in legislation, but also protect in judiciary and implement in enforcement. Compared to the developed countries, there is a long way for China in the process of realization of equality.

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Contents

Section 1. Study of art.....	3
<i>Yunus Nigar</i>	
The mystery hidden in the picture of an unknown artist — was revealed!.....	3
Section 2. History and archaeology.....	7
<i>Klichev Oybek Abdurasulovich</i>	
Legal aspects of Russian political agency in the emirate of Bukhara (cross over review)	7
Section 3. Pedagogy.....	10
<i>Mishchenko Svitlana Hryhorivna</i>	
Development of teachers college professional competence as scientific problem	10
<i>Omarov Omar Alievich, Omarova Naida Omarovna</i>	
The development of information-educational environment (IEE) in the regions of Russia	13
<i>Ovsyannikova Oksana Aleksandrovna</i>	
Development of the art experience of teenagers by the ways of art synthesis	15
Section 4. Political science.....	19
<i>Vedeneev Ilia</i>	
The American-Chinese “Cold Economic” War	19
Section 5. Sociology.....	22
<i>Kizilova Kseniya, Haerpfer Christian W.</i>	
Social capital as the factor of societal transformations in post-communist societies	22
Section 6. Philology and linguistics.....	26
<i>Kosman Marcin</i>	
The unequal power structure between Holmes and Watson in “The Final Problem”	26
Section 7. Economics and management.....	31
<i>Kopani Xhevdet</i>	
Best practices in the management of procurement and suppliers, as an important factor in the management of the project.....	31
Section 8. Science of law.....	37
<i>Menga Irisi</i>	
Insurance claim in administrative disputes resolution	37
<i>Shkëndi Çili</i>	
Donation contracts by Albanian legislation.....	40
<i>Yao Tian</i>	
Discussion on the right of equality in China’s Constitution	43