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COMPARATIVE AND CONSTITUTIONAL LAW ELEMENTS REGARDING THE STRUCTURE OF LEGAL ORDERS AND THEIR FUNDAMENTAL ELEMENTS

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Abstract
The science of comparative law as well as the science of comparative constitutional law can reveal that other legal orders solves the same problem through closer or simpler legal institutions and can show why and how some national legal institutions are outdated or lacking in substance. In the knowledge of the science of comparative law and constitutional law, the comparative knowledge of isolated legal institutions is only a step towards the knowledge and understanding of the whole: the legal order first, and then the respective legal system. In any legal order, the fundamental legal elements combine in an order which is not egalitarian and horizontal, but, on the contrary, hierarchical and vertical. This order is ruled, directly or implicitly, by the value system which - clearly, visibly and consciously, or confusedly, invisibly and unconsciously - is at the basis of any legal order. What is therefore essential for the relation between two legal orders, as well as for their classification, are not their common point, nor their points of opposition, but the elements where their similarities lie and the elements where their divergences lie.Indeed, whatever the differences between them may be, two legal orders must be considered typologically related and classified into the same legal system as soon as their determining elements become similar. On the contrary, whatever their similarities may be, two legal orders must be classified into different legal systems, as soon as their determining elements oppose each other.
Keywords: *legal order; fundamental element; comparative law; constitutional law; fungibile elements.*

Legal orders - conceptual and introductory elements

A *legal order* can be defined [1] as the entirety of legal regulations, principles and notions applicable within the society of which the relations are regulated by legal regulations [2] which may be called legal principles, notions and institutions, fundamental legal elements.

If a legal order is seen as a whole, the fundamental legal elements [3] can be considered the cells of this organism, and lawyers and especially comparative law professionals have always seen the fundamental legal elements as elements of equal value, which might be wrong, because they do not differentiate between them, but, in reality, legal orders arenot simply the sum of the fundamental legal elements, and what is important for the global knowledge of a legal order is not the thorough knowledge of

the entirety of these elements, but knowing the place and the role which some of them play within the legal order.[4]

In any legal order, the fundamental legal elements combine in an order which is not egalitarian and horizontal, but, on the contrary, hierarchical and vertical. This order is ruled, directly or implicitly, by the value system which - clearly, visibly and consciously, or confusedly, invisibly and unconsciously - is at the basis of any legal order. It might not be considered wrong to compare the structure of a legal order with that of an atom made up of a nucleus surrounded by a veil of electrons, a sort of cloud which envelopes the nucleus. Thus, in the centre of each legal order there is a nucleus of fundamental legal elements made up of the determinant elements, and, around this nucleus, which represents the fundamental structure of the respective legal order, a multitude of elements which are called fungible, revolve. That is why a thorough analysis is needed in order to show how the determining elements differ from the fungible elements.[5]

The analysis of significances of determining and perishable (fungible) elements

All fundamental legal elements primarily have a technical meaning. In this respect, there are no major differences between determining and fungible elements. Still, determining elements additionally have an ideological and teleological [6] meaning, explained by the fact that these fundamental legal elements are in direct relationship with the value system on which any legal order is built, either consciously and deliberately, or even accidentally. The determining elements, individually but especially in correlation, express the systems of principles and values, as well as the teleological finality of the legal order in question.

These elements are called determining because they attribute to any legal order its specific individuality; they create it by imposing their fundamental structure; they condition these fundamental structures and, through them, the specific profile and morphology for each legal order. The preponderent position of the determining elements reverberates onto other fundamental legal elements and forms - in principle - the entirety of the legal order.These elements thus make up the central nucleus around

which the other fundamental legal elements, the fungible elements, the role of which is more technical than ideological or teleological, are ordered and combined.

The other fundamental legal elements, which are called fungible elements, are by far the most numerous. However, they only have a secondary importance, as they complete the profile of the respective legal order, without determining it.

These elements are fungible, because changing or replacing them does not change the fundamental structures, leaving the initial morphology, specific to the legal order which contains them, intact. Their importance is, in principle, limited to the respective regulation or legal institution; their influence does not reverberate over the entirety of the legal order in any way; their meaning is no longer general, but limited; it is not central, but peripheral; it is not determining, but subordinate. Thus, the two categories do not have the same value at all.

The analysis of distinctive criteria of the two types of legal elements of juridical order

An objective analysis allows to observe that within a legal order [7] certain fundamental legal elements are more important than others and that the structural profile of the legal orders is determined by some of them, the position of which is central, the influence of which reflects onto the entire legal order. This dominant position manifests over the entirety of the legal order or over a great part of its institutions and elements.

Their importance is no longer limited, marginal and subordinate, but general, central and determining. Thus, for instance, the economic constitution, the official ideology, the principle of the separation or unity of state powers, the certainty or uncertainty relationships which connects the law to the factors which have created it,just like the principles for the interpretation of the law or the role of the judge are legal institutions which directly or indirectly influence the entire legal order, and therefore necessarily determine all the other fundamental legal elements. Given their central place and the fact that they determine the structural profile of the legal order, changing them equates to changing the specific structure of the legal order taken into consideration. On the contrary, other legal elements have a limited significance and

they do not determine the specific character of the legal order and do not influence the entirety of the legal order. Their position is marginal and determined. Thus, for instance, the technical determination of marriage and divorce, the content of parental power, the right to inheritance of the surviving spouse or the limits of the freedom of disposition through testament, of the administrative act or its conditions for withdrawal, and others as well, only have a limited significance, because they can be changed or replaced without affecting, through it, the specific character of the legal order in question.

The former are determining elements and the latter are fungible elements. The difference between the two and between the structures they form resides in the fact that the former specify the fundamental structure of the legal order, and changing or replacing them would mean to modify or change the profile of this legal order itself. On the contrary, the fungible elements can be replaced, without changing anything fundamental or specific in the given legal order.

Identification and characteristics of determinants elements

Before showing what the determining elements[8] are in general, it is imperative to state that they represent groups of elements rather than individual elements, and that they are so complementary and interconnected that the same elements can often be present in different categories.

The most important determining elements may be *the conception regarding law and the role of law* within the legal order taken into account. It is an element which, directly or indirectly, determines the entirety of the elements which form this legal order. The conception regarding law may vary from one legal order to another, which makes its functions and role potentially different.

In turn, this determining element is influenced by another: *ideology or doctrine*[9]*, official or not*, which influences law and which states its relations to power. They may be officious, hidden, implicit and lax, as in the European [10] and Anglo-Saxon systems, where law may even oppose ideology, which lawyers ignore most of the time.

The third determining element contains *the uncertainty relations which exist between what is given and what is built*. These relations may be uncertainty relations, as in the legal orders from European or Anglo-Saxon legal systems.

The fourth determining element may be identified as being *the economic constitution of the respective legal order,*and lawyers are far from learning the exceptional importance of this notion for understanding each legal order. Still, the economic constitution dominates the issue of ownership, inheritance, freedom of transferring ownership, the issue of agreements and contractual freedom, freedom of trade, freedom of profession, not to mention another series of very important implications not only in civil law, but also in commercial and economic law.

The fifth determining element is made up of *the conception and the role of the state.*Here as well there are a complexity of issues and elements which, in the European system, may be designated through the idea of rule of law. The role of the state [11], its relations to the law, the position of political parties within the state, the principle of unity or plurality of powers, the relation of state and power, the fundamental rights of the citizens must be added to this element.

The sixth determining element includes *the sources of law and their hierarchy,*as they are not the same in all legal orders.

The seventh determining element includes *the interpretation of laws and of law*, as well as the position of the judge and his role in the interpretation process.[12]

Finally, the last determining element concerns *the legal notions and the fundamental legal categories.* They may exist in some legal orders but not in others. Here, for instance, there is a very important point of divergence between the European system, based on notions, classifications and categories originating from Roman law, and the Anglo-American system, which has created its own notions and classifications.

The role of this short enumeration is only to take a glance at the determining elements. In addition, this enumeration should be completed with two observations.

On the one hand, it is possible that there are some determining elements specific to certain systems in addition to these general determining elements. Thus, it is possible for some determining elements to be present in some systems and absent in others.[13]

On the other hand, one element or another may be simultaneously connected to one determining element or another. Thus, for instance, the freedom of trade or certain freedom may be connected either to the determining element of economic structure, or to the one regarding fundamental freedoms, or, finally, to the conception regarding the

state.[14] Whatever the potential details which may be completed or changed, what seems essential is the fact that, in general, these elements themselves state the true structures of legal orders.

The fundamental characteristics of the determining elements of juridical order

This short enumeration intends to also summarise the main characteristics of the above-mentioned elements.

Thus, on the one hand, these characteristics mark the determining elements, and, on the other, they allow their distinction from the fungible elements. Indeed, the main characteristics of the determining elements may be identified as: uniqueness, their irreplaceable character, their determining character and their complementarity.

The first characteristic, uniqueness, results from the fact that each determining element, as well as the solution it proposes, are unique in the respective legal order.

The second characteristic assumes the fact that each determining element is irreplaceable, which means that each legal order would cease to be itself without the respective determining elements. Replacing the determining elements with others would necessarily lead to changing the specific profile of the given legal order, as well as that of the system it belongs to.[15]

The third characteristic is that these elements are determining for the profile of the respective legal order. This means that they directly or indirectly influence the entirety or the majority of the other legal elements of this order. Replacing these determining elements with others would mean changing the profile of the entire legal order [16], influencing, in a different manner and through other determining elements, the other legal elements which make up this legal order.

The fourth characteristic is complementarity and the tight solidarity existing between the determining elements. The existence of some means the existence of others, which signifies that, in reality, it is difficult to change just one of these elements without changing the others.

In reality, the four characteristics only express one and the same reality, namely that they are but four aspects of the same phenomenon, and recognising them really means acknowledging the same principles. Thus, uniqueness is explained by, and, in

turn, explains the irreplaceable character, as well as the strict connection which unites these elements to the legal order taken into consideration, therefore their determining character.

Through these characteristics themselves, the determining elements oppose the fungible elements which are rather accessory than fundamental to each legal order, being determined rather than determining.

Instead of uniqueness, the fungible elements are characterised by the plurality of solutions. This means that the elements in question, as well as the solutions arising from them, may be replaced with others, without the respective legal order suffering any fundamental change. This is because of and also explained by their loose connection to the legal order, or, since the fungible elements are characterised by the plurality of solutions and by the fact that they only have a weak and accidental relation to the legal order, it can be explained why these fungible elements can be replaced and why, by replacing them, the morphological profile and the fundamental characteristics of the legal order analysed do not change [17].

The fundamental contributions of the theory of determining elementsfor fundamenting the science of comparative law

Still, the new contributions of the theory of determining elements, and especially what and how it contributes to fundamenting the science of comparative law as an autonomous subject must be analysed. It may be said that this theory brings objective criteria able to order the subject, thus fundamenting the science of comparative law.[18]

Distinguishing the determining elements from the fungible elements means refusing to admit the point of view, implicitly accepted by all comparative specialists, and which is the basis for micro-comparison, thus the basis for all comparative efforts, namely that all fundamental legal elements within a legal order have the same value. Admitting that, if all the legal elements which make up a legal order have a technical value, some legal elements also have an ideological and teleological value, means first refusing the micro-results that micro-comparison reaches.

The distinction between the determining elements and the fungible elements allows the discovery of the determining structures, therefore of the central nucleus, the

value of which resides in the fact that it contains the elements which determine the specific morphology of the legal orders. It is a change of perspective which, in reality, is a change of the scale of observation. Through itthe move from micro-comparison to macro-comparison is achieved, therefore the move from a comparison having as object the fundamental legal elements, seen as an infinity of cells of equal value, to a comparison the object of which are legal orders, their determining elements and structures. The result of the former is knowing the legal elements, seen individually and in isolation. This fragmentary knowledge piled on top of each other cannot be ordered and classified except by the distinction between determining and fungible elements. This distinction makes macro-comparison possible, which brings out the role of the fundamental structures in legal orders. These are stated by the determining, irreducible and irreplaceable elements, creating the specific character of each legal order. Through this, the objective and scientific criteria themselves are established, due to which legal systems may be stated, and legal orders may be classified.[19] Indeed, the theory of determining elements proposes a scientific and not arbitrary, sure and objective criterion, able to classify legal orders into legal systems, whereas knowing the dominant morphological structures of legal orders is not the sole objective of the science of comparative law. Their comparison and, ultimately, their typological classification remains one its main duties.

The opposition features of legal orders

Legal orders are far from opposing each other, wholly or feature by feature. Most often, if not always, they oppose and approach each other at the same time. The observation is accurate for the legal orders belonging to the same legal system, as well as for legal orders belonging to different legal systems.[20] It is enough to know through which elements the legal orders are similar or oppose each other, as, in the end, the typological affinity and classification of two or more legal orders from the same legal system or from different legal systems shall depend on them.

The fact that two legal orders, for instance French law and Romanian law, belong to two different legal system, does not mean that they oppose each other, feature by feature and in all respects.[21] They may have, and indeed have numerous common

elements, since Romanian law was profoundly influenced by French law and codes. Still, despite these common elements, they are fundamentally different because their determining structures which make up the central nucleus, as currently different: and whatever the similarities in their multitude of fungible elements may be, these legal orders must be classified into different legal systems.

The similarities existing between two legal orders belonging to the same legal system, for example French and German law, are very important, because they are found at the level of the fundamental structures and are based on determining elements.[22] On the contrary, the differences which separate them do not have a decisive significance because they only exist at the level of fungible elements, therefore of the elements which, ultimately, do not determine nor characterise legal orders. Thus, whatever the multitude of difference between their fungible elements may be, these legal orders must be classified into the same legal system [23], because they more or less have the same central nucleus, therefore the same determining elements. What is therefore essential for the relation between two legal orders, as well as for their classification, are not their common point, nor their points of opposition, but the elements where their similarities lie and the elements where their divergences lie.[24] Indeed, whatever the differences between them may be, two legal orders must be considered typologically related and classified into the same legal system as soon as their determining elements become similar. On the contrary, whatever their similarities may be, two legal orders must be classified into different legal systems [25], as soon as their determining elements oppose each other.

Conclusions

In conclusion, performing all this research which begins by distinguishing the determining elements from the fungible elements, by identifying the determining elements, stating the determining structures, understanding the typological affinity of legal orders, classifying legal orders into legal systems through scientific, not arbitrary, criteria ultimately means exploring new areas for solving new problems and gaining new knowledge. Undertaking all these operations does not only mean surpassing the comparative method as a method, but also moving away from it and towards the

science of comparative law, in other words, creating a new subject, in a scientific, systematic and objective way, starting from the results of micro-comparison. This seems to be the field and purpose of the science of comparative law as an autonomous science, which comparative specialists have always been searching for, without finding them.

Thus, any autonomous subject means a certain abstractisation, which is achieved starting from fact to idea, from the incoherent multitude of observations to the unity of rules, from the chaotic juxtaposition of knowledge to the hierarchy of logically determined categories.

The first duty of any science is, essentially, to reduce, frame and order the disorderly multiplicity of observations and facts belonging to a certain field, into stable and objectively determined categories.

The second duty is to explain what seems inexplicable, that is, the multitude of facts through the unity of rules and categories. This is where the role of the science of comparative law as an autonomous subject may reside: striving to order and classify in a coherent whole the chaotic multitude of micro-results which micro-comparison offers, but it can do so only based on the fundamental scientific criteria which are offered by the theory of determining elements.

Thus, it may be said that the existence of the science of comparative law itself, as an autonomous subject, depends on this theory, which, otherwise allows the replacement of the Ptolemaic perspective with the Copernican one. It allows observing the exact position of legal orders and legal systems related to each other. Finally, it helps to understand - through a synthetic and coherent view resulting from a change in perspective - the legal universe in which one lives.

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THE LEGAL CONFLICT OF CONSTITUTIONAL NATURE AS REFLECTED IN THE JURISPRUDENCE OF THE CONSTITUTIONAL COURT

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Abstract
In its activity, the Constitutional Court of Romania analyzes both acts and facts. The legal conflict of constitutional nature falls into the category of constitutional facts, in the last years being more and more present before the constitutional judges. Even if the activity of the Court is dominated by the verification of the constitutionality of the laws, ordinances or other legal acts, the requests regarding the resolution of the legal conflicts of constitutional nature begin to draw the attention of the public opinion, as they determine the constitutional litigation court to establish, by jurisprudential way, the conduct to be followed by public authorities regarding the designation of constitutional authorities or highlight the dangers that may occur in the situation in which certain constitutional norms are violated. The merits of the legal conflict of constitutional nature arise from the jurisprudence of the Constitutional Court which, in this matter, has manifested a continuous openness.
Keywords: *jurisprudence, Constitutional Court, the legal conflict, constitutional facts*

Introduction

The revision of the Romanian Constitution in 2003 allowed for the consolidation of the competence of the Constitutional Court of Romania by establishing a new attribution, namely that of solving the legal conflicts of constitutional nature. Thus, according to Article 146 letter e, the Constitutional Court resolves the legal conflicts of constitutional nature between public authorities, at the request of the President of Romania, one of the presidents of the two Chambers, the Prime Minister or the President of the Superior Council of Magistracy. This attribution was also taken over in Law no. 47/1992 [1] on the organization and functioning of the Constitutional Court.

By its constitutional and legal status, the Constitutional Court is called not only to ascertain the existence of the legal conflict of constitutional nature, but also to resolve such a conflict. The Constitutional Court analyzes the existence of the legal conflict of a constitutional nature, and in the case in which it finds that there is such a conflict, it indicates the conduct to be followed by the public authorities involved in the conflict.

The juridical nature of the legal conflict of constitutional nature

The meaning of the legal conflict of a constitutional nature does not differ from the text of the Constitution nor from the legal norms contained in the law of organization and functioning of the Constitutional Court. The Constitution provides only the right of the Constitutional Court to resolve the legal conflicts of constitutional nature and the legal subjects entitled to notify the Court with such a legal conflict, while Law no. 47/1992 regulates the actual procedure for solving the legal conflict of constitutional nature. With regard to the legal issues that may be brought before the Constitutional Court, it can be observed that they are restrictively regulated in the fundamental act, the constitutional provision does not distinguish whether the authorities they represent are or are not parties to the conflict before the Court, as the court points out in one [2] of its decisions.

Instead, the jurisprudence of the Constitutional Court outlines the content of the notion of legal conflict of constitutional nature. Thus, by Decision no. 148 of 16 April 2003 (Official Gazette issue 317 of 12 May 2003), the Constitutional Court has shown that these conflicts may arise between two or more constitutional authorities regarding the content or the scope of their attributions, deriving from the Constitution. The court does not solve political conflicts, but institutional blockages, respectively the positive or negative conflicts of competence.

This is a first decision of the constitutional litigation court, which refers to the notion of legal conflict of constitutional nature and by which the Court tried to establish its content; still, the complexity of the constitutional legal relations and the issues arising from them over which the constitutional court has been asked to rule from the moment the decision was adopted and until now has determined the evolution of the jurisprudence in the matter. From the jurisprudential analysis it will be possible to observe the inclination that the constitutional court has had for extending the scope of the notion of legal conflict of constitutional nature.

By Decision no. 53 of 28 January 2005, published in the Official Gazette of Romania, Part I, issue 144 of 17 February 2005, the Court settles that this legal conflict of constitutional nature involves concrete acts or actions by which one or more

authorities arrogate powers, attributions or competences that, according to the Constitution, belong to other public authorities, or the omission of some public authorities, consisting of declining competence or the refusal to perform certain acts that fall within their obligations.

By Decision no. 97 of 7 February 2008, published in the Official Gazette of Romania, Part I, issue 169 of 5 March 2008, the constitutional legal conflict is claimed to exist between two or more authorities and may concern the content or extent of their attributions, arising from Constitution, which means that these are conflicts of competence, positive or negative, and which can create institutional blockades.

By Decision no. 270 of 10 March 2008, published in the Official Gazette of Romania, Part I, issue 290 of 15 April 2008, the Court also held that the text of Article 146 letter e) of the Constitution "establishes the competence of the Court to resolve in any case any legal conflict of a constitutional nature arising between public authorities, and not only the conflicts of competence emerging between them".

The Constitutional Court went even further with the approach in this matter and through several decisions (Decision of the Constitutional Court no. 901 of 17 June 2009, published in the Official Gazette of Romania, Part I, issue 503 of 21 July 2009, Decision no. 1525 of 24 November 2010, published in the Official Gazette of Romania, Part I, issue 818 of 7 December 2010, Decision no. 108 of 5 March 2014, published in the Official Gazette of Romania, Part I, issue 257 of 9 April 2014 , Decision no. 285 of 21 May 2014, published in the Official Gazette of Romania, Part I, issue 478 of 28 June 2014, Decision no. 685 of 7 November 2018, published in the Official Gazette of Romania, Part I, issue 1021 of 29 November 2018, or Decision no. 26 of 16 January 2019, published in the Official Gazette of Romania, Part I, issue 193 of 12 March 2019) has stated that these legal conflicts of constitutional nature "are not limited to conflicts of competence only, positive or negative, which could create institutional blockages, but they concern any conflicting legal situations whose emergence resides directly in the text of the Constitution".

Therefore, compared to the initial approach in which the legal conflict of constitutional nature was viewed by the constitutional litigation court through the prism of the institutional blockages, at present there is a broader view of the concept

enshrined in Article 146 letter e from the Constitution and which considers “any conflicting legal situations whose emergence resides directly in the text of the Constitution”.

Despite this new approach to the problem of the legal conflict of a constitutional nature, the Constitutional Court emphasizes in two decisions (Decision no. 685 of 7 November 2018 and Decision no. 26 of 16 January 2019) that the rule regarding the employment of the competence of the Constitutional Court “is that, insofar as there are mechanisms by which the public authorities can regulate themselves through their direct action, the role of the Constitutional Court becoming a subsidiary one. On the other hand, in the absence of these mechanisms, insofar as the task of regulating the constitutional system rests exclusively with the court, which is thus placed in a position to fight for guaranteeing its rights or freedoms against an unconstitutional but institutionalized legal paradigm, the role of the Constitutional Court becomes a major and essential one for removing the constitutional blockade”.

In our opinion it is a balanced approach of the constitutional judge, because, in general, the subjects of law involved in legal conflicts of constitutional nature have a strong political foundation, and a random involvement of the constitutional court in the settlement of such conflicts could lead to the institution’s disbelief and to accusations of political partisanship.

Regarding the meaning of the notion of “public authorities” between which a legal conflict of constitutional nature may arise, the Constitutional Court has shown [3] that there are only those authorities included in Title III of the Constitution, namely: the Parliament, composed of the Chamber of Deputies and the Senate, The President of Romania, as a single-person public authority, the Government, the central public administration bodies and the local public administration bodies, as well as the judicial authority bodies.

Because the constitutional court has recently adopted an important decision related to a legal conflict of a constitutional nature, we consider that it is appropriate to present some aspects derived from the manifestation of the will of the constitutional court. This is Decision no. 85 of 24 February 2020, by which the Constitutional Court sanctioned the unconstitutional conduct of the President of Romania in the procedure of

forming the Government. The decision is interesting both from the perspective of the object of the request, of its considerations, as well as of the prescribed conduct to the subject of law generating the legal conflict of constitutional nature.

DECISION no. 85 [4] of 24 February 2020 on the requests for the resolution of the legal conflicts of constitutional nature between the President of Romania and the Parliament of Romania, made by the President of the Chamber of Deputies and the President of the Senate

In order to adopt this decision, the Constitutional Court was notified with the requests for the resolution of the legal conflicts of constitutional nature between the President of Romania and the Parliament of Romania, formulated by the President of the Chamber of Deputies and the President of the Senate. According to Article 146 letter e of the Constitution, both the President of the Chamber of Deputies and the President of the Senate can hold the right to refer the Constitutional Court with the resolution of a legal conflict of constitutional nature.

The Constitutional Court has found that the requests made by the President of the Senate and the President of the Chamber of Deputies, respectively, concern a litigious, conflicting situation, as they refer to a dispute between the President of Romania and the Parliament regarding the nomination of the candidate for the position of Prime Minister. It has been appreciated that this conflict has a legal nature, as it refers to the extent and valorization of the competence of the President of Romania in this context, as well as a constitutional one in nature, as the whole litigation situation is confined to the constitutional provisions regulating the procedure of the Government's investiture, all together the constitutional provisions that set up the role of the President of Romania and of the Parliament, as well as the legal relations between the two public authorities.

From a procedural point of view, before entering the merits of the application, the Court initially checks the following aspects: the holder of the complaint; the quality of public authority of the parties in conflict; the legal character of the conflict under analysis; the constitutional nature of the conflict.

The requests of the President of the Senate and the Chamber of Deputies have underlined, in essence, the fact that the President of Romania acted discretionarily by appointing the candidate for the position of Prime Minister, in the sense that he proposed the same person who, the day before, had received a vote of no confidence from the part of the Parliament of Romania, in order to cause the dissolution of the Parliament and to determine early elections.

In its analysis, the Constitutional Court found that the litigation situation refers to the constitutional provisions regarding the nomination of the candidate for the position of prime minister, to all the constitutional norms and principles that configure the procedure for appointing the Government, the role of the President of Romania and the Parliament, as well as the legal relations between the two public authorities, in a specific context, determined by the adoption of a censure motion and the immediate appointment, as a candidate for the position of prime minister, of the same person who fulfills the position of prime minister of the dismissed Government.

After finding the existence of the legal conflict of constitutional nature, the Constitutional Court resolved this conflict and showed the conduct that the public authorities involved in the legal conflict of constitutional nature must have. Thus, the Court ruled that “the whole set of acts/facts/statements of the President of Romania demonstrates the distortion of the natural meaning of the constitutional norms regarding the nomination of the candidate for the position of prime minister, the fact that there was not even the intention of appointing a candidate to obtain the vote of confidence of the Parliament, but rather that there was the intention not to obtain it, and, from this perspective, an antagonistic position of the President to the Parliament, with the violation of the obligation of constitutional loyalty governing the interpretation and application of the Constitution and the relations between the public authorities of constitutional rank, which consequently determine a legal conflict of constitutional nature between the President of Romania and the Parliament”.

From the point of view of the conduct, in the accomplishment of the attribution provided by Article 103 paragraph (1) of the Constitution, the President of Romania was obliged to re-designate the candidate for the position of prime minister, the Court

drawing attention that this designation must respect both the letter and the spirit of the Constitution, as well as the obligation of loyal constitutional behavior.

Solving the legal conflict of constitutional nature, the constitutional litigation court drew attention to deviations from the constitutional norms and sanctioned this unfair conduct in relation to the text of the fundamental law.

Conclusions

As a guarantor of compliance with the fundamental norms, the Constitutional Court has the power to resolve legal conflicts of a constitutional nature, disputes between different public authorities regulated in Title III of the Romanian Constitution. The Constitutional Court does not resolve political conflicts [5], but is called, through the notification made by the institutional actors expressly provided by the constitutional text, to solve legal conflicts of constitutional nature. Considering that one of the conditions for achieving the fundamental objectives of the Romanian state is a good functioning of the public authorities, following the principles of separation and balance of powers, without institutional blockages, an aspect underlined in the jurisprudence of the Constitutional Court (Decision no. 460 of 13 November 2013), in the case of the emergence of an institutional blockade that cannot be solved by the self-regulation mechanism, the constitutional litigation court is called to unblock the situation. Of course, from the point of view of the meaning of the notion of legal conflict of a constitutional nature, it does not intervene only in case of institutional blockade, but in any conflicting legal situations whose emergence resides directly in the text of the Constitution. Moreover, it can be observed, analyzing the evolution of the jurisprudence in this matter that the meaning of the notion of legal conflict of constitutional nature is in a continuous dynamic.

Regarding the consequences of the manifestation of the Constitutional Court will, regardless of the authority that generated the legal conflict of constitutional nature, it has the obligation, within the coordinates of the rule of law, to respect and comply with those established by the decision of the Constitutional Court (Decision no. 85 of 24 February 2020).

The decision resolving the legal conflict of a constitutional nature is final and communicated to the author of the referral, as well as to the parties in conflict, before its publication in the Official Gazette of Romania, Part I [6].

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CRIMINAL BEHAVIOUR AND ITS MOTIVATIONS

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Abstract
Criminal behaviour should be followed under all its aspects, the process of raising and educating the individuals playing a dynamic part within the whole criminal-related structure. One cannot put aside the nature or the on-going development of the individual under all its psychological social and cultural aspects. The role of the family, governed by the educational process, is very important, the family environment thus being able to create prototypes for the society, subject to the cultural transformations and to the social and economic changes.
Keywords: *criminal behaviour, dominant social environment, personality, motivations, criminogenic factors, unique circumstances.*

Introduction

All along his/her life, the individual develops more or less normally as a reaction to external stimuli. During the development process that starts at birth, at the same time with the growing process, the individual becomes normal or deviant, he/she can be marginalized or subjected to the inferiority complex. The trajectory of such a process is influenced at the same extent by the family, social, educational and cultural environment, the individual acquiring both the capacity of adaptability to rapid changes of the society and also the capacity of immunization to its actions. On its way to adulthood, education plays the main part in the development of the individual, in creating values and models for society, but his/her behaviour manifests itself by relating to the other members of the society, thus giving birth to a social style of the group. The individual's manifestations are not self-subsistent, but they take place within the group in which the individual is inserted, being exposed to the pressures of the dominant environment in which he/she finds him/herself.

The criminal behaviour in relation with the dominant social environment

Not only the biological constitution of the individual prevails over the individual's criminal manifestations, but also his/her whole life experience, experiences he/she had had during their lives, including the social context in which he/she finds his/herself at a

certain moment. The individual manifests differently as a reaction to external stimuli, an important part being played by the sources of the impulse and of control. The interruption and inhibition of normal growth or the occurrence of some unavoidable conflicts along the adulthood process can determine deviant or criminal behaviours, the most inclined to that being the impulsive individuals, those having a disorganised, chaotic, futureless way of life. As a paradigm, though, their criminal manifestations are well organised, also showing wisdom and astuteness in their organisation. These individuals adopt such behaviour regularly and monotonously, without being scared in any way by failures or by eventual sanctions applied. Sometimes, they act impulsively, such impulse being based on the tendency of deviation which is innate and not acquired. Beyond this, it is true that social factors, therefore social relationships, and also the culture of the environment and of the group, have an influence on behaviour.

In other words, the personality of the offender who commits the offence is favoured by the social conditions influencing the criminal actions or the moment of arriving to such action. Any criminal act should be approached in terms of control which includes social dynamics [1]. The criminal behaviour occurs as a result of the confrontation between society, on one hand, organised socially and legally, and its subjects, on the other hand, organised on categories and social groups. Nevertheless, criminal manifestations appear as a result of continuous interactions [2], in terms of the way in which the interpersonal behaviours are perceived. We have to notice, however, if the individual finds him/herself in front of an interaction which is not a priority.

The antisocial act cannot be interpreted outside the dominant environment, in which objective and subjective causes and factors subscribe, having an impact on abnormal behaviour. Each behaviour includes its own story. That is why, what is automatically perceivable or similar to another behaviour found is not characteristic to that situation. Each event is of interest partially, taking into account the specificity of the conditions in which it is manifested, and also the reaction of ”that individual” to such environment. All these are supported by the fact that at present the man does no longer live isolated, but in a specific environment, with particular situations and biological, psychological and social characteristics. The society now is organised so that the individual is liable for his/her own actions. Hence the interactions taking place between

individuals, based on arguments related to ideas, principles, rules, values, feelings and attitudes.

The source of criminal behaviour. Determinants and motivations

The study of criminal-related act is closely related to the inherent, psycho-pathological analysis of the wrongdoer. We talk about an abnormal individual from the psycho-pathological point of view, who can have a normal or abnormal behaviour, in relation with the concrete situations in which it takes place. Such manifestation can be influenced by a series of factors related to somatization, temperament, attitudes, psychology, society and culture. All these factors create pressure and give birth, by their mutual action, to antisocial behaviours which manifest persistently in time. The predisposition to delinquency is especially met to those with excessive energy, itching for adventure, impulsive, aggressive, and destructive or to those having an authoritarian, hostile, despiteful temperament; regarding them we have the so-called criminal potential. The antisocial act occurs as a result of the combination of the criminal potential with the circumstantial factors [3].

Each wrongdoer should be related to the offence he/she commits. For the same social situation, human reactions are different, each of them being driven by a unique motivation [4]. The antisocial behaviour occurs as a cognitive expression over the conditions of the social life and reality. The biological and psychological side interferes with the social one, which explains the diversity of human reactions to the same given situation [5]. The role of the family is a primary one within the structure of the individual's personality and within the construction of a normal and balanced character. The first stages in the character development identify with the need of affection, understanding, protection and safety on the parents' behalf, the parents fulfilling the role of guides and road openers for the future adult. The lack of such landmarks or the shortcomings registered within the family nucleus have repercussions in the individual's psychopathic and disharmonic personality. The frustrations, tensions, feelings of emotional instability or of emotional conflict, experienced since childhood, can develop the predisposition to delinquency, especially if we related to a disorganised cultural environment, present in the urban disadvantaged areas [6]. Therefore, temperament,

intelligence, and level of energy, practically all the aspects of personality, are in close connection with the social and environmental situations. The evolution of the human being and his/her behaviour are always closely connected to the hereditary and environmental factors. The psychic factors have impact on the whole body, being present at the level of each cell from the human body. At the same extent, in researching the causes of the offences, they start from the idea that the wrongdoer is not an isolated individual, but the product of the society in which he/she lives, involving also the responsibility of the society.

The criminal personality and the criminal tendencies

There is a variety of deviant or criminal behaviours, extremely different one from another, and what is of interest is the totality of the deeds which determine the behaviour of an individual at a certain moment. It is unquestionable that the biological factors are the basis of personality itself, respectively the basis of criminality. Alcoholism, physical diseases, mental illnesses, suicide, as well as other negative characteristics of the predecessors, represent the luggage of a direct genetic inheritance of mental weakness. The behaviour is not the one which is transmitted, but there can be some significant „patterns", easy to place in a certain context and at a certain moment, where it is necessary that the individual adapt to the pressures exerted on him/her. Practically, when analysing criminality, we have to take into consideration the correlation between the *disposition of personality* and the *environment* in which it develops.

Personality and actions should be regarded from a dynamic perspective, so that each human behaviour has to be prevalently assessed according to personality and environment, and then according to deeds. Thus, the following aspects are of equal interest: disposition of the individual, his/her condition of development, events from his/her life and from the past, and also the external influences which determine the action. Franz Exner, in his researches on the person of the wrongdoer, reached the conclusion that the formation of personality is also determined by the surrounding environment, and the offence represents a reaction to the environment impressions. It is a combination of influences, dispositions and environment [7].

All behaviours are different, according to their dynamics, they have to be analysed within a certain time unit and in a given situation. The professional thief, the wrongdoer associated in a criminal organisation, the dishonest public servant, cannot share the same values, and their thinking and wishes lead to different motivations. That is why, in order to understand deviance, we have to analyse the individual in his/her biological, psychological and social complexity, he/she being constantly in different and complex circumstances. Practically, the deviant behaviour supposes an active participation of the individual, who acts according to his/her own feelings, as a response of his/her personality to the need to feel similar or different from the others.

Criminogenic factors in juvenile delinquency

The teenage period represents a favourable ground for violent and aggressive behaviours, where a rapid psychological and physical transformation takes place, in which the need of his/her own identity is felt [8]. An early antisocial debut shows a higher probability regarding the criminal-related career of a person. Understanding the criminal and violent behaviour starts from the establishment of neuronal correlations which are the basis of the cognitive and effective processes guiding the daily antisocial behaviour. Therefore, at the basis of the criminal behaviour there are both social-environmental influences and simply neuronal factors. Thus, both age and the development stage in which the individual finds him/herself, can explain how adolescence can involve an aggressive or criminal behaviour risk. The brain activity is correlated with the mental functions and the behaviour of an individual, in different moments of development [9]. It was emphasized that the eventual dysfunctions at the medial frontal orbital cortex level are associated with a lower capacity to reflect on his/her actions and to manage the aggressive actions toward a violent behaviour

When explaining criminal juvenile activity, the minor should be placed within the context of his/her life and observed through the combination of all biological, psychological and sociological aspects. A progressive analysis of his/her biography is necessary, in order to individualize his/her own personality, and for that you need to effectively place yourself into his/her world. This implies a thorough study his/her way of being, within the whole psychological and evolutional path, and listening to the subject

regarding his/her inner resonances, interpersonal and environment relationships. We have to analyse the experiences lived directly by him/her and which make up his/her life history, paying attention to the way in which they are told and also to the shapes he/she gives to his/her own stories, as it is extremely important to see the most profound and authentic core of the story. We can see from here the fundamental meaning of his/her choices and we can distinguish the motivation of the minor's illegal behaviour as an expression of his/her actions during his/her life. Such behaviour should not be reduced to a particular neuropsychological functioning, but an analysis is imposed, analysis of the individual in his/her complexity, in relation to his/her psychological needs, values, his/her priorities at a certain moment, respectively to everything contributing to the construction of his/her life, his/her lifestyle, his/her relationship with himself/herself and with the world around him/her.

Conclusions

A criminal behaviour begins in his/her defect, disharmonic, psychopathic personality. The antisocial act should be presented from a multilateral perspective, in terms of all circumstantial causes and conditions. The individual places himself/herself willingly in the conflict zone, being an active participant, as a result of his/her defective affective and social structure. The more significant a deficiency is, the higher his/her social inadequacy level is, and the more frequent and powerful the antisocial manifestations are.

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JURIST MIRCEA DJUVARA ON THE EDUCATION OF YOUNG PEOPLE (1939)

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Abstract:
Our paper aims to draw public's attention to the conception that Mircea Djuvara, a prominent Romanian jurist (1880-1944), had of education. His ideas on the education of young people were published in the magazine Royal Foundations of 1939. Mircea Djuvara considered that, in the education of young people, besides the well-known factors, namely family, school, church and so forth, an important role could be played by new factors, such as the nation and possible examples provided by politics. Mircea Djuvara recommended that young people should get involved in social activities, and, by doing so, to promote national collectivity.
Keywords: *Mircea Djuvara, education, young people*

1. Mircea Djuvara: brief presentation of his personality

Mircea Djuvara was born in Bucharest in 1886, in a family with traditions in the Law field [1]. He graduated from "Gheorghe Lazăr" High school from Bucharest, being among the best students every year, and then he studied law, philosophy and philosophy at the University of Bucharest. As a young man, he was deeply marked by the personality and conception of Titu Maiorescu, fact which led to Djuvara getting closer to the intellectual group *Convorbiri literare* (*Literary Conversations*).

Mircea Djuvara continued his intellectual formation at the University of Sorbonne, where he attended doctoral studies in Law, as well as at the Faculty of Medicine in Paris and at some universities in Germany. In addition to law studies, he participated in lectures on philosophy, mathematics, physics, medicine and psychology, being captivated by the lectures that Bergson would held at Collège de France. He published several articles in French scientific journals and in 1913, he obtained the doctorate in law [2].

Immediately after, Djuvara returned to his country, where he started his didactic activity at the Faculty of Law, within the University of Bucharest, teaching lectures in legal encyclopaedia and constitutional law and excelling in the fields of law

encyclopedia and law philosophy. He ascended all didactic levels: lecturer, associate professor and full professor (1932), and proved to be a very goog speaker, which would explain the respect of his students. Moreover, as a professor, he attended numerous public conferences.

Furthermore, Mircea Djuvara had an intense diplomatic activity: he was a member of the Romanian delegation at the Peace Conference from Paris-Versailles (1919), the country's delegate to the General Assemblies of the League of Nations, and in 1924, he participated in the Romanian-Soviet Conference in Vienna.

With respect to his scientific activity, Mircea Djuvara was appointed a correspondent member of the Romanian Academy, the vice president of the International Institute of Law Philosophy and Legal Sociology and a professor at the International Law Academy in The Hague. Moreover, he was a member of the Romanian Social Institute, of the Institute of Administrative Sciences, of the Academy of Moral and Political Sciences, of Libere University, as well as a foreign member of the Academy of Sciences and Arts in Boston.

Mircea Djuvara was the Minister of Justice in 1936, Minister of State, member of the Parliament in several terms (1922-1938) and lawyer at the Ilfov Bar [3]. His scientific work includes over 140 titles that cover fields such as: general philosophy, legal philosophy, law theory, legal sociology and so forth [4]. He died in 1944.

2. Mircea Djuvara: On the Education of Young People

When analyzing the problem of social education of young people, Mircea Djuvara considered that this issue involved understanding the relationships between the individual and the society. The two universes, i.e. the individual and the society, coexist, and basically, they are not to be perceived as two diametrically opposed realities. "Individuals are almost impossible to conceive without the society" [5]. Therefore, he considered the existence of a bipolar reality.

Society is not a unit composed of separate individuals, as the individual and the social groups are interdependent. An individual evolves under the relation of consciousness and motivations, being influenced by the traditions that exist in that society. "All our thoughts, all our feelings, all our actions appear as a kind of reflexes of the society" [6]. The "Greek miracle" itself, as Djuvara argued when referring to

everything that ancient Greece had achieved in the field of science and art, could exist only when shaped and influenced Elada civilization. In conclusion, “society exercises a deep action on the soul of the individual” [7].

A child socializes in a certain environment in which he lives. At first, he/ she receives from the family and society, and then, at their maturity, they give back the fruits of the education they received. Therefore, it is obvious that education must play an important role in the formation of human personality. Djuvara knew and embraced the views on child psychology developed by well-known theorists of the time, from France (Jean Piaget), England, Germany, as well as from our country.

The Romanian jurist unreservedly supported the role of the action, of what we nowadays call *game*, in the formation of the child and of the human character. In this regard, he noted, that “at the beginning of [the formation of] consciousness there can only be action” [8]. A child’s play may later become sports game, that had a number of valences. Djuvara considered that discipline is freely assumed and very important, as it may acquire complex valences, since “game in a group sometimes involves very strict rules and, at the same time, voluntarily obeying them, which is in fact the ideal way of social life” [9]. By means of sports game, both the pride of getting good results and the admiration for what was beautiful were cultivated.

Mircea Djuvara approaches the issue of discipline philosophically, and in connection with the concept of freedom. “Listening to and subjecting ourselves to discipline is a great virtue, but the obedience given must not be that of an animal, but that of free and thoughtful human being” [10]. The answer to the question how a man could be disciplined, yet not blindly submissive, was simple: by reason, by the prioritization of goals and by a conscious and assumed choice.

The ratio between discipline / obedience and freedom was vital in the organization and functioning of the state. If man listened to and obeyed all state requirements, and did not think, he would neither be free any longer, nor be able to create, and, as a result, society would remain petrified and would no longer advance. “Discipline, if it is total and generalized” is nothing more to man than “an absurdity and an insult” [11]. Discipline, as Djuvara stated, is justified only for the fulfillment of a higher purpose, which man, by reason, understands, approves and accomplishes.

Discipline “must never degenerate into brutality”, it must be “freely received and, especially, freely understood, even when it implies inevitable rigor”. As far as possible, discipline must be “cherished, sought and loved even by the one to whom it is imposed” [12].

Djuvara’s vision of the discipline is, obviously, very profound and characterized by suppleness, philosophical background, as well as by the need to understand the rules of behaviour that are beneficial to the human being, and to the society in general.

When analyzing in depth and systematically the problem of young people’s education, the Romanian jurist brings to attention other elements of this process, such as the importance of personal example. Djuvara considers that “personal example contagion” could play a miraculous role, as it represents “one of the most effective means of education.” However, the affection between the educator and the educated is also essential. “The primary school teacher or any other teacher who does not know how to get closer to the child’s soul [...] can ultimately do more harm than good” [13].

Language and word play also their role in the formation of a young person, through the messages they carry and transmit, messages that could reach unexpected spheres. Words could sing to our soul “rhythmically” or in “musical phrases”. It was about using words in poetry and music, so that they may “work deep inside and be valuable means of education” [14].

Manual work and teamwork cannot be neglected in one’s development. Human activity brings the satisfaction of the “well-done work”, the feeling of solidarity and understanding of others’ wishes and needs. Djuvara emphasized the need to involve young people in common activities that were necessary for the community in which they lived. State authorities had the responsibility to train students in achieving “a healthy social ideal”. They were to be guided “to live an active life together”. Otherwise, young generation could become a prey to light demagogues, wasting time with harmful effects on the formation of this social segment’s personality [15]. “The individual can mature only by profession”, while the dilettante “always remains imperfect” [16].

When discussing educational factors, the traditional ones, such as family, school and church, are also taken into account by Mircea Djuvara. Within a family, the influence of the “warm connection between parents and children” was emphasized, as

well as the fact that any family that could achieve a strong cohesion in order to overcome difficult moments constitutes “a superior school of altruism and moral education” [17].

Djuvara did not insist on the role of school and church, as they were well-known factors in one’s development. The interposition of the communist regime in the Romanian history led to the circumvention of the church’s role in the process of forming one’s personality. However, in the interwar time, church was still a pillar of morality, compassion and altruism, and had been well founded at the beginning of the twentieth century [18].

Mircea Djuvara brought to public attention a less discussed aspect when it comes to the education of young people, namely the nation. “The man of our times is generally very sensitive to the call of the nation, which comes [...] from the depths of his consciousness.” This feeling is more prevalent in the difficult moments of a people’s history, when the individual “gladly” sacrifices both himself and his wealth “for the salvation of the nation he is part of” [19]. It was, obviously, an influence of the turbulent times that Europe was going through, namely the sacrifice of national integrity and independence of some states, as well as the outbreak of World War II. The reaction of Mircea Djuvara was that of a patriot’s, who in a turbulent era, saw his own country threatened [20].

When addressing the political sphere, Djuvara did not hesitate to highlight its educational value. The author debased demagoguery, opportunism and selfishness which he considered to be transposed in materialistic interests and the thirst for power. The politics must subordinate to the interests of the nation and be open to “those who, by forgetting themselves, feel the vocation to guide their society on the path of public progress” [21].

In Djuvara’s opinion, the educational ideal of his time should have been the harmonious formation of each individual’s personality, which had to be based on optimism, moderation and modesty and, further on, given back to the society under the form of a creative activity. Evil exists in us and in the society, but one must defeat it “for the sake of our exaltation and progress [...] and for the benefit of others.” The author

recommended young people to be energetic and to direct their energies “towards the ideal values of the spirit" and to the benefit of the society [22].

Djuvara emphasized that the ideal human being of his time could not be “that of the wise man of antiquity”, nor that of the “saint of the Middle Ages”, nor the ideal of the seventeenth century, or of any other past time. The ideal of his time consisted in “the cultivation of the self” and in “one’s active participation in the integrity of social life”. Isolation was nothing else but spiritual mutilation, and only by living a social life and through acts of courage, the fullness of human life could be shaped [23].

3. Conclusions

Throughout his life and career, Mircea Djuvara proved to be a genuine intellectual. He transcends the field of his profession and easily translates from law to various other areas, such as: diplomacy, philosophy, psychology, pedagogy, education, literature, oratory and so forth. Undoubtedly a voice of his time, Mircea Djuvara was in contact with the ideas of influential personalities of that time, such as Titu Maiorescu and Henri Bergson, and he appreciated the works of thinkers, such as Blaise Pascale, Jean Jacques Rousseau, Émile Durcheim and others whom he cited in his research.

When addressing the issue of young people’s education, Mircea Djuvara demonstrated suppleness, honesty and realism. He was not a novice in the matter, and, at times, he proved a true avant-gardist [24]. Djuvara started from the universally valid concepts, from the realities of his time and of his society, in order to envision recommendations that were viable for his time and for the national community in which he lived. From generally valid principles, the author pictured the educational ideal of his present and, due to his life and professional experience, he managed to draw exhortations and words of wisdom for the education of young people.

Enlivened by patriotic feelings, Mircea Djuvara tried to innoculate them to the young generation as well and in order to do so, he did not bypass the example of the politics, advocating for honesty and involvement in the nation’s propagation.

His conception of education represented a real plea for the involvement of young people in action and in the society, as well as for discipline, which the jurist defined as an assumed and vital necessity and, essentially, as an expression of human freedom.

To conclude, Mircea Djuvara remains a true model, one of the greatest jurists of our nation, who got actively involved in several related fields and ennobled his profession through an encyclopaedic spirit.

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SOME COMMENTS REGARDING THE LAW NO. 129/2019 FOR PREVENTING AND COMBATING OF MONEY LAUNDERING AND TERRORISM FINANCING

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Abstract
The article presents and analyzes aspects related to law no. for the prevention and combating of money laundering and terrorist financing, as well as for amending and supplementing normative acts, in particular the provisions relating to the forensic investigation of money laundering and the financing of terrorism.
Keywords*: money laundering, financing of terrorism, investigation, Financial Intelligence Units.*

Introduction

The money laundering offences are included in the Romanian legislation in Article 49 of Law no. 129/2019 for the prevention and combating of money laundering and terrorist financing, these acts of money laundering being defined in accordance with the provisions of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Terrorist Financing of Warsaw of 16 May 2005 and of the Directive 2015/849/EU on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing.

In essence, the phenomenon of money laundering consists in hiding the true origin of the profits obtained illegally by the criminals as well as their true identity in order to subsequently benefit from the amounts obtained. Money laundering refers to the existence of another crime - the main crime - as a result of which illegal income is obtained and consists of any action that uses the income from that main crime.

As examples of main crimes, we can mention: illegal arms sales, smuggling, drug trafficking, embezzlement, prostitution, bribery, computer crimes, etc. Money laundering affects not only the integrity of financial and business services, but also the economic development of states. It also negatively affects public confidence in banking systems and financial markets, especially in emerging economies.

From the perspective of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Terrorist Financing, the forms of international cooperation are the following: assistance during the investigation of crimes, identification, tracing, blocking or immediate seizure of confiscated property to facilitate in particular the application of a subsequent confiscation measure and cooperation between financial intelligence units. The Convention seeks to improve cooperation between financial intelligence units in order to facilitate the investigation and conviction of persons suspected of committing money laundering offences. At the same time, the Convention recommends that Member States take the necessary measures to establish a regulatory and supervisory regime in order to prevent money laundering and to comply with relevant international standards, such as the recommendations adopted by the Financial Action Task Force on Money Laundering (-FATF-).

Directive 2015/849/EU aims to prevent the use of the European Union's financial system for the purpose of money laundering and terrorist financing. This Directive applies to credit institutions, financial institutions, as well as to certain natural or legal persons engaged in their professional activities, such as auditors, external accountants, tax advisers, real estate agents, gambling service providers, notaries and others. persons practicing legal professions, when participating, in the name and on behalf of the client, in any financial or real estate transaction, or when assisting in the planning or execution of transactions for the client related to the purchase and sale of real estate or commercial entities, money management, securities or other assets of the client, opening or managing bank accounts, savings accounts or securities accounts, organizing the necessary contributions for the creation, operation or administration of companies, creation, operation or administration of trusts, companies, bow or similar structures. Directive 2015/849/EU also applies to other persons who trade in goods only to the extent that payments are made or received in cash and have a value of at least 10 000 euros, regardless of whether the transaction is carried out in a single transaction. operation or through several operations that seem to be related to each other.

According to Article 49 para. (1) of Law no. 129/2019 for the prevention and combating of money laundering and terrorist financing, it is the crime of money laundering to commit the following acts:

a) the exchange or transfer of goods, knowing that they come from the commission of crimes, in order to conceal or conceal the illicit origin of these goods or in order to help the person who committed the crime from which the goods come to evade prosecution, trial or execution of the sentence;

b) disguising or concealment of the true nature, provenance, location, disposition, movement or ownership of the goods or of the rights over them, knowing that the goods come from the commission of crimes;

c) the acquisition, possession or use of goods by a person other than the active subject of the crime from which the goods come, knowing that they come from the commission of crimes.

The legal object of the crime of money laundering is the social relations that guarantee the financial-banking system and the healthy money circulation of the national currency, on the one hand, and on the other, the normal formation and development of relations that guarantee the origin of legal income.

The active subject of the crime of money laundering can be any person, without requiring a special quality.

The financial intelligence units

Financial intelligence units are the main sources of information in money laundering investigations [1]. The financial intelligence units were defined for the first time by the Financial Action Task Force - FATF - through recommendations, the most recent definition being developed in the recommendations from the year of 2019. Thus, Recommendation no. 29 of the FATF in the year of 2019 defines financial intelligence units as “national centres, which receive and analyse suspicious transaction reports and other important information for money laundering, associated main crimes and terrorist financing, as well as for disseminating the results of the analysis. Financial intelligence units should also obtain additional information from reporting bodies and have timely

access to the financial, administrative and law enforcement information they need to perform their duties properly" [2].

The financial intelligence units are defined in Article 32 of Directive 2015/849/EU on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing in accordance with the text of the Recommendation no. 29 of the FATF organization from the year of 2019. Directive 2015/849/EU, according to Article 32 provides for the obligation of each Member State to set up a financial intelligence unit in order to effectively prevent, detect and combat money laundering and terrorist financing [3].

The main reports submitted to the financial intelligence units are as follows [4]: reports on suspicious transactions or activities; reports on foreign exchange transactions; reports on foreign exchange transactions carried out by casinos; reports on bank transfers; cross-border reports.

The national system for preventing and combating of money laundering and terrorist financing consists of the following authorities and institutions according to Article 1 para. (1) of Law no. 129/2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing normative acts: the criminal investigation bodies; the public authorities and institutions with regulatory, information and control attributions in the field, such as the financial information unit of Romania, authorities with financial/fiscal control attributions or authorities with fiscal control attributions, customs authority; state bodies specialized in the information activity provided in Article 6 para. (1) of Law no. 51/1991 on the national security of Romania, republished, with subsequent additions; the autonomous administrative authorities and institutions with the role of sectoral regulation and supervision and control of reporting entities, such as the National Bank of Romania, the Financial Supervision Authority, the National Gambling Office.

The National Office for Prevention and Combating of Money Laundering (FIU) is the financial intelligence unit of Romania, of administrative type, based in Bucharest, a specialized body with legal personality, independent and autonomous from an operational and functional point of view, subordinated Government and under the coordination of the Prime Minister of Romania. The object of activity of the National

Office for Prevention and Combating of Money Laundering is the receipt, analysis, processing and dissemination of financial information, supervision and control, according to law, of reporting entities in order to prevent and combat money laundering and terrorist financing.

The National Office for Preventing and Combating of Money Laundering represents the authority that coordinates the assessment of money laundering risks and terrorist financing at national level, an assessment that is carried out in cooperation with the authorities and institutions provided by Article 1 para. (1) of Law no. 129/2019, ensuring the protection of personal data.

In fulfilling its object of activity, the National Office for Prevention and Combating of Money Laundering, has the following main attributions, according to the provisions of Article 39 para. (3) of Law no. 129/2019: receives the reports provided for in this law, as well as other information from reporting entities, authorities and public institutions in connection with money laundering, money laundering offences and terrorist financing; collects the information received by creating its own databases; requests from the reporting entities, public or private authorities or institutions the data and information necessary for the performance of the tasks established by law, including classified information; evaluates, processes and analyzes the information received; orders, in accordance with the law, the suspension of transactions related to a suspicious activity of money laundering or terrorist financing and may order the revocation of the suspension measure, pursuant to the provisions of this law, etc.

The reporting entities have the obligation to report to the National Office for the Prevention and Combating of Money Laundering the transactions with amounts in cash, in lions (the local currency of Romania or in foreign currency) or in foreign currency, whose minimum limit represents the equivalent in lions of 10,000 euros. Credit institutions and financial institutions will submit online reports on external transfers to and from accounts, in lions or foreign currency, whose minimum limit is the equivalent in lions of 15,000 euros.

The National Office for the Prevention and Combating of Money Laundering analyses and processes the information from the reports on suspicious transactions, and when there are indications of money laundering or terrorist financing, it immediately

informs the Prosecutor's Office attached to the High Court of Cassation and Justice [5]. If the National Office for the Prevention and Combating of Money Laundering finds the financing of terrorism, it will immediately notify the Romanian Intelligence Service regarding the suspicious terrorist financing operations.

The National Office for the Prevention and Combating of Money Laundering shall inform the criminal investigation bodies and, as the case may be, other competent authorities about suspicions of committing crimes other than money laundering or terrorist financing.

In order to fulfil its object of activity, the Office for the Prevention and Combating of Money Laundering has direct access, in a timely manner, to financial, fiscal, administrative information, as well as to any other information from law enforcement authorities and law enforcement agencies. criminal prosecution, for performing the tasks properly. The Office for the Prevention and Combating of Money Laundering represents Romania in its field of competence and promotes the exchange of experience in relations with international organizations and institutions, cooperates with foreign financial intelligence units, can participate in the activities of international bodies and can be a member of them.

The Office for the Prevention and Combating of Money Laundering requests from the reporting entities, public or private authorities or institutions the data and information necessary for the fulfilment of the attributions established by law. We mention that the requested data are transmitted exclusively in electronic format and are processed and used within the Office for the Prevention and Combating of Money Laundering in a confidential regime, respecting the security measures of personal data processing.

In order to fulfil the legal obligations of the National Bank of Romania and the Financial Supervision Authority, the Office for the Prevention and Combating of Money Laundering provides, at their motivated request, information on persons and entities that have associated money laundering and financing risk of terrorism.

The manner of application of the provisions of Law no. 129/2019 is supervised and controlled, within the service attributions, by the following authorities and bodies: the National Bank of Romania; the Financial Supervision Authority; the National Agency for Fiscal Administration; the National Gambling Office; the Office for the Prevention and

Combating of Money Laundering; the self-regulatory bodies, for the reporting entities they represent and coordinate. At the same time, we emphasize that the authorities and bodies mentioned above must immediately inform the Office for the Prevention and Combating of Money Laundering when, in the exercise of their specific duties, they discover facts that may be related to money laundering or terrorist financing, or regarding other violations of the provisions of Law no. 129/2019 with significant impact on the exposure to the risk of money laundering and terrorist financing, found according to specific attributions.

Conclusions

The financial intelligence unit is independent and autonomous, which means that it has the authority and capacity to exercise its functions freely, including the ability to make autonomous decisions to analyse, request and communicate specific information. The national financial intelligence unit, in its capacity as the national central unit, is responsible for receiving and analysing reports on suspicious transactions and other information relevant to money laundering, associated main crimes or terrorist financing.

The financial intelligence unit shall communicate to the competent authorities the results of its analysis and any relevant additional information, if there are grounds for suspecting money laundering, associated main offences or terrorist financing. The financial intelligence unit is also able to obtain additional information from the obligated entities. Member States shall provide the financial intelligence unit with adequate financial, human and technical resources to carry out its tasks.

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THE CONCEPT OF EUROPEAN CITIZENSHIP

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Abstract:
The European integration represents a complex process with initial objectives of economic matter, later expanding its area of interest towards a plenary integration, regarding almost all the domains of interstates collaboration, except national security and public order. Within this framework, the progress recorded within the process of bringing the European nations more closely, a common set of values was set for all the citizens of the member states. The current study set as a purpose to identify the challenges the states need to cope with, related to the definition of the concept of European citizenship.
Keywords: *sovereignty, citizenship, international organisation*

General considerations

The entire European construction is based on the goal of setting an ever tighter union among the people living within the European area. Therefore, the member states have decided to have a peaceful future founded on common values, aspirations and principles, even from the very first steps of its existence. A consolidated close relation among the European nations implies that, in the moment of the existence of a reasonably advance stage in the setting of the European Union, to set a political-legal form of relation between the present international organisation and the persons inhabiting its territorial boundaries.

For this, the member states, through the free will agreement, are bound to conceptualise this relation to overlap the national legislation naturally, without affecting it. Though it is not a unanimously shared vision by the EU member states, notwithstanding that the idea of this kind of new citizenship to belong to more peoples, is not a new one. As early as July 1940, Charles de Gaulle, Jean Monet and Winston Churchill considered as possible the existence of a common citizenship within a French-British Association.

Discrepancies derive from the conceiving tools and the patterns the current world order are offering, among which the bluntest confrontation is represented by the

referential system to which the new European citizenship is to be reported to. This new concept is formed of two terms which symbolise two different legal plans, the national and the international. Although the concept of “citizenship” originates in the domestic law, it evolved from the time of the Greek or Roman fortresses, to which it continues to relate to[1],enlarging its semantic as well in the sphere of international law.

The legal concept of citizenship

The modern state represents a superior form of organisation and regulation, both in the domestic context of a state[2], as well as in what the international law domain is concerned. The term of citizen has multiple significances, depending on the legal subject it is retrieved and constitutes one of the illustrating concepts in matter of identification of certain legal institutions both in concepts and theories from national legislation and in the domain of the international relations alike. [3]

The term of citizen designates in the constitutional law mainly a holder of rights towards the state he/she belongs to while the same concept ignores its citizen condition in public or private international law. Therefore, for this branch of law only the membership sovereignty according to which a certain international conduct is regulated for the states towards their nationals are important. Most of the constitutions and law currently use the term of citizenship to designate this membership.

The etymology of the word indicates a large tradition of the institution of citizenship, deriving from the Latin word *civitatem* = the English fortress or city. The western languages usedifferent terms to designate of the institution as *citoyen* (Fr.), *ciudadano* (Sp.), *cittadino* (It.), meaning “*full rights citizen*”, “active citizen”. In French, for instance, national and nationalité are used for the terms citizen or citizenship, but with a wide range of meanings. The Russian term *grajdanin*is translated in Romanian“citizen -cetaţean”(*grajdanstvo*- “citizenship”), but with a wider semantics than in Romanian, the one of “person.”

In Romania, until the moment when citizenship was defined in 1975, the term has remained dedicated by legislation with consistency even from 1948. Up to then, the names given to this legal institution were either inadequate or were overcome by the evolutions of the language *(fortress*, *police* or even*city*), or had, mainly, another

significance, such as *citizenship*, *suditence*or *obedience, citizenship*,*nationality*, which were the equivalents for *indigenous*, *sudit*, *subject*, *citizen*, *national*,to which *native* is added.

Researching the legal substance of the concept of citizenship, we can notice that “Among all legal matters, none of them is more important than the citizenship for a state, as its force and power depend on the number and the attachment of its citizens for the individual, since its connections with the state depend on the private or public conditions of his existence [...] the entire life is involved in this connection.” [4]

The concept of citizenship doesn’t have only legal valences, but also political, if we regard it as a person’s membership to a human community, organised in a state form.

The legal complexity of the institution of citizenship originates from the encircling of a series of particular features, differently analysed within the framework of various branches of the law such as constitutional law, international law, private international law or family law and so on.

The interpretations used for citizenship within constitutional law designate the legal institution, which is a large range of legal regulations, and also the legal conditions features which set the quality of citizen for individuals. The second meaning has a special importance and represents the subject of arguments in legal literature, due to the fact it treats citizenship in terms of national law matter, with all the approach involves:the legal concept of the notion of citizenship of a person, acquiring or loss of nationality.

The term of citizenship was defined in legal literature in multiple ways, such as “a state and individual connection”, “a legal and political connection”, “a legal membership” or an inherent quality of a person.[5]

The objective interpretation of the concept refers to the rendering of more or less complex certain legal relations, while the subjective approach concerns the rendering of the same relations, but regarded from the perspective of one of the subjects of these legal relations.The subjective interpretation addresses citizenship as a legal quality of a private person, named citizen, of being a member of a state. All the other constitutional rights derive from it.

A different interpretation is the one from the objective approach, in which the citizenship is the legal fundamental relation between the private person and the state, and to a wider meaning between individual and society. From this situation the equality among the members of the same state originates, from which they are connected in an equal report, as force and legal matter, as citizens with equal rights who take part in exercising the state power and benefits from his own legal system. Correlatively, these rights correspond to duties to support and promote the interest of a particular state, in terms of law order.

Starting from the features of the state sovereignty the extraterritoriality character of the legal connection between the state and its citizen can be proved. The connection not only remains after leaving the territory, but also cannot be alienated to another private person, as it is inalienable. Internationally, these features arerelativized, qualitatively competing one against another and being also limited by the conventions regarding the general human condition and by those regarding the determination of citizenship, the tendency that the giving of citizenship can become a mandatory general requirement being present. [6]

For this purpose, the provisions of the international documents regarding human rights and fundamental freedoms enshrine the right of each human being to citizenship, aspect which substantially contributes to the diminishing up to total removal of the statelessness cases. *The Universal Declaration of Human Rights* provides that “any individual shall have the right to citizenship” and that “no human being can be arbitrary deprived of his citizenship or his right to change his citizenship” (art. 15).

In addition, *The InternationalCovenantfor Civil and Political Rights* provides that everyone shall have the right to recognition everywhere as a person before the law (art. 16), which is firstly determined by his citizenship. The same text of the Covenant also provides that “every child has the right to acquire a nationality” [7] (art. 24 pct. 3).

From what was mentioned above, we can conclude that the state has exclusive power regarding the regulation in matter of citizenship. The national legislation is the one to determine the connection between citizenship, the ways of its acquiring and loss, the rights and duties of citizenship for an individual, as well as the consequences residing from it. These powers reside from the principle of sovereignty which represent

the background for the whole current world order. The principle of sovereign equality of the states derives also from the content and the characteristic features of this principle, which acknowledges the exclusive power of a state to regulate in matters, in his quality of primal subject of international law.

The European citizenship

The present world order acknowledges the sovereign right of a state to regulate in matters of national and international law, conferring it total legal capacity. The international organisations, among which the European Union, lack this capacity. They are set and function according to objectives set by constitutive treaties, negotiated and signed by states, based on their freely expressed will.

The role of the international organisations is to achieve objectives set by the member states, in their legal international capacity manifesting within the limits of the fulfilment of the purposes they set, and correlatively, their legal capacity is a functional one which is not at all total, as in the case of the states,hence the impossibility of being able to set any citizenship connection with private persons, this deriving from sovereignty, an attribute characteristic only for states.

Under these terms, the problem of legitimising a concept as *the European citizenship* arises, which comprises in a broad sense two terms which belong to different regulation trellis, national and international, [8]national as it includes the term of citizenship, and international as any European level construction is based on the basic regulation principles of international law. In order to identify the significance used by the phrase, we'll begin from the manner it is regulated by the constitutive treaties of the European Union.

The treaty of Maastricht is the first international document to introduce the European citizenship, which confers essential role for the concept within the wide process of European integration. The European integration has as objective, among others, the institutionalisation of the European citizenship according to the regulations of the E.U. institutions, considering therefore as "a new stage of the process of setting a new tighter Union among the European nations" [9].

The provisions of the Treaty on European Union, by introducing the concept of European citizen, promotes and consolidates the European identity by the direct involvement of the citizens from the member states in the European integration process. According to the definition adopted in the Treaty of Maastricht, the European citizenship is not a legal institution as such, but more a subjective interpretation of this quality, by considering each individual which has the citizenship of a member state while being also a citizen of the European Union, which is redundant information.

If we are to pursue the goal stated by the signatories of the Treaty of Maastricht, a first step to this direction was indirectly made by setting and developing a sole Market, in which the citizens of the member states benefit from a range of general rights derived from this project in diverse as freedom of circulation of goods and services, consumers' protection and public health, equal opportunities and treatments, employment and social protection access etc. [10]

The definition of the European citizen is present from the first paragraph of the article 17 (former art. 8) of the Treaty of setting EC[11], which states that the European citizen is "that individual with a nationality (citizenship) of a member state". Later on, within the Intergovernmental Conference limits, the signatory states of the Treaty of Maastricht adopted in order to complete the definition a Declaration[12], added in 1992 to the Treaty,which clarified the identity of the individuals as being citizens of a member state or another should be done by reference to the national law of the state in case.

The Treaty of Amsterdam added arrange of additions to the previous definitions and interpretations. The provisions of article 17 from TEC[13]states that "*the citizenship of the Union shall complete the national citizenship but shall not replace"*, interpretation which institutionalizes an already settled principle within the content of the Intergovernmental Conference Declaration annexed to the Treaty of Maastricht[14].

This ratification outlines and consolidates one of the characteristics of the European citizenship which it defines as inseparable from the national citizenship which remains, in all circumstances, primal and original. As a consequence, the acquire and loss of European citizenship is conditioned by the acquire and loss of the citizenship of one of the member states of the Union. To this effect, article 17 from TEC clearly

regulates that: *"Any individual with a citizenship of an EU member state shall be citizen of the Union"*.

From the mentioned regulations results that the additional and complementary character of the community citizenship, with rights and duties which individualize it as a *sui generis* model, but which doesn't set a supplementary citizenship for the national one. The same consequences are recognisable for the provisions of the Treaty on EC which sets that n individual shall not own two citizenships, the citizenship of the origin state and the European citizenship. From the legal point of view we are placed in another situation compared to the one in which an individual owns the citizenship of two or more distinct states.

The double citizenship as defined by the international law differs fundamentally from the apparent "doublecitizenship" which any citizen of any EU member state can acquire automatically. There are material differences between the two political-legal categories which a private person can set. This has the citizenship of an EU member state to which he belongs, being the final beneficiary only of a European law regulated at the level of the European Union, as a functional international legal, limited entity which addresses the member state exclusively.

An important contribution is added by the Treaty of Amsterdam through its ratifications which refer to article 18 of the Treaty on EC, regarding the right to freedom of movement and the right to travel. According to these provisions, the EU Council in his capacity of EU institution, is able to take decisions targeting the promotion of these rights, regulating according the codecision procedure as provided by article 251 (former article 189 B) of the Treaty on EC.

Articles 17-22 of the Treaty on EC defines the European citizen and boosts the legal situations the individuals already enjoyed as *de facto*. Partially, the matter of the related rights of the European citizenship are already settled officially into a certain communitarian *acquis*[15] and consolidated the already existing rights of the derived law or in practice such as the right to freedom of movement or the right to petition to the European Parliament.

A significant contribution which would shape the concept of European citizenship had the acknowledgement of the right to vote of the citizens from the member states on

the entire territory of the Union and the one to candidate in the scrutiny organised for the European Parliament elections as well as for the local communities from any member state. This consistent package of political rights from the national legal heritage available for any citizen is taken over by analogy at the level of EU, therefore setting a material approach to the classic concept of citizenship.

From what was mentioned above we can conclude that the rights derived from the new citizenship statute of the Union do not enrich the legal heritage of an individual within the legislative framework of a state of origin, but it generates consequences in other two direction such as:

- in the legislation of other member states: the right to freedom of movement, the right to travel or electoral rights;
- in the communitarian legislation: the right to petition by notifying the Mediator;
- in international legislation: regulations regarding diplomatic protection.

To conclude, we can state that the main preoccupation of the regulations setting the concept of European citizenship aim firstly to fulfil the terms provided by each member state of UE and, secondly, implies the observance of the demands set at the level of the community. [16]

Within this framework, the concept of European citizenship is to consider the fact that it is mandatory to be based on indivisible and universal values of the human dignity promoted by the European Union, such as freedom, equality and solidarity and which will also contribute to the preservation and the development of the entire spiritual and moral heritage of the member states. Seen in this light, the European Union stands on the principle of rule of law and, as a consequence, applies specific mechanisms of functioning adjusting them to the particularity of the European construction.

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[23] It is about the Declaration of Denmark
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THE ASSOCIATIONS OF UNDERTAKINGS - A FAVOURABLE ENVIRONMENT FOR THE DEVELOPMENT OF ANTICOMPETITIVE AGREEMENTS

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Abstract
This article focuses on the ways in which the associations of undertakings can prevent the infringements of competition rules, given that the anticompetitive agreements have often been facilitated by meetings of competitors at events or by meetings organized by professional associations for their own purpose. This paper briefly presents the theoretical concepts that facilitate its understanding (undertaking, association of undertakings, decisions by associations of undertakings) and advocates for the implementation of programs to comply with competition rules within companies and professional associations.
Keywords: *competition, undertaking, anticompetitive agreements, associations of undertakings, compliance program.*

Introductory aspects

In a market economy, competition between undertakings plays a very important role with regard to the adaptation of supply and demand, the division of labour between undertakings and, implicitly, it guarantees consumers welfare, in achieving an optimal distribution of existing resources and in the efficiency of some parameters such as price, production, quality, variety or innovation [1]. This is also the reason why states have developed a competition policy, thus outlining the notion of competition law to discipline the confrontation between companies/professionals facing the market in the fight to win, retain or expand customers network.

At European Union (EU) level, competition policy is governed by primary law [2], with competition being considered "the normal means of ensuring economic balance and progress" [3].

It is well known that cooperation between undertakings enable more efficient work and enhances innovation. Thus, in order to develop and become more efficient, undertakings, especially small and medium-sized enterprises (SMEs), join together into associations of undertakings.

The most professional association, especially trade associations, take an active role in shaping the way their industry works. They promote product standards and best practices, standard terms and conditions of sale, development codes of ethics or promote common interests in relation to legislative power. In the vast majority of cases, cooperation between these undertakings does not oppose to the competition law.

However, in view of the functioning of the associations, on the one hand, the meetings of the association create a favourable framework for concluding anticompetitive agreements and, on the other hand, through decisions adopted by the association of undertakings, certain economic behaviour on the market may be imposed on its members.

Therefore, the company's culture of competition law is vital for the proper functioning of the internal market. In addition, national competition authorities need to play an active role in raising awareness of the need to comply with competition law rules and provide practical advice in this regard.

Both EU law and Romanian law prohibit all agreements between undertakings [4], decisions of associations of undertakings and concerted practice [5] which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market (art. 101 par. 1 TFEU) or which have as their object or may have as their effect the restriction, prevention or distortion of competition on the Romanian market or on a part of it (art. 5 Law no. 21/1996) [6].

The notions of undertaking, associations of undertakings, decision of associations of undertakings

In shaping the notions specific to Competition Law, the EU Court of Justice has played an important role. Thus, in the context of competition law, „the undertaking" means "any entity engaged in an economic activity, regardless of legal status or method of financing" [7] and "the economic activity" means any activity consisting in offering goods and services on a given market [8].

The association of undertaking is a long-term association between several natural persons, who carry out economic activities, organized in one of the forms provided by law (authorized natural persons, individual or family enterprise) or between

legal persons, who share their material contribution, knowledge or their contribution to the work, for carrying out any activity of common or general interest [9]. A professional group represents an association of undertakings if it adopts rules that are the expression of their will and seek to obtain a specific behavior from them in their economic activity [10].

The notion of association covers a fairly wide range. For competition rules to apply to an association of undertakings, it does not have to be in a specific legal form, but there must be two elements [11]:

• a structural or organizational element. Thus, an association must have a long-lasting corporate structure, which distinguishes it from an agreement between two or more companies.

• a functional element, in the sense that its activities aim at or have an impact on an economic activity. However, it is not necessary for an association to be present in a market.

In practice, the association of undertakings covers not only trade associations but also a myriad of bodies with statutory, disciplinary, regulatory and executive duties. The public law status of an association is not relevant in the sense of EU competition law, but the exercise of public power is not an economic activity [12]. As we have seen, self-employed persons and members of liberal professions (lawyers, notaries, bailiffs, doctors, accountants, insolvency practitioners, architects, etc.) are, from the point of view of competition law, considered to be undertakings [13].

It should be emphasized that the application of competition rules is not excluded when an association is assigned certain tasks of public interest, by law, with a view to the application of public policies [14].

Whatever its name (recommendations, guidelines, resolutions, directives, internal regulations, statutory rules, articles of incorporation, oral exhortation etc.), a decision of an association of undertakings is an act of collective will; it emanates from the competent body of that association (according to its statute). The decisions of the association of undertakings are reprehensible insofar as they have the vocation to impose on their members a certain behaviour on the market, even if they, apparently, do not leave this impression.

According to practice, a recommendation of an association of enterprises can be considered as a manifestation of the common will of its members, but not any recommendation can constitute a decision of the association of enterprises within the meaning of art. 101 paragraph 1 of TFEU.

Among the most common actions of professional associations likely to infringe competition rules are those which have as their effect or object the harmonization of the behaviour of their members on the market in order to fix the price [15], to allocate distribution markets[16], to limit the production or sales [17] or the bid-rigging [18], and also the boycott [19] or the refusal of applications for membership [20].

Creating a culture of competition within associations of undertakings

In order to prevent infringements of competition rules, both the European Commission and national competition authorities are working to encourage companies to create a true culture of competition within them, as well as in associations of which they are part.

Thus, companies are encouraged to develop compliance programs [21]. These compliance programs are often developed in reaction to past infringements or even after fines have been imposed. More, they are seen as an essential element of good corporate governance.

There is no “one size fits all” model of Compliance program. That program needs to be tailor-made to the company or association concerned. It is specific to each company because it has to reflect its needs to ensure compliance and develop its own strategy.

The existence of a Compliance program does not protect the company from any sanctions if it infringes the competition rules [22]. It can be regarded as good practice in granting an attenuating circumstance in setting the fine, if its implementation is effective, but the mere existence of that will not be considered as an attenuating circumstance [23].

In order to draw up a Compliance program, certain steps must be followed, of which we list: detailed self-assessment to identify the risks of infringing competition rules; risk level assessment; the necessary measures to eliminate the risks; planning

and elaboration of the compliance program that corresponds to the purpose of the association; program implementation and staff training; periodic review of the program.

Conclusion

The associative environment, through its specificity, brings together companies or professionals who are currently competing to win, expand and retain customers. There is a risk that the meetings within the association will be the starting point in reaching an anticompetitive agreement that would take one of the forms prohibited by law: agreements between undertakings, decisions made by associations of undertakings and concerted practice.

Implementing a program to comply with competition rules within the association is the optimal solution for association members, as well as the step towards creating a true culture of competition within it, as well as in the field/branch in which it operates.

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[4] Agreement refers to an explicit or implicit arrangement between firms normally in competition with each other to their mutual benefit. Agreements to restrict competition may cover such matters as prices, production, markets and customers. These types of agreements are often equated with the formation of cartels or collusion and in most jurisdictions are treated as violations of competition legislation because of their effect of increasing prices, restricting output and other adverse economic consequences (https://www.concurrences.com/en/glossary/agreement-notion-en).
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CONSIDERATIONS REGARDING THE EMERGENCE, EVOLUTION AND DEVELOPMENT OF DACO-ROMAN LAW AND THE LAW OF THE ROMANIAN COUNTRIES UNTIL THE 19TH CENTURY

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Abstract

Romanian law is part of the family of Romano-Germanic law, right from the beginning of its appearance, motivated by a first circumstance according to which the Daco-Roman populations, after the conquest of Dacia by the Roman Empire, applied in parallel both the local legal customs and general principles of Roman law.

During the Roman conquest, an important dimension of public administration in Dacia, a Roman province, was concerned with the legal norms of Roman and local law. Roman law appears in this province in the form of civil law and gentile law, the law applied in Roman Dacia having a statutory character, in the sense that each category of persons had a well-defined legal status.

In the Wallachia, Moldova and Muntenia, a new stage of codification of legal norms appears, the sources of inspiration being especially the French, Italian, Swiss legislations, etc.

Keywords: *Roman Law, The law of the land, Ordinary law*

Introduction

We can definitely speak of a Romanian law, in the classical sense of the notion, once with the formation of the Romanian Principalities. Equally valid is the fact that until the historical moment of great significance for the Romanian nation, the Union of 1859, there were three "Romanian Countries", mostly populated by Romanians and where Romanian traditions and customary rules influenced the evolution and development of these state formations. To cite Fl.Negoiță, and authors A.Tinu and C.Boboc [1], it shows that the law related to the current territory of our country has six stages, as follows: 1) the right of the Dacian monarchy, from the centralization of the Dacian state until the moment of the Roman conquest;2) legal dualism in Dacia, from the Roman conquest to the Aurelian retreat-271/274 A.D.;3) feudal law, from the moment of ruralization of life on the territories of the ancient Roman Dacia of Wallachia and up until the revolutionary

moment of 1821; 4) capitalist law, comprising *in extenso* the period 1821-1947; 5) socialist law and 6) the transitional law, starting in December 1989.

Here it is appropriate to add a new period that began in 2007, with Romania's accession to the European Union. It is essential to follow and analyze Romanian law from this perspective and especially the relationship between national law and EU law, for several reasons. For example, national law gives priority to the rules of European law, with the necessary nuances, then the binding nature of the decisions of the European Court of Human Rights or the procedure referred to as the "referral for a preliminary ruling before the Court of Justice of the European Union", not to mention matters relating to statehood and whereby some of the components of national sovereignty have been voluntarily assigned to a separate subject of international law called the European Union. We specify that the ones described above are the prerogative of all the states that are part of the European Union.

Romanian law is part of the family of Romano-Germanic law [2], right from the beginning of its appearance, motivated by a first circumstance according to which the Daco-Roman populations, after the conquest of Dacia by the Roman Empire, applied in parallel both the local legal customs and general principles of Roman law.

Law in the daco-getaean period

The Daco-Getaeans, our ancestors, who were the northern branch of the Thracians, occupied the Carpatho-Danubian-Pontic space from the Iron Age. It is very well known that the Daco-Getaean tribes populated a much larger area than the one currently occupied by Romania.

The first mentions of this brave people date back to 514 BC, by the historian Herodotus. The apogee of the Daco-Getaean state was reached in Burebista's time, when the Daco-Getaean state stretched from the forested Carpathians to the Haemus Mountains (Balkans) and from the Middle Danube to the Black Sea, the Pontic coast of Olbic (Bug), to Pontic Apollonia (Szopol-Bulgaria). As it „came to be feared by the Romans as well” (Strabo), Burebista intervened in the civil war in the Roman state.[3]

Once with the formation of the Daco-Getaean state, legal norms appeared, some of which replaced the customs of the era of military democracy. Strabo and Jordan

show that the Dacian-Getaean laws were adopted in the time of Burebista, being of divine inspiration. As professors Emil Cernea and Emil Molcuţ pointed out, they have been passed down from generation to generation in written form and have been preserved until the time of Jordan. (6th century BC).[4]

Formal sources of law in the era of the centralized Geto-Dacian State

As author Cosmin Dariescu pointed out, “At this time the formal sources of Geto-Dacian law are”:

The custom, crystallized since the previous era and which continues to be the main legal source;

Written laws (called by the Getae "belagines") which contained legal norms enacted by state authorities.”[5]

Trade in Dacia was extremely developed, being strongly supported by the Greek colonies on the shores of the Black Sea: Tomis, Histria and Callatis. The Roman dinar circulated intensely and therefore, the existence of legal norms on obligations is implied.

As for criminal law, Romanian doctrinaires show that the punishments of the Geto-Dacians were extremely harsh, the main provisions aimed at defending the state and private property, and as punishments, private revenge and judicial duel.[6]

It is obvious that this state was organized and functioned on the basis of strict rules, meant to ensure its stability. Simultaneously with the formation of the Daco-Getaean state[7], legal norms appeared, some customs being taken over and sanctioned by the state. In parallel, corresponding to the new requirements of economic and social life, the state established new legal rules so that, in addition to the unwritten law existing in the form of customs, in the Daco-Getaean state a system of laws was elaborated which although it did not affect us directly, is still remembered by the ancient authors.[8]

The great Daco-Getaean state led by Burebista was also reformed from a legal point of view. Thus, as Jordan states in Getica, in the time of Burebista the laws called ***Belagines*** were elaborated***.*** Unfortunately, the texts of these normative acts were not sent to us. What is important, however, is that with the drafting, these laws became

positive laws, their commands being sanctioned by the state and the conduct described in these rules becoming mandatory.

With the disappearance of Burebista, the Daco-Getaean state suffered a certain decline. None of his successors, including Deceneus, Comosicus, Duras, rose to his performances. An exception, however, existed in the person of King Decebalus, whose state formation, though smaller than that of Burebista, enjoyed the respect and consideration of the Roman rulers.

The expansionist tendencies of Rome could not be eliminated by Decebalus either, so that, following the two fierce wars of 101-102 AD. and 105-106 AD, Dacia was transformed into a Roman province.

The sources of law in Roman Dacia

With the establishment of Roman rule in Dacia, along with local unwritten law, written Roman law was introduced. According to the Roman conception, the local custom could be applied, insofar as it did not contradict the general principles of the Roman law.[9]

It can be concluded that Roman law, in its written form in Latin, in turn paved the way for the formation of the Romanian people with Daco-Roman origins.

As for the Roman nature of our law, it is known that the establishment of Roman rule in Dacia introduced along with unwritten local law, Roman law, the two legal rules, of Dacian and Roman origin, which were applied in parallel – insofar as the local custom did not contradict the general principles of Roman law – so that then, in a process of intertwining and mutual influence, a new system of law, Daco-Roman, may be born, in which the concepts and legal institutions have acquired new functions and new purposes.[10]

During the Roman conquest, an important dimension of public administration in Dacia, a Roman province, looked at the legal norms of Roman and local law. Roman law appears in this province in the form of civil law and Gentile law, the law applied in Roman Dacia having a statutory character, in the sense that each category of persons had a well-defined legal status. Thus, the Roman citizens enjoyed:

- *ius civilae*, the fullness of political and civil rights;

- *ius commercii* (*commercium*), the right to conclude legal acts, according to Roman civil law;
- *ius cannubii* (*cannubium*), the right to marry, according to Roman law;
- *ius militiae*, the right to enlist in the Roman legions;
- *ius sufragii*, the right to choose;
- *ius honorum*, the right to run for a magistracy in the colonies.[11]

As we have shown, the Dacian state, a strong military democracy, was governed by rules that enjoyed the respect of the native population. Of course, in case of non-compliance, the coercive force of the state intervened. At first, immediately after the occupation of Dacia, the two legal regulations worked in parallel, but over time, the two systems merged and the Daco-Roman law system emerged. According to this system, in Roman Dacia there were several forms of property, namely:

- provincial property, which was exercised by the natives on the lands distributed from the "*ager publicus*" (the public field);
- quiritary ownership was exercised by the Roman citizens who, in order to benefit of this ownership created *ius italicum*, a special right, by virtue of which, the land belonging to some colonies in the provinces was assimilated with that in Italy and was exempt from taxes;
- pilgrim property, exercised by pilgrims.[12]

The marriage and family of Roman citizens were governed by Roman regulations. The marriage and family of the Geto-Dacians continue to be governed by Geto-Dacian customs [13], and *ius connubii* or *connubium* it was the right to enter into a marriage valid under Roman law.[14]

In the Roman province of Dacia, the trade was flourishing, and a proof in this sense is given by the "Transylvanian triptychs". These are wax tablets dating from the 2nd century AD discovered in the gold mines near Roşia Montană. Twenty-five pieces have been discovered, of which fourteen are legible, and indeed twelve of them are of interest for the present paper, as they relate to certain contracts.

The twelve tablets on the contracts indicate the application of classical Roman law, but in simplified forms. In loan agreements, the parties use a single stipulation for

both the borrowed amount and the interest, although classical law required two stipulations. In the employment contract, the parties establish that the risk of force majeure falls on the worker and not on the employer (as in classical law).[15]

The formal sources of law in the Romanian State formations

In the specialized works, it is specified that the peaceful withdrawal of the "provincial" officials and of the legions meant for Dacia the end of the Roman imperial domination, without it being replaced by another political power. The destruction of the state apparatus and the legislative system established by Rome in Dacia put in front of the Romanized Dacian natives the need to remedy this political and legislative gap. Both objectives were achieved simultaneously in the conditions of socio-political transformations during the 3rd-6th centuries and under the influence of the great processes that resulted in the ethnogenesis of the Romanians, their Christianization and the formation of the Romanian language.[16]

Regarding the ***Romanian State*** and its appearance, as well as the customs and legal norms of Romanians, we will make brief clarifications by consulting the historical sources. Professor Florin Constantiniu shows that according to the "*Gesta hungarorum*" (The deeds of the Hungarians) the Hungarian population met in the ninth century AD three formations of Romanians, led by Knyaz-voivodes, as follows:

- Menumorut whose residence was in the "Byhor" fortress, as such "Ţara Crişurilor";
- Gelou whose voivodeship is established in the aforementioned document under the name "*Terra Ultrasilvana*", professor Constantiniu placing it in the Transylvanian Plateau;
- Glad with residence in Keve, the Serbian Banat.[17]

Regarding this historical source, the great scientist Nicolae Iorga states that "nothing can be preserved from this story except that at the entrance to the parts beyond the Tisza, the Hungarians found a native Romanian-Slavic or Romanian population following the Slavs, with voivodes at their head, even Knyazes:"[18]

The old legal organizations of the Romanians are of two categories: unwritten and written.

Thus, we speak of the Romanian customary law as an elaboration of the mentality of a Society of diffuse tradition, which we find subject to the mechanisms of the collective subconscious, and which from this condition must be understood as an organic, integrated process of peasant life as a whole, a product whose manifestation cannot be separated from the spiritual, economic or political activities of the peasant community... customary law is a non-specialized cultural gear of provisions and norms that bring, bind and hold together in the geographical, biological, psychological and historical frameworks of peasant culture, all the daily spiritual, economic, legal and political manifestations of peasant culture. It includes, for example, both the rules applied in the case of a transfer of ownership, an obligation or a contract, the rules necessary in the case of trial and punishment of a crime, but also the domestic rules to be followed in relations in family, the rules of the calendar of agricultural and pastoral work, the norms, the habits of association in work, the rules of the meetings of the village communes, the rules of magical and religious practices, etc.[19]

Written legislation is formed by rules and laws, these words correspond to the Greek word "*nomakanon*". The rules respond precisely to the notion of *kanones*, that is, church laws, and the law to the word *nomos*, social-civil law.

The doctrine states that the usual legal norms that crystallized during the early feudalism formed a unitary ensemble that was called by the Romanians the Law of the land, in the legal sense of a politically organized society in countries. In the era of developed feudalism, the Law of the land was the main source of law, but at the same time, written law was applied in the form of church and secular rules or the codification of legal customs.[20]

The most important church rules are those from 1578 – the Putna Monastery, 1618 – the Suceava Metropolitanate and 1636 – the Bistriţa Monastery.

The law of the country is the name that has become widespread since the period of early feudalism for all legal norms within public unions – the "countries" of Romanians – without any geographical or ethnic territorial determinant, which denotes the unitary nature of these rules. Just as the name of country continued to apply to the Romanian feudal states after their establishment, so the law of the country continued to uphold all the rules of law applied in the legal life of these states. It is the name consecrated and

used in all social strata and which appears in all documents written in Romanian. Moreover, in a text written in Greek, the author, Matei al Mirelor, transcribes with Greek characters the Romanian words *the Law of the land.*[21]

Therefore, the ordinary right of Romanians also proves the idea of our unity of spirit and nation and which could not be removed despite the territorial separations.

As the author Elena Paraschiv points out, the most important sources of our written law from the era of feudalism were "Cartea românească de învăţătură" and „Îndreptarea legii". We find other sources of written law in the history of the Romanian provinces, as follows:

- Matei Basarab's Small Code (1640);
- Vasile Lupu's Code (1646);
- Matei Basarab's Code (1652);
- Unio Trium Nationum (1540) foundation of public law in Transylvania, a discriminatory act against the majority Romanian population and through which the representatives of this ethnic group were excluded from the activities of the administration.

Also in the Phanariot period, from Moldova and Wallachia), ample codes of laws appeared, systematized and anchored in the needs of the time. Thus, during Alexandru Ipsilanti's period, in Wallachia „Pravilniceasca Condică" appeared, considered by C.G. Dissescu to be a "civil code". But the first law manual in Romanian was made by Andronache Donici, a famous jurisconsult. This abbreviated collection of royal laws, printed in Iasi (1814), is a kind of repertoire of jurisprudence, with references to the laws of the Basilicas and Roman law.[22]

The political-administrative organization of the Transylvanian voivodship gradually took shape, reaching its full form at the beginning of the 14th century ... the Romanians had their own administrative, judicial, military organizations, some of which – principalities and voivodeships – were old local institutions… these organizations provided Romanian communities with local autonomy, wider or narrower, variable by time and place. In their internal organization, the districts were governed according to ancient customs, according to Romanian law [23]

In 1818, in Wallachia, under the reign of the voivode Caradja, the Caradja Law Code appeared, which we can qualify as a general code, because it included four specialized codes, namely:

- Civil (parts I-IV: Cheeks, Things, Bargains, Gifts);
- Criminal (part V Guilts);
- Criminal Procedure (part VI of judgments);
- Civil Procedure (part VI of judgments).

Certain provisions of the Caragea Code were applied until 1943 by the Court of Cassation.

In Moldavia, in 1817, Callimachi-Voda's Code of Laws was published. As C.G. Dissescu shows, the boyars in a public assembly found a way to gather the most useful parts from the royal books, which would unite with the custom of the land, in order to form an improved set of laws. This code of laws, which appeared at the request of the ruler Scarlat Callimachi, had the following sources of inspiration:

a) The Romanian custom;
b) Byzantine law;
c) The French civil code (1804);
d) The Austrian civil code (1811).

The Calimach Code uses as its main model of inspiration, the Austrian Civil Code, the second edition of 1811, without being a translation of it, being characterized by the great jurist Zachariae von Lengenthal a simple legislation faithful to Byzantine law.[24]

In 1825, in Moldavia, under the reign of Ionita Sturdza, the Criminal Code of Moldavia was published.

Starting with 1821 and on the territory of Wallachia we witness the process of the decomposition of feudalism, simultaneously with the beginning of capitalism. Obviously, this transition period highlighted other needs of society that were regulated by special laws and new codes. Also, as certain common rules still corresponded to social needs, legislators ordered their consecration in writing. Other habits that no longer corresponded to the needs were removed.

In the Wallachia, Moldova and Muntenia, a new stage of codification of legal norms appears, the sources of inspiration being especially the French, Italian, Swiss legislations, etc..

In 1859, with the unification of Moldavia and Wallachia under the rule of Alexandru Ioan Cuza, with the formation of the modern national state, the great legislative work began. Under the rule of this great ruler, the Civil Code, the Criminal Code and the Codes of Civil and Criminal Procedure were elaborated. The Civil Code was enacted in 1865. The Romanian civil code, although taken entirely from a foreign people and not adapted to the Romanian mentality and needs, was nevertheless assimilated by us and most of its institutions acquired the character of native institutions.[25]

- The Code of Civil Procedure was inspired by the Code of the of Geneva-Switzerland canton and was promulgated in 1865;
- The penal code is enacted in 1864;
- The Code of Criminal Procedure is enacted in 1865,
- The commercial code of 1887 had as an important source of inspiration the Italian Commercial Code. It should be noted that, prior to this, in Romania there was a code entitled “Condica de Comerciu” with its annexes. It entered into force in 1841 and was inspired by the French code.

After the reign of Alexandru Ioan Cuza, Romania went through a new flourishing stage, until the establishment of the communist regime. Testimonies in this sense are the Constitutions of 1866, 1923, 1938, fundamental laws deeply democratic and highly appreciated by legal specialists in the civilized world. Regarding the Constitution of 1938, in the recent Romanian doctrine, although the primacy granted to the social by this fundamental law is recognized, it is noted that due to the obvious tendencies of concentration of powers in the hands of the monarch, it is inferior to the previous Constitution of 1923. This Constitution was, in fact, suspended in the summer of 1940.[26]

Conclusions

This paper proves that the territories inhabited by Romanians have been permanently influenced by the idea of law and justice. Starting from the Daco-Getae era where we meet the local customs but also the written norms, *the belagines,* and until the age of the great written laws (the codes of the 19th century), we notice the concern of Romanians with having a life organized and governed by laws that steer their social relations.

We note that the ordinary law in Wallachia, although obviously not rooted in the degree of precision specific to modern legal norms, is ultimately a collective product adapted to the socio-economic needs of the community. The written laws of the Romanian formations represent in their beginnings a form of codification of the old customs combined initially with norms of Roman inspiration and later with the sources of modern inspiration, for example Napoleon Code or the codes of laws originating from the Germanic spaces of Europe.

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THE RIGHT TO A HEALTHY ENVIRONMENT AND THE ESTABLISHMENT OF THE STATE OF EMERGENCY

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Abstract

The right to health and normal life is enshrined by Universal Declaration of Human Rights, a document from which all national and international regulations are derived.

Today it is very well known that the right to health is a fundamental human right.

The influence of environmental factors and not only, on modern man responds to the interest on correct information, which currently involves, as we have seen, knowledge from other fields: medicine, biology, sociology, sciences that try to clarify the cause-effect relationship in human life.

All political, social, legal and medical decision makers, as well as the population, must contribute to a healthy life.

In these conditions, I will try in this article to analyse the cause-effect rapport about the healthy life of the population given the conditions of establishing the State of Emergency.

Keywords*: environment, state of emergency, healthy life.*

At the national level, the activity of environmental protection and ensuring a healthy life have long been regulated by a lot of laws that, even if they were not perfect, are perfectible over time.

Romania's environmental policy has registered a series of pluses and minuses, which are related both to the involvement of the institutions in these policies, but also to the country's population.

People do not have an ecological thinking [1]. The proven civic spirit on environmental protection is far away from what the EU expects from citizens.

The challenges we face today, in terms of population health, requires a coordinated and comprehensive feedback from all states. Communities around the world are trying to cope with Coronavirus pandemic, and in order to overcome this situation, certain exceptional measures must be taken, measures that restrict certain rights of citizens.

As we well know, Romania and the whole world are going through an unprecedented situation, the spread of an extremely dangerous virus, Covid-19. In

order to ensure a healthy life of the population, the State of Emergency was established and restrictive measures of rights were taken in this regard.

In Romania, according to the Constitution and its special laws, exceptional measures corresponding to exceptional situations may be implemented, both at local and national level: the state of alert, the state of emergency, the state of siege.

The magnitude of this virus spreading, in Romania and around the world, has forced the authorities to establish a state of emergency, for the first time in decades.

The state of emergency represents a set of exceptional measures of political, economic and public order applicable throughout the country or in some territorial administrative units in two different situations: if there are some current or imminent serious dangers to national security or in case of disasters necessary to prevent, limit or eliminate the consequences of such calamities.

This exceptional measure may be instituted by the President of Romania, only by decree and with the consent of the Parliament.

The state of emergency is regulated by the Romanian Constitution, Law no. 453 of November 1st, 2004 with approval of GEO no. 1/1999 regarding the state of siege and the regime of emergency state and GEO no. 21/2004 regarding the National Emergency Management System.

Article 93 of the Constitution explains the expression "exceptional measures".

The approval of establishment of the state of emergency must be requested by the President to the Parliament, within 5 days from its setting up.

The state of emergency is established for a maximum period of 30 days, according to art. 5 of GEO no. 1 / 1999, with the possibility of extension, if the situation requires it.

When establishing the state of emergency, some attributions of the specialized central public administration and of the local public administration passed to the competence of the military authorities and other central public authorities, laid down in the decree establishing the state of siege or emergency.

During the state of emergency, is forbidden the restriction of the right to life, except the cases where death is the result of acts of war, torture and inhuman or degrading treatment or punishment, conviction for crimes not stipulated under national

or international law and restriction of free access to justice, according to art. 3 of GEO no. 1/1999.

During the state of emergency, the exercise of some rights and freedoms may be restricted, except for human rights and fundamental freedoms, only if the situation requires it and in compliance with art. 53 of the Constitution.

According to GEO no. 1/1999 the invested authorities must apply a series of exceptional measures, among which: to limit or prohibit the movement of vehicles or persons in certain areas or between certain hours and to issue, in justified cases, free movement permits, to carry out controls, to exercise exclusively the right to authorize public meetings.

All these measures are necessary to ensure a healthy life of the population; they are necessary to reduce as much as possible the risk of disease.

In terms of health disparities, the EU has made significant progress, with health being a basic human need.

A good state of health of the population is a decisive factor for the quality of life and contributes to the creation of a sustainable economy.

Health is essential for the well-being of individuals and for creating a sustainable economy, as it is crucial for improving labor market participation and productivity. [2]

Access to health care needs to be improved to ensure a healthy life. It must be upgraded and have a humanist character.

During all this period of the State of Emergency, measures with immediate applicability were taken, but also measures with gradual applicability, depending on the situation.

To protect people's health, schools were closed, borders were gradually closed, road, rail and air traffic were also suspended. Health is the top priority in terms of allocated funds and mobilization.

As difficult as it is to adapt to certain limits, it is the only solution that proves that lives can be saved.

During the state of emergency, people must be properly informed, in order to be able to get over the severity of the period we are going through.

The *right to a healthy environment* implies for all also some obligations related to the protection and defense of this environment.

In terms of health, civilization has contributed either to overcoming diseases or has itself been a source of the development of diseases, diseases that we seem to be facing today.

Even before the outbreak of this pandemic, the civilized world was facing pollution, in various forms of manifestation: air pollution, soil, water and food pollution, phonic pollution and demographic pollution.

The phenomena interdependence in nature is also confirmed by the proven causal relationship between the vice of the human living environment and his state of health. [3]

Contemporary medicine defined *health* as "the state of the human body in which all physiological, mental and emotional functions are normal." For the human community, the term *public health* was created, defined as "a medical and social science dedicated to the study of preserving and improving the health of a community overall."

The improvement of living conditions has led to the decrease of infectious diseases, while urbanization and the development of industry have led to the vice of the environment (pollution) and the emergence of diseases related to human professional environment, respiratory diseases or allergies.

We tend to believe that the current pandemic situation is perhaps also influenced by excessive pollution.

The ecosystem undergoes rapid and irreversible changes, the human body hardly being able to adapt to the new living conditions.

,,The earth is in our hands. Together we should start the necessary actions so that we can be proud of the fact that we are trying and maybe even succeeding in transmitting to our children and their children a clean and safe world. ”[4]

The World Health Organization has always recommended to all states to focus on protecting the lives and health of their citizens, preventing any type of mass disease of the population through epidemics or pandemics.

States have the obligation to take legal, administrative and any other kind of measures necessary for the implementation of the right to a healthy environment. [5]

During the state of emergency, the Ministry of Environment intensified the inspections at landfills to reduce pollution; the certificates of the companies that illegally exploit wood were withdrawn by ministerial order (the Order was published in the Official Gazette on 30.03.2020); discussions took place regarding the stopping of legal deforestation, during the state of emergency (07.04.2020) etc.

Also during the state of emergency, due to excessive pollution, the European Court of Justice issued a decision sentencing Romania for the constant exceedances of PM10 in Bucharest.

During the state of emergency, due to the fact that the freedom of the population was restricted or limited, the environment also had to gain. Pollution has decreased in many areas, nature is basically regaining its rights, wild animals could be seen approaching to the cities.

Therefore, even before the establishment of the State of Emergency, measures were taken to guarantee the right to a healthy environment. Thus, for example, Directive 2003/4 / EC of the European Parliament and the Council regarding the public access to environmental information [6] represents the fundamental framework regulation.

On the occasion of international summits such as the one in Rio (1992), Johannesburg (2002) [7], sustainable development strategies were adopted concerning the nature, as a legacy and life resource for future generations.

Conclusions

As we can see, the quality of the environment has become an important issue for human rights, whether we are on a state of emergency or not. The right to a healthy and ecologically balanced environment is the fastest evolving of its generation, in terms of guarantee and effectiveness through justice.

The right to health remains a priority, regardless of the moment we are, so we must take all necessary measures to keep the environment clean and balanced from the ecological point of view.

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SOME REFLECTIONS ABOUT THE ACTIVATION OF ART 15 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS BY ROMANIA IN THE CONTEXT OF THE COVID-19 PANDEMIC

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Abstract
In the context of the sanitary crisis generated by the spread of the SARS-CoV-2 virus, the Romanian authorities have considered as necessary to declare a state of emergency, to limit the exercise of certain rights and freedoms with the purpose of preventing the spread of the virus and have decided to derogate from the European Convention of Human Rights. Starting from these realities, the objective of the current article is the analysis of Art 15 of the Convention in relation to the previous jurisprudence of the European Court of Human Rights in this area and proposes a reflection upon the need to activate this article by Romania.
Keywords: *Covid-19, human rights, Art 14 of the European Convention on Human Rights, derogation, Romania.*

Introduction

The evolution of the international situation determined by the spread of SARS-CoV-2 coronavirus in over 150 countries, the declaration of the “pandemic” by the World Health Organization, the experience of countries severely affected by the evolution of the virus, the imminent massive increase in the number of infected people were the main considerations that formed the basis of the Romanian state's decision to take urgent, exceptional measures in order to limit the infection of the population with the SARS-CoV-2 virus and to protect their right to life and health.

On 16th March 2020, the national authorities declared the state of emergency [1] and have decided the limitation of the exercise of the following rights and freedoms with the purpose of preventing the spread of COVID-19 and to manage the consequences, related to the evolution of the epidemiological situation: free movement; the right to intimate, family and private life; inviolability of the home; the right to education; freedom of assembly; the right of private property; the right to strike; economic freedom.

Also, it was decided the activation of Art 15 of the European Convention on Human Rights (the Convention) which states, under exceptional circumstances, the

possibility to derogate, with limitations and under supervision, from their obligations to insure certain rights and freedoms according to the Convention.

In the context of the Covid-19 crisis, together with Romania, other member states of the Council of Europe, such as Albania, Georgia, Estonia, Moldova, Armenia and Latvia [2] and others have applied Art 15 of the Convention.

For the first time, the system for the protection of human rights created by the Convention faces a true test. Covid-19 represents a real threat for public health in Europe, with the state imposing a series of restrictions and limitations of the exercise of rights and freedoms in their attempt to face the pandemic.

At the level of the national and international legal communities, a wide debate was launched regarding the opportunity to activate or not the Art 15 of the European Convention of Human Rights, outlining different points of view in this regard, so far [3].

From our perspective, a definite and general answer to such a problem cannot be offered because this answer differs depending on several factors such as the nature of the restrictions and/or their duration and, in particular, the *de facto* situation and *de jure* of each state. We will have the answer in time, when the measures taken by today's governments will be analysed in the decisions of the European Court of Human Rights, which is competent to examine *post factum* whether the measures derogating from the obligations of the Convention were strictly appropriate to the facts [4].

The activation of art 15 of the European Convention on Human Rights by Romania

According to Art 15 Para 1 of the Convention, "In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law". Also, Para 2 of the same article, states that "No derogation from the right to life (Art 2 of the Convention), from the prohibition of torture, inhuman or degrading treatment or punishment (Art 3 of the Convention), slavery (Art 4 Para 1 of the Convention), the rule of *nulla poena sine lege* (Art 7 of the Convention), the abolition of death penalty (Protocol 6 and 13 of the

Convention) and the rule of *non bis in idem* (Art 4 of Protocol 7 to the Convention) shall be made under this provision".

Finally, Para 3 states that "Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate, and the provisions of the Convention are again being fully executed".

From Art 15 it results the fact that for its activation a series of substantive and of form conditions shall cumulatively be met. Regarding the substantive conditions, these are the following: the existence of either a war, or another public danger threatening the life of the nation, the derogation from the obligations provided for in the Convention may take place only to the extent that the situation so requires, the measures taken not being in conflict with other obligations of the state under international law.

Given that the activation of Art 15 of the Convention is not novelty for the Court, ruling upon the need of invoking it in the past by other states [5], for instance by Turkey [6], Ireland [7] or Great Britain [8] for the analysis of these conditions we shall relate first of all to its jurisprudence in this area.

We will also take into account the information material prepared by the Council of Europe on respect for democracy, the rule of law and human rights in the context of the situation arising from the spread of COVID-19 [9], as well as the provisions of the Guide of the Council of Europe regarding Art 15 of the European Convention of Human Rights [10].

The condition for the existence either of a war or of another public danger threatening the nation's life

Thus, with regard to the first formal condition, we note that the classification of a situation within the notion of "public danger threatening the life of the nation" is left by the Court to the assessment of national authorities. But it does not mean that if the Court is notified with a complaint on the violation of a right guaranteed by the Convention, it does not have the possibility to remove such consideration. Definitely, it has this possibility, which is clear from its case law [11].

In the application *Lawless v Ireland*, the Court has defined the notion of "a public emergency threatening the life of the nation" as being "a situation of exceptional and prominent danger or crisis affecting the general public, and constituting a threat to the organised life of the community which composes the State in question" [12].

We consider that the situation in our country generated by the Covid-19 pandemic was within the definition given by the Court, thus the first condition of the existence of a serious threat for public health and affecting the life of the nation has been fulfilled.

The condition that "the derogation from the obligations provided for in the Convention should take place only to the strict extent required by the situation"

Regarding the second condition stated by Art 15 Para 1, the Court has established in its jurisprudence [13] a series of criteria for assessment of its fulfilment, namely: the nature of the affected rights, the circumstances which led to the triggering of the state of emergency, the duration of the state of emergency, if the measures have been used with the purpose for which were granted, if the measure was legal and has been applied in accordance with a procedure stated by the law, if the judicial control for these measures is possible, whether the principle of proportionality has been respected in the taking of measures and whether their application has involved any discrimination.

In the information material, the Council of Europe showed that every state shall evaluate if the adopted measures guarantee a derogation from the Convention, depending on the nature and extent of the limitations applied for the rights and freedoms protected by the Convention. The ability of the states to do such thing is an important feature of the human rights protection system, allowing the continuous application of the Convention and its surveillance equipment even in the most critical periods [14].

The Council draws attention upon the importance of legality and proportionality, remind that in special situations, the compliance with the principles of the state of law is mandatory. Any action of the state must be carried out in compliance with the law in its broadest sense, not only in the sense of the law as an act of national parliaments, but also in the sense of an act of the executive power issued in compliance with constitutional provisions. The Council also stated that the special measures taken

during this period must be capable of achieving the aims pursued and deviate as little as possible from the usual procedures.

Regarding Romania's situation, we consider that the limitations imposed so far over certain rights are justified, having a legal base [15], are strictly necessary, are based on scientific evidences, are proportional with the situation which requested them and have a limited duration. Situations of arbitrary or discriminatory application and situations of violation of human dignity have not been notified until the time of writing this paper [16].

The derogation also proves necessary because in the case in which the emergency measures are conferred by ordinary legal rules there is a risk that the measures taken and, in particular, the extended powers of the authorities will become permanent, even after the end of the state of emergency. The derogative regime mitigates such risks, stating exceptional powers only temporary, for exceptional circumstances [17].

The condition that "the adopted measures are not contradictory with other state's obligations resulting from the international law"

The last requirement of form to be met by states according to Art 15 Para 1 is that the measures taken by them do not conflict with other obligations of the State arising from international law. With regard to this requirement, the case law of the ECHR is rather limited.

In the decision ruled for the application *Lawless v Ireland*, the Court has stated that "no facts have come to the knowledge of the Court which give it cause hold that the measure taken by the Irish Government derogating from the Convention may have conflicted with the said Government's other obligations under international law" [18].

Also, in the application case *Brannigan and McBride v United Kingdom*, the Court has analysed this requirement as referring to Art 4 of the International Covenant on Civil and Political Rights [19] and has concluded that there "is not its role to seek to define authoritatively the meaning of the terms 'officially proclaimed' in Article 4 of the Covenant. Nevertheless it must examine whether there is any plausible basis for the applicant's argument in this respect" [20] and that „the public statement made by the

British Government of its intension to derogate from the Convention was well in keeping with the notion of an official proclamation" [21].

In the application file *Hassan v United Kingdom*, the Court had to decide whether, in the absence of a derogation in an international conflict context, the Court could nevertheless re-interpret a Convention provision in accordance with the principles of international (humanitarian) law. The Court has stated in its decision that "although internment was not a permitted ground for the deprivation of liberty under the text of Article 5, the Contracting Party was not required to derogate from its obligations under Article 5 in order to allow for the internment of prisoners of war and civilians posing a threat to security in a conflict context because that Article could be interpreted and applied in accordance with the principles of international humanitarian law (namely the Third and Fourth Geneva Conventions)" [22].

Regarding this requirement, the legal literature has mentioned that when "the Court considered the phrase 'other obligations under international law' of Article 15(1), there has been a marked evolution in non-derogable rights beyond the Council of Europe. Internationally, States have gradually accepted that there needs to be judicial guarantees over liberty and fair trial, even in times of emergency, and that no margin of appreciation – no matter how widely construed – would allow for the suspension of rights which may place in jeopardy jus cogens imperatives prohibiting torture or protecting of the right to life" [23].

The rights from which derogations are not allowed

We need to recall that Art 15 Para 2 of the above-mentioned Convention expressly states the rights from which derogations are not allowed, not even in a state of emergency. These rights shall be the right to life (Art 2 of the Convention), the prohibition torture or inhuman or degrading treatments (Art 3 of the Convention), prohibition of slavery (Art 4 Para 1 of the Convention), the rule n*ulla poena sine lege* (Art 7 of the Convention), the abolition of death penalty (Protocol 6 and 13 of the Convention) and the rule *non bis in idem* (Art 4 Protocol 7 of the Convention).

Another category of rights is that whose limitation shall be allowed only for states of emergency, namely: the prohibition of forced labor, the right to freedom and safety,

the right to a fair trial and the right to an effective remedy. Finally, a last category refers to those rights in respect of which, even within their regulation, the possibility of derogation is established. Thus, regarding these rights (the right to private and family life, the free speech and religion, the freedom of expression, the right to assemblies and association), their limitation may operate under normal circumstances (to the extent to which are fulfilled the requirements of Para 2 of each of the articles guaranteeing these rights and freedoms), but a supplementary limitation may be established during a state of emergency [24].

Regarding this last category of rights and the fact that it can be limited also under normal circumstances, it has been showed that “under no circumstance this aspect shall lead to the wrong conclusion in the meaning that the activation of Art 15 is useless in this case. The limitation of the rights guaranteed by the Convention may be subjected to the consideration of the Court, and the violation of the fundamental rights may be criticized. Notified with a complaint aiming the violation of a right belonging to this category, the Court shall verify the existence of a violation and, if so, shall establish if this violation is within the limitations stated by Para 2 of the article stating that particular right. Only if the violation of the right shall exceed the limitations of Para 2, the Court shall go further and establish if the derogation fulfils the conditions imposed by Art 15 [25].

The substantive conditions required by Art 15 Para 3 of the Convention

Beyond all these conditions of form, Art 15 Para 3 of the Convention refers to a series of substantive requirements. Thus, it is established the obligation of the States who have invoked this right of derogation to fully inform the General Secretary of the Council of Europe regarding the adopted measures, the motives which determined their adoption, as well as regarding the date on which these measures have ceased to be in force and the provisions of the Convention are applicable again.

Regarding Romania, we consider that the form related conditions have been fulfilled. The Permanent Representation of Romania has notified the General Secretary of the Council of Europe regarding the establishment of the state of emergency throughout the state’s territory for a period of 30 days, as well as regarding its

prolongation. Also, it requested that this verbal Note be considered as a notification in the meaning of Art 15 of the European Convention on Human Rights and has submitted a translated copy of the Decree No 195/16 March 2020 of the Romanian President regarding the establishment of the state of emergency in Romania. Also, the measures of immediate or gradual application, established by the Decree and the fact that they are absolutely necessary to limit the spread of the SARS-CoV-2 virus and to protect public health were indicated.

Given the obligation to fully inform belonging to the state, on 14th April 2020 Romania has notified the General Secretary of the Council of Europe the supplementary measures adopted in the area limiting the spread of the SARS-CoV-2 and its effects throughout Romania, as well as the data until the state of emergency shall be prolonged.

These formal requirements are important because in part, the Court will extract information so as to determine whether a State has indeed fulfilled its substantive obligations under Article 15 Para 1. As it has been shown in the application *Aksoy v Turkey*, the Court is "competent to examine this issue [procedural requirements of Article 15(3)] of its own motion, and in particular whether the Turkish notice of derogation contained sufficient information about the measure in question […] to satisfy the requirements of Art 15 Para 3" [26].

The importance of these procedural obligations has been emphasized in the subsequent decisions issued in the cases against Turkey [27], in which the Court has underlined that "the legislative decrees which allowed for derogation – but also the notifications to the Council of Europe – were only applicable to the south-east of Turkey". Therefore, the Court has stated that "would be working against the object and purpose of that provision if, when assessing the territorial scope of the derogation concerned, it was to extend its effects to a part of Turkish territory not explicitly named in the notice of derogation. It follows that the derogation in question is inapplicable *ratione loci* to the facts of the case" [28].

Conclusions

The activation by Romania of the provisions of Art 15 of the European Convention on Human Rights must not be understood as a total removal of the guarantees of the Convention and of any form of control regarding the compliance with the fundamental rights and also it cannot be considered as an evasion from its provisions. Even if they are mitigated by the state of emergency, the guarantees of the rule of law are in no way deactivated. “To derogate” does not mean “to violate”, the obligation to respect the democracy, the rule of law, the human rights and fundamental freedoms remaining mandatory. The disproportionate or unjustified nature of a measure may be invoked both in front of the public authorities responsible for the application of the adopted measure, as well as in front of the courts. The derogation from the Convention is temporary and does not mean that Romania shall no longer be liable in front of the Strasbourg Court if the rights of the citizens shall be violated during this period.

Absolutely, the derogation from the obligations regarding the human rights as response to pandemics was and remains controversial, one thing being certain: “human rights shall be a valuable compass for the states drafting emergency measures” [29].

Regarding the situation of Romania, we have expressed a point of view which shall be confirmed or refuted by the future decisions of the European Court of Human Rights in the case in which shall have to analyse if the measure derogating from the obligations of the Convention taken by the Romanian state during this period was grounded or not.

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[2] https://www.coe.int/en/web/conventions/notifications

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[12] ECHR, Decision ruled in the application *Lawless v Ireland*, 1 July 1961
[13] See also the decisions ruled in the application: *Brannigan and McBride v United Kingdom*, 25 May 1993; *A and others v United Kingdom*, 19 February 2009; *Mehmet Hasan Altan v Turkey*, 20 March 2018
[14]https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40
[15] Regarding this condition, it has been shown that "in Romania, this mention of the Council could rise certain issues, for as long as according to the Constitution and the GEO No 1/1991 the delegation of the attributions for legislation from the Parliament to the governmental organs took place based on a presidential decree and not based on a decision of the Parliament" (Ștefan-Nicolae Alexandru, Mihnea-Andrei Novac)
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[18] ECHR, Decision ruled in the application *Lawless v Ireland*, 1 July 1961
[19] Art 4 states: "1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. 2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision. 3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation".
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THE STATE OF EMERGENCY AND THE ECONOMIC REPERCUSSIONS. A NEW "AVALANCHE" OF INSOLVENCIES

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Abstract

In the context in which websites, debates, publications and online conferences have exploded and merged from multidisciplinary and interdisciplinary point of view, revolving around the "extravagant" Covid-19 virus, we set out not to miss this opportunistic "mixer" of scientific research on the socio-economic impact of the pandemic and to contribute timidly but reasonably to proposals for reviving the economy, drawing our attention to the insolvency procedure, which will appear to us more than ever. Insolvency will become a "real fact" in everyday life, in which legal reform towards the second chance will be a vital necessity of the economic and social renaissance. In the current context of the public health crisis, inevitably followed by a psychological, social and economic crisis, we consider that the reform of insolvency law by outlining a "rescue culture" or at least the temporary modification of specific rules, by measures of "relaxation" and the suspension of certain obligations incumbent on the debtor in a state of financial difficulty, becomes an absolutely essential step in our legal system and not only, in response to the temporary lack of liquidity of companies. In fact, this is the inevitable and optimal direction we must head towards in front of the impact of Coronavirus on the world and the dynamics of insolvency. The biggest challenge now remains economic recovery. After all, it is said that any crisis brings with it an opportunity for change for the better, and we are somewhat obliged to take advantage of it this time as well.

Keywords*: Coronavirus, state of emergency, economy, globalization, Europeanization, insolvency, measures to revive the economy, measures to temporarily amend insolvency legislation.*

The state of emergency – a compromise between health and economy

Until recently, this term "COVID-19" was so foreign to the population and today it resonates with great echo around the globe. Originally from Wuhan, China, this "invisible enemy" is a SARS-like virus that has spread rapidly primarily in Asian countries and during the transit period has advanced massively around the world,

getting to dominate the society, the world press, the politics, the economics, the life itself and to reconfigure in record time the rules “woven” in time of humanity. All governments had to choose between the right to health, life and economy, so they chose life and the heads of State declared a state of emergency, which occurred in a global chain, with few exceptions. As a result, the economy seems to have beaten to the “last breath”, some entrepreneurs have reinvented themselves in the struggle for survival, large companies have restructured, governments have reoriented themselves in funding plans and state aid to support the economy and the population, rights have been temporarily curtailed, legislation has entered an accelerated dynamic of special regulations, our personal and professional routines have changed significantly, schools have closed, events of all kinds they have been annulled, traffic restrictions have been imposed on citizens, social distancing has gradually left its mark on our psyche, and the list goes on. Of course, we cannot deny that all this time the planet itself has regenerated and we are breathing less polluted air. At the same time, however, digitalization reached levels unimaginable a few months ago, computerized procedures being implemented for years have now been forced to materialize in real time and in record time. However, the impact of COVID-19 is not yet a complete one, it continues to unfold and surprise us with new developments.

It almost seems to be just a movie running in cinemas, while we wait for an intense and thrilling viewing and feeling to return to everyday life. The reality is that the “movie” is still running and we don’t even know when and how it will end.

We were saying that the establishment of the state of emergency was a real compromise of the economy, but a necessary compromise. But for how long? This compromise can only be short-lived, as the suspension of activities has affected the entire economy and the stagnation of the economy in turn means famine and, consequently, the compromise of life and health. For example, we are spinning in such a thorny and vicious circle. In this regard, governments in all states have already moved to obvious measures to ease restrictions, people are happy with these relaxations, plan vacations and become somewhat unaware and skeptical of the real danger of Covid_19. Meanwhile, the economy is claiming the right to “wake up” and revival, with branches such as tourism or industry constantly looking for solutions and ways to restart

the business in optimal conditions to stop the spread of the new Coronavirus. We only hope that this rather uncertain context, which seeks to identify a socio-economic balance, will not be followed by a wave even more severe of disease. There is a risk of premature, dangerous and perhaps irresponsible relaxation, which involves a high risk being taken by each state trying to gradually relax the restrictions. In any case, we are on the verge of a new compromise. We are being forced to revive the economy at the risk of now compromising public health. What is certain is that the Coronavirus epidemic (COVID-19) has already brought considerable human suffering and major economic disruption, and governments must prioritize effective public health measures to prevent infection, implement well-targeted policies to support health systems, and protect the incomes of vulnerable employees and businesses. Last but not least, supportive macroeconomic policies can help restore confidence and help restore demand as the virus epidemic decreases in intensity, but they cannot compensate for the immediate disruption resulting from the imposed interruptions. The economic decline is inevitable and is very steep, perhaps counterbalanced by the pharmaceutical industry and other sectors of interest in times of crisis, such as agriculture, the food system, etc. Most certainly, the new economic crisis will generate much deeper and more intense effects of reform both economically, psycho-socially and legislatively, compared to the crisis of 2008.

A new economic crisis. Globalization or Deglobalization? Where to?

According to a report drawn up by OECD in March 2020, "*Coronavirus: The world economy at risk*" [1], China's production declines are being felt around the world, reflecting China's key and growing role in global supply chains, travel and goods. Consequently, it is estimated that the overall annual GDP growth will fall to 2.4% in 2020, as a whole, from an already weak 2.9% in 2019. At the same time, the negative impact on financial markets, tourism sector, aviation industry, followed of course by other sectors, as well as disruption of supply chains, contribute to downward reviews in all 2020 G20 economies, especially those strongly connected to China, such as be Japan, Korea and Australia. The predictions will become even more drastic if the effects of the virus epidemic do not fade soon. Also, according to the OECD, growth in the

Eurozone will remain lower, at around 1% per year on average in the period 2020-2021, and the impact of the virus epidemic will weaken the results in the first half of 2020. The more we sink into uncertainty, the longer the corporate investment is delayed.

The reality is that the global economy is on a downward trajectory even before the pandemic, a concern that the OECD has expressed since March 2019 based on an official report - *Global Growth Weakening as some risks materialize*, [2] which highlighted the risks that prevent global expansion, including the slowdown in external and domestic demand, the US-China trade war, political uncertainty in Europe, including Brexit, with the United Kingdom being an important trading partner for many countries.

Thus, the continuing uncertainty over trade policies, which is now overlapping with the health crisis in tandem with the global social and economic crisis, remains an important source of risk for global investment, jobs and living standards. On a different note, what are the perspectives for 2020-2021 in the new global economic and social context without precedent? Reality casts a dark shadow over the global economy and people's well-being. A new period of financial and economic stress broke out. The forecasts based on IMF statistics are also very bleak, [3] considering that this crisis will "contract" the economy with an unprecedented force since the Great Depression of 1930, a situation in which "*Global GDP will lose another 3 percent in 2020, and if the economic crisis extends into 2021, the level of global GDP will fall by another 8 percent from initial forecasts". Also, according to IMF, unemployment may rise to 10.4 percent in European countries in the single currency area, as opposed to 7.6%.*

The globalization process since World War II driven by multilateral agreements that allow trade opening is challenged. The process of Europeanization is also being challenged in these uncertain times when states are struggling to establish their own or borrowed survival strategies. However, we believe that governments must continue to act in a coordinated and cooperative manner at the level of the European Union but also at the international level, without addressing extremist, totalitarian regimes, to the detriment of the policies that have emerged over so many decades and with so many sacrifices. First of all, it must take into account the interdependence of economies. There is an urgent need for much bolder political action to revive the economy or at least to maintain a balance until the effects of this regime of socio-economic "paralysis"

are overcome. Perhaps this is the path to common solidarity. We have examples in which geopolitical opponents, such as the USA and Russia [4], have applied humanitarian aid measures, by exchanging the mechanical ventilation devices so necessary in the fight to stop the Covid-19 pandemic.

The situation remains inherently fragile and society is sinking even deeper into this economic vulnerability, which it had not even completely "cured" after the 2008 crisis and structural challenges such as digitalisation, trade, climate change, persistent inequalities, lag behind in front of global challenges and risks related to biology, viruses and health, which become dissuasive. In our opinion, deglobalization is by no means a way to overcome the health crisis triggered by the Coronavirus pandemic in January 2020, rather there is a single window of opportunity to avoid social and economic stagnation. The great philosophers consider that a crisis of any kind can be an opportunity through which ,,*humanity may realize the acute danger posed by global division*". [5] What does this mean and what are the current challenges of globalization? It may well be said that it involves a global plan, but rather a unitary coordination. For example, in the case of the 2008 financial crisis or the 2014 Ebola epidemic, the United States have taken on the role of global leader in preventing global economic destruction. In the new context, however, we could say that we are also facing a crisis of global leadership, the US reducing support for international organizations such as the World Health Organization.

In this context, the European Union could regain the popular support lost recently, through concrete financial support, by arranging measures for the joint distribution of solutions, research and medical staff. In this regard, the French President of Finance, Bruno le Maire, stated that "if everyone will be for itself, if we let other States collapse, Europe will not recover". Thus, the collective response of the European Union to the crisis caused by the epidemic has proved to be the fastest and perhaps most impressive in the world to date, by ensuring a budget of 3 trillion Euros, the President of the European Commission, Ursula von der Leyen, saying that "the European budget will be the motor for recovery". The exchange of experience in such crucial moments must be fully exploited, with global cooperation becoming essential for the economic front. We cannot deny the international, European nature of the economy, of the production,

trade, supply chains, this being a reality that appears to us more than ever, and the signing of a global agreement in this context can save humanity. Perhaps this is the critical point at which we must opt either for division, unilateralism, nationalism, economic and social extremism, or for global solidarity and uniformity, harmonization, universalism and global socio-economic stability, or rather to identify a balance between the two trends.

This vision does not in any way mean the loss of state sovereignty and independence, it does not mean the ”dissipation” of the culture of each state. These are historical nostalgia that we must overcome and look to the future, realizing that countries do not have the capacity to relaunch themselves, that we live in an interconnected, interdependent world, in which all Union and international bodies seek viable solutions for socio-economic resuscitation, opportunities that every country should “cling to” in such times. Less developed countries certainly need loans, the support of developed or less affected countries to overcome the crisis, to restore ties and balances once destroyed. Moreover, leaving aside the conspiracies against the “globalists who run the world”, what about the “*democratization of knowledge“*? Such contexts on the border between life and death show us that science and research results are a global public good and transcend borders, being absolutely necessary to share experiences and good practices so that research results are optimized for the public good.

In fact, as the President of the European Parliament, David Sassoli, stated: “*Not since* the *end* of the *Second World War have we faced such* a *dramatic crisis*. ... This *situation* is *so serious* that *no European government could* think of responding alone”. In this sense, the package of measures proposed by the European Commission, [6] which will complement the national measures, is an essential plan in combating the effects of Coronavirus, already materialized by significant economic consequences such as massive insolvency not only of SMEs but also of numerous airlines, large tourism companies, the decline of bitcoin or the collapse of stock markets. As a consequence, the European Commission has made European budgetary rules more flexible, instituted actions related to state aid, created the *EUR 37 billion Coronavirus Response Investment Initiative,* in order to provide liquidity to SMEs but also to the healthcare

sector and launched the *Support mitigating Unemployment Risks in Emergency - SURE*).[7]

The EU, in its turn, a global player, seems to have taken on some role as a global leader in the crisis, as it has mobilized more than € 400 million to improve global measures to prevent and control the virus, not just in Europe, but also globally, supporting the World Health Organization in substantiating the*2019 Novel Coronavirus (2019-nCoV): Strategic Preparedness and Response Plan*, [8] collaborating at the same time multilaterally and in coordination with global financial institutions such as the G7 and G20. At the same time, in addition to the strategy ,,*Team Europe*", The Commission adopted the Macro-Financial Assistance Policy (MFA) by proposing the allocation of EUR 3 billion to ten enlargement and neighborhood policy partners, including Albania, Georgia, Kosovo, the Republic of Moldova, Tunisia and Ukraine, in the form of loans under advantageous conditions, in order to limit the negative economic impact of the Coronavirus pandemic by covering immediate and urgent financing needs. In this regard, Paulo Gentiloni, as Commissioner for the Economy, stated that "European solidarity must not stop at the borders of the Union, because in this global crisis, we win or lose together". [9] Of course, at the national level, it is up to each state to complete these measures and apply internally the *EU economic recovery plan.* What is certain is that the virus does not take into account borders, whatever they may be and no matter how superficial or rigorous they may be.

Concluding in terms of supporting the idea of Europeanization and globalization, we mention that Romania already benefits from the support provided by the EU, so far the amount of one and a half EUR million has already been mobilized to alleviate the crisis. This short presentation of the international, Union and national economy in an overview, general, also helps us to understand that, although there are distinct national legal systems that define certain rights and obligations, it becomes clear that the reality of global competition affects the national laws and policies.

A new "avalanche" of insolvencies. Chain effects

Despite these efforts to respond to the crisis caused by the new Coronavirus, the resulting "economic pandemic" and its impact on the world of bankruptcy and

restructuring are and will continue to be very real. The impact of COVID-19 will significantly change the business restructuring landscape. Interruption of the flow of goods and services means interruption of production, imports, exports and capital markets. Larger companies, suppliers and their downstream manufacturers are facing material declines in cash flow. Not surprisingly, many companies are heavily indebted, and with the reduction in cash flows, this debt will materially hamper their repositioning and restructuring capacity. It is obvious that capital markets "breathe" uncertainty, and this pandemic raises uncertainty in larger portions.

We will face perhaps the biggest wave of insolvencies that will unfold in a "cascade" in most sectors nationally and internationally. The insolvency issue will affect all parts of business relationships: companies, customers, banks/insured creditors, sellers, owners, insurance companies and employees, not to mention the impact on the capital value of these new struggling companies. As a reflex reaction, we fear that in this context credit will tighten, thus having an additional impact on already fragile cash flows and on the ability to access finance. Sovereign central banks, such as the European Central Bank, will try to respond to both the virus (and its costs) and the economic stress created, as there will be recessions in several countries, and these countries will need credit support.

Why not admit, governments have created many economic support plans, especially for SMEs, which are perhaps the most vulnerable to this crisis, but the reality is that some of these support measures are very restrictive and apply only to "healthy" companies until the onset of the public health crisis, debtors already in financial difficulty not having any chance to benefit from such "safety nets". In these circumstances, what happens to companies that are already in insolvency proceedings, in the phase of judicial reorganization, or that were on the verge of requesting the opening of this procedure? Let's take the example of the program *IMM INVEST ROMANIA* which allows Romanian SMEs significantly affected by the COVID-19 crisis to obtain state-guaranteed loans of up to 800,000 Euros for carrying out current activity or for investments, without commissions and interest. [10] The program can be a safety "net" for SMEs, but not for those already insolvent or in financial difficulty and meet the criteria to enter into such a procedure. There are also excluded SMEs which appear

with overdue loans, including for leasing-type financing, in the last 6 months prior to 31 December 2019 or if they are prohibited to issue checks on 31 December 2019 and appear with major incidents with promissory notes in the last 6 months prior to December 31. Under these strict lending conditions, there will not be many companies eligible for financing and in our opinion the effective financing measures would be more beneficial to the detriment of the guarantee ones.

Leaving behind companies already in insolvency or on the verge of insolvency, to which the State seems to give them no chance, let us turn our attention a little to those that are, in principle, healthy. If we take into account the forecasts and scenarios of major international organizations such as the World Bank or the IMF, which certainly show a decrease in the volume of international trade, as well as the inevitable repercussions of the state of emergency declared in over 40 countries to stop the spread of the virus, respectively creating a supply shock due to the dependence often on a small number of suppliers, blocking of many activities and sectors, especially tourism, transport, especially air and hospitality, but also the automotive industry, declining sales, layoffs, restricting activities, late payment of suppliers, we undoubtedly find a double shock, demand and supply, which will affect the line of business around the world, especially since all activities are interconnected. Consequently, despite all support efforts, the economy will face the largest increase in insolvencies from 2009 to date, plus 25% in 2020 [11], especially if we consider the risk of a new wave of Coronavirus epidemic, which will block the attempt to restart the economy and translate it. Insolvency means hundreds of people left without jobs, who in turn have bank loans, debts, bills to pay, it means social crisis, in addition to health and economic, obviously followed by the financial crisis.

Therefore, what will be the marketplace? This crisis has two components, both the consumption component, which has decreased due to the state of emergency, and the supply component. Therefore, the current crisis cannot be compared to the crisis of ten years ago, but the experience of ten years ago can help us make much faster and more complex decisions in managing the current crisis, before it is too late.

The urgency of the temporary change of the insolvency legislation - as a measure of "resuscitation" of the economy. Predictions

Certainly, the very state of emergency decreed by the president implies temporary legislative changes of strict necessity, interpretation and application. In this sense, extraordinary norms have been designed, which either involve legislative measures derogating from the general framework, or bring temporary additions to it. We emphasize here that the regulation of such rapid measures of social and economic protection triggers the risk of legal parallels, legislative vacuum and gaps in interpretation.

As we have seen, the illustrative scenarios, which have not yet reached the peak of the economic impact of the coronavirus pandemic, have triggered a number of strategic and economic measures at global and European level. At the level of Romania, the legislative start in this sense was represented by GEO no.29/2020 on some economic and fiscal-budgetary measures [12], as essential measures to mitigate negative repercussions on the economy. In our opinion, among the most important for the economic system were the provisions of art.VII according to which "(1) For the fiscal obligations due starting with the date of entry into force of this emergency ordinance and not paid until the termination, according to par. (4), of the measures provided for in this Article shall not be calculated and no interest and penalties for delay are due in accordance with the Fiscal Procedure Code, approved by Law no.2007/2015, as amended and supplemented". Also, regarding SMEs, art.X becomes essential, stating that, "(1) During the state of emergency, small and medium-sized enterprises, as defined by Law no.346/2004 on stimulating the establishment and development of small and medium-sized enterprises, as subsequently amended and supplemented, which have ceased in whole or in part on the basis of decisions issued by the competent public authorities, by law, during the state of emergency declared and holding the state of emergency certificate issued by the Ministry of Economy, Energy and Business Environment, benefits from the deferral of payment for utility services - electricity, natural gas, water, telephone and Internet services, as well as the deferral of payment of rent for the building intended for headquarters and secondary offices.(2) By derogation from other legal provisions, in the ongoing contracts, other than those

provided in par. (1), concluded by the small or medium enterprises provided in par. (1), force majeure may be invoked against them only after the attempt, proved by documents communicated between the parties by any means, including electronic means, to renegotiate the contract, to adapt their clauses taking into account the exceptional conditions generated by the state of emergency".

At the same time, we greatly appreciate the relaxation of the fiscal policy by suspending the enforcements by the tax creditors, par. (3) in Art.VII establishing that "Enforcement measures are suspended or are not commenced by garnishment on the tax receivables, except for the forced executions that are applied for the recovery of the tax receivables established by court decisions pronounced in criminal matters. Measures to suspend enforcement by garnishment on traceable amounts representing income and cash are applied, by the effect of the law, by credit institutions or seized third parties, without other formalities from the tax authorities". Among other things, we feel the need to discuss, at this point, also the Government Ordinance no.6/2019 [13] on the establishment of tax facilities, which entered into force on 8 August 2019 and which created a special mechanism for payment deferral and debt relief in respect of interest and penalties of outstanding tax obligations at the end of 2018, with the effect of "resuscitation" of enterprises on the border with insolvency. Although, initially, the final deadline for accessing the provisions of the Ordinance was quite short, in the sense of starting the procedure by submitting the application to the tax authority, respectively September 30, amid the state of emergency triggered by the Coronavirus pandemic, changes were made, and in this respect to the advantage of the debtors. Thus, art.22 par.(1) of GEO no.6/2019 was amended based on GEO 29/2020 in the sense that: ,,*(1) The restructuring request provided in art.5 may be filed until 30 October 2020, under penalty of forfeiture".*

We could say that one of the chances of debtors in financial hardship was GEO no. 29/2020 on some economic and fiscal-budgetary measures, which practically stopped for the moment the abusive behaviour at times, in our opinion, of the tax creditor, suspending during the state of emergency but also for a period of 30 days after its cessation all forced executions and conferring certain advantages such as the extension of payment terms, the granting of fiscal facilities and the possibility of

restructuring meant to revive the economy, etc. For example, no more summons were issued, garnishments on cash and traceable incomes were made and no seizures were made on the assets, except for the amounts from the court decisions pronounced in criminal matters. These measures can really accelerate economic recovery and obstruct bankruptcies by giving respite to debtors in financial difficulty.

Of course, in addition to GEO no.29/2020, came many other emergency ordinances, as the social crisis and the economic crisis deepened, requiring new support measures. We mention here GEO no.30 of 18 March 2020 for amending and supplementing normative acts, as well as for establishing measures in the field of social protection in the context of the epidemiological situation caused by the spread of SARS-CoV-2 Coronavirus, which came with new measures to support the economy, by establishing state insurance of technical unemployment benefits. Thus, according to Art.XI, ,,during the state of emergency established by Decree no.195/2020 regarding the establishment of the state of emergency on the Romanian territory, for the period of temporary suspension of the individual employment contract, at the initiative of the employer, according to art.52 par.(1) letter c) of the Labour Code, as a result of the effects produced by the SARS-CoV-2 Coronavirus, the benefits payable to employees are set at 75% of the basic salary corresponding to the job occupied and are supported from the insurance budget for unemployment". The measures were to be completed and developed by GEO no.32/2020, GEO 33/2020, respectively GEO no.53/2020 and many more such ordinances will probably follow, which will come in support of socio-economic support at national level.

We believe that the measures necessary for the economic recovery will take shape even better over time. We still have to reflect on the statement of the President of the European Commission:*,,I am convinced that the European Union can withstand this shock. But each Member State needs to live up to its full responsibility. And the EU as a whole needs to be determined, coordinated and united".* [14]

Latosensu, we could say that the social, economic and legislative efforts and measures undertaken at national level are in an ascending rhythm and in line with European and global trends, which will be in continuous transformation and adaptation to the concrete situation resulting from the evolution of the health, social and economic

crisis. First of all, economic support needs to be improved through much stronger and more intense public investment, through the granting of direct grants and state guarantees targeting investment loans and working capital financing, the provision of more flexible state aid or specific support in the form of salary subsidies for employees. Monetary policy must be supported, in its turn, and it becomes very likely the emergence of other tax cuts as in other economies, by changing the structure of taxes and duties due to the consolidated state budget, perhaps by fewer constraints, enough to maintain a budgetary balance. For example, in Austria, taxes on multinational corporations have been raised and taxes on the middle class have been reduced. Of course, on the agenda of several European countries and not only there is the proposal to ensure a guaranteed minimum income to support people affected by the crisis, especially if we look at the whole and see that the number of employment contracts suspended only in Romania exceeded one million, while over two hundred thousand contracts were terminated. Let us not forget the banking system and the need to provide guarantee mechanisms and liquidity lines for banks, in order to ensure working capital for SMEs, guarantees and venture capital, as well as other economic policy instruments.

Stricto sensu, focusing on insolvency, it becomes imperative that this phenomenon be anchored in the socio-economic reality through urgent and temporary administrative and legislative measures. It is in this idea that we avoided an abrupt analysis and tried to start from the general context in order to narrow the scope of the analysis to identify useful measures to reform the field of insolvency.

In this context, we aim for companies in difficulty to be able to continue their activity or even to “freeze” it temporarily without permanently losing their perspectives. In these unprecedented times, company managers will need to be well prepared, with a solid understanding of the duties and insolvency framework of the jurisdictions in which they operate. Some jurisdictions have already taken steps to adapt insolvency law in the light of COVID-19, for example by suspending the obligation to file insolvency proceedings by the end of this year and introducing new laws to allow company-specific rescue. We have tried to monitor these types of legislative developments at European and global level, as well as the ability of existing insolvency legislation to provide

adequate responses to the extremely difficult situation in which many companies may find themselves in the Covid-19 crisis, in order to identify the most opportune solutions. We will analyze and propose measures in this regard from the perspective of the two concrete hypotheses identified.

On the one hand, we are talking about the companies that in the shortest time will have to declare their insolvency, as they will meet the conditions that attract the obligation to request the insolvency provided by Law no.85/2014 on insolvency prevention and insolvency proceedings, and on the other hand, we have in mind the companies that are already in insolvency proceedings, especially in the phase of judicial reorganization.

Regarding the first hypothesis, we consider that it is time to promote a lot and to implement in advance, before it is too late, the *Directive (EU) 2019/1023 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency)*[15], although Romania, like the other Member States of the European Union, has the obligation to implement this normative act until 17 July 2021, with certain exceptions. Especially in the current context, the Directive represents an opportunity to seize the chance for harmonization in the sense of a rescue culture through a legislative reform of the insolvency institution, with a focus on preventive restructuring frameworks. One of the elements that seem to be emphasized at the level of the European Union is the encouragement of extrajudicial agreements, those *out-of-court* transactions, thus going on the attempt to restructure out of court and before the fatidic word “insolvency” is pronounced. These transactions represent attempts to stabilize the receivables and restructure the activity by massively inviting to negotiation the creditors who hold the majority of receivables, the control ones, in our legislation being regulated but too little promoted and developed in this sense the ad-hoc mandate and the preventive arrangement.

But what happens to the companies that during this period meet the conditions for requesting insolvency, reaching the threshold of a certain, liquid and due debt of more than 60 days, in a minimum amount of Lei 40,000? We mention that, according to

the Insolvency Code, the debtor has the obligation and not the right to request the opening of the insolvency procedure within maximum 30 days from the occurrence of this state, and exceeding by more than 6 months the term provided by art.66 of Law no.85/2014 may attract the criminal liability of the administrator for committing the offence of simple bankruptcy, in accordance with art.240 of the Criminal Code. Of course, the literature has already sounded the alarm regarding the postponement of the initiation of these insolvency proceedings but also regarding this term, oscillating between considering it either a limitation period [16], suspended by law based on art.62 par.(1) of the Decree no.240/2020 issued by the President of Romania regarding the establishment of the state of emergency, either a maximum term specific to the insolvency legislation, [17] according to which the criminal liability or tort civil liability of the statutory administrators is attracted. Given that in this case we are talking about an obligation and not a right of the insolvent debtor, we are of the opinion that the suspension of the deadline for requesting the opening of the procedure would not have been justified during the state of emergency, prescription and revocation being specific means of paralyzing rights and not obligations. Although the general rule resulted and interpreted at national level, [18] in the sense that during the state of emergency the debtors' requests to open insolvency proceedings are not judged, there were cases [19] in which such requests were judged on the grounds of the exceptional nature of the state of insolvency, as well as the need for urgent protection of the debtor in financial difficulty by suspending the forced executions based on art.75 of the Insolvency Code.

Of course, the pressure of doctrinal and jurisprudential criticism was quite accentuated during this period regarding the uncertainty that gravitated around the field of insolvency, which is why in the meantime *Law no. 55 of 15 May 2020 on certain measures to prevent and combat the effects of the COVID-19 pandemic*, in which the legislator has allocated a number of articles, we could even say generously, dedicating Section 8 – „Measures in the field of insolvency "exclusively in the matter of insolvency. Thus, in addition to areas such as transport, health, education and research, or the field of labour and social protection, the field of insolvency is making its presence felt more than ever, as a corollary of the economy, necessary to be upgraded and reformed. However, we consider that the measures are somewhat late, entering into force only

after the declaration of the state of alert at national level, at the same time, there are minimum measures, which relate mainly to a limited period of time, respectively the state of alert, and are addressed especially to debtors who have ceased their activity totally or partially as strict effect of the measures adopted during the state of emergency, established by Decree no. 195/2020. These measures are aimed at, among others, a suspension of art. 66 of Insolvency Code which we were talking about above, in the sense that, according to art. 46 par.1) the debtor no longer has the obligation to file a request to open insolvency proceedings during the state of alert, but this option is not restricted, the legislator leaving it to the insolvent debtor to choose between requesting the opening of proceedings either during the state alert, or after its expiration, period in which the threshold value also increases from Lei 40,000 to Lei 50,000, both for debtors and creditors, as it results from art.47 par.2). However, we point out, as an addition to the measures taken, the timid promotion of the arrangement with creditors by ensuring longer deadlines for drafting the offer of arrangement with creditors, but also by conditioning the creditors of prior negotiation with the debtor, proven by documents, before requesting the opening insolvency proceedings.

Going over these current procedural aspects, strictly related to the period of the state of emergency or the state of alert, we consider that we need an overall view, which would place us beyond the cessation of the state of emergency, then or later companies being in the same imperative situation to request the initiation of insolvency proceedings. Essentially, the Romanian legislator did not intervene with major and systematic amendments on Law no.85/2014 on insolvency prevention and insolvency procedures, at a time when the economic situation is going through the hardest tests and obviously requires legislative changes at all levels, not just at macroeconomic level. Why do we invoke the lack of action in this current strategic area of the economy? Because the debtors who have reached the insolvency threshold, even if they did not request during the state of emergency or alert to enter the insolvency procedure, considering that this obligation has been suspended, will be obliged to request it tomorrow, because there are no concrete measures for these debtors nor for those who are already in insolvency proceedings and trying to complete a reorganization plan, while insolvency practitioners struggle to supervise and manage in crisis conditions acts

and operations imposed by legal norms, by digitizing all specific procedures. Indeed, we appreciate the measures proposed by the legislator, even if they are minimal, drawn up at the last moment and on the verge of the collapse of the national economy, respectively the possibility of modifying the reorganization plan already being implemented, within 3 months from the occurrence of law, in cases where the perspectives of the debtor's recovery have changed due to the situation created by the Covid-19 pandemic, as well as the possibility of prolonging the duration of the execution of the plan, up to a maximum of 5 years for cases in which the activity was totally or partially interrupted. At the same time, a temporary solution is the possibility for debtors to request the insolvency judge, within 30 days from the entry into force of the law, to suspend the execution of the reorganization plan for a period not exceeding two months, specifying that it is a measure that is strictly addressed to debtors in judicial reorganization at the time of the law, which have ceased their activity totally, not partially, as a result of the measures adopted by the public authorities.

The reality is that measures to temporarily amend insolvency law could be left without real major effects of economic support, as they do not seem to be viable long-term solutions, but rather a superficially ticked chapter of the government agenda. *De lege ferenda*, it would be appropriate to make real, concrete, not only temporary, to the insolvency law, measures to protect debtors in financial difficulty and to relax the conditions for entering insolvency, given the rapid economic decline from one day to another, which will do nothing but trigger an unprecedented wave of insolvencies. In this regard, accessing the website of INSOL Europe Association [20], in its turn a member of the INSOL International Federation [21], with a strategic role in substantiating the guiding principles in drawing up codes and laws, European and international directions on insolvency, we note some proposals for reform, urgent adaptation of legal rules, addressed to national legislators. Moreover, within The Conference on European Restructuring and Insolvency Law (CERIL) [22], there was discussed the capacity of existing insolvency law to provide appropriate responses to the extremely difficult situation in which many companies may find themselves in the COVID-19 crisis, and in a statement CERIL management called on European and EU national legislators to "take immediate action and adapt insolvency legislation in the light of the current

extraordinary economic situation and prevent unnecessary bankruptcies of entrepreneurs".

Consequently, the recommended primary strategic steps were:

1. suspension of the obligation to file insolvency proceedings based on over-indebtedness and

2. to respond quickly to the lack of liquidity of companies.

In this context, we could take the example of a temporary legislative reform of the field of insolvency carried out in more developed countries. For example, the Australian Federal Government has recently approved temporary amendments to insolvency and corporate laws, given the challenges that COVID-19 presents to many profitable and viable companies. Thus, the *Omnibus* bill *2020* [23] provides for measures to prevent unnecessary insolvencies and bankruptcies by providing a "safety net" for administrators and companies so as to help them operate in a temporary period of illiquidity, rather than entering into a judicial reorganization or voluntary liquidation. The measures involve a kind of "hibernation", especially of companies severely affected by the measures taken during the state of emergency, as well as the appointment of specialized people, multidisciplinary, operational advisory groups, to assist them in debt management and to avoid bankruptcy. As part of the important changes, the administrators will be temporarily exempted from the obligation to request the opening of insolvency proceedings, and the temporary exemption will work for a period of six months. In addition, in addition to other measures to relax the insolvency legislation, the minimum threshold of the threshold value according to which the creditors can request the opening of the procedure is also modified, also for a period of 6 months. In fact, countries such as Austria and the Czech Republic have also decided to suspend the obligation to request the opening of insolvency proceedings for a period of 6 months after the end of the state of emergency. A very effective example in this sense would be Luxembourg, [24] which has suspended *sine die* this obligation, a measure which, in our opinion, becomes necessary in such an uncertain and unpredictable general context.

Germany also regulated a *Law on mitigating the consequences of the COVID-19 pandemic on insolvency field*. The amendments to the existing regime aim primarily at suspending the obligation to submit the insolvency file, appropriately limiting the liability

of the company's management and incentives for the continued activity of the affected companies. This is achieved by a complete suspension of the insolvency obligation until 30 September 2020 and through a series of additional measures to ensure that management can continue to conduct business on a regular basis, eliminate the risks associated with the provision of new financing in crisis and reduce the risks of fiscal recovery for contractual counterparties in general. A very interesting aspect that the German legislature has in view is that the suspension does not apply if the insolvency is not caused by the effects of the spread of the SARS-CoV-2 virus (COVID - 19 pandemic). Thus, it distinguishes between insolvency caused strictly by the pandemic and insolvency inevitable and independent of the global health crisis, in the sense that if the debtor was not in a state of financial difficulty on 31 December 2019, insolvency is presumed to be caused by the effects of the COVID- 19 and that there are perspectives for remediation, otherwise no. In our opinion, this perspective is somewhat exaggerated, being really necessary a differentiation between debtors, for example the one in good faith and the one in bad faith, or the business in the branches most affected by the pandemic, in the sense of benefiting from more tax facilities, etc., but in no case the total exclusion from such legislative opportunities of those who were already vulnerable and in financial difficulty at the time of the general crisis state.

Finally, if we refer to the category of debtors already in a state of insolvency, and we are especially interested in debtors in the process of judicial reorganization as a procedure that contributes, in our opinion, to the recovery and revival of the economy, we find that, in essence, the thorny issue it concerns not only the triggering moment of the insolvency procedure, but also the assurance of the continuity and development of the judicial reorganization plans in course of implementation. Indeed, the insolvency proceedings followed their course, only the actual activity of the court being suspended during the state of emergency. But what about overlapping this economic crisis with these already vulnerable companies? Will they still be able to complete a reorganization plan or pay their current debts so that they do not inevitably "step" in bankruptcy proceedings or be enforced by creditors?

For example, the execution of the judicial reorganization plan, approved and confirmed in advance, continued its course, the debtor being required to comply with the

plan, to pay the amounts provided under the payment program, the legislator not stipulating provisional measures to suspend, postpone these obligations during the state of emergency. As a consequence, debtors had to identify the means of rescue, often opting for tax and budgetary benefits granted by the authorities, the most convenient measure being the application for technical unemployment, as other measures, such as, for example, the measure of granting loans guaranteed by the state presented above, excluded from the beginning the companies already in insolvency, regardless of whether they were in the phase of judicial reorganization.

In this context, the chances of recovery have decreased in a very steep way for the companies in judicial reorganization, the conversion to bankruptcy becoming almost inevitable, especially if we consider the new regulations of GEO no.88/2018 which amended Law no.85/2014, in the sense that *"for the debts accumulated during the insolvency procedure that are more than 60 days old, the forced execution can be started".*

Of course, in the macroeconomic regulations during the state of emergency, economic operators have identified and accessed certain levers of suspension of payment obligations, deferral of payment for utility services, settlement by the state of technical unemployment benefits, exemption from penalties for delay in the execution of contracts concluded with public authorities, as well as other facilities and support measures in trade relations, all based on obtaining an Emergency Situation Certificate according to the procedure regulated by Order no.791 of 25 March 2020 issued by the Ministry of Economy, Energy and Business Environment. However, the support measures are necessary even after the completion of the state of emergency, respectively of the state of alert, triggered on the Romanian territory, when the mass enforcements are restarted. That is why, in our opinion, *stricto sensu* measures are required alsoregarding the insolvency legislation, which should contribute to the support of economic operators, either in the sense of timely recovery by intensifying the application of preventive insolvency procedures, especially the preventive arrangement, or by adapting the insolvency procedure and the legal regime of reorganization of debtors to the new socio-economic context.

De lege ferenda, we propose a relaxation of the insolvency regulations, in the sense of the possibility of suspending for a period of at least 6 months the payment obligations resulting from the reorganization plan or rescheduling the payments by modifying the reorganization plan based on a decision of the insolvency judge and without being necessary the consent of all creditors, prioritizing measures such as: payment of current receivables, granting special support to insolvent debtors through appropriate financing programs, providing free guidance and counseling supported by the state, increase of the threshold value of Lei 40,000 for a longer period of time, at least for 6 months, not only during the state of alert, but also the suspension of the creditors' right to request the transition to bankruptcy or forced execution or modification of the condition regarding the debt payability, currently 60 days, by increasing it to at least 120 days**.** Now more than ever, policymakers can consider including a simplified insolvency regime, in particular by providing SMEs with simplified reorganization procedures and other options for their timely rescue, which would aim to simplify formalities for the notification, submission and proof of claims and the approval of reorganization plans, the provision of standard templates, programs and forms, the use of electronic means, as well as reduced costs, public aid and shorter deadlines but also limited reasons for their extension, measures recently proposed by UNCITRAL, too, which is progressing more and more with *The draft model law on a simplified insolvency regime for micro-enterprises* (MSE insolvency) [25]. The latter project was discussed at the 56th meeting of Working Group V, held in Vienna on 2-5 December 2019 and was on the proposed agenda for the May 2020 session in New York, to support any final amendments following the review of the 56th meeting of Working Group V.

Finally, if we were to relate to some predictions and risks in the immediate future, we could consider issues such as: the decline of financial markets, the emergence of legislative overlaps and misinterpretations that will give free rein to the so-called "vulture investors", opportunistic buyers of assets/companies without adverse credits and interests, tightening of credit as a reflex reaction, with additional impact on already fragile cash flows, the explosion of the invocation of force majeure in most trade relations and the reflection on general contractual obligations for emergency situation based on emergency ordinances regulated during the state of emergency, certificate

that continues to produce effects, there existing also the possibility of obtaining a force majeure notice [26]**.** At the same time, we will face the emergence of the force majeure phenomenon versus insolvency, companies being tempted to argue that they are not really insolvent, invoking force majeure as a priority, actions that will end with direct bankruptcy and loss of opportunities for judicial reorganization, but also the emergence of the indulgence phenomenon of the courts post pandemic regarding the installation of insolvencies and granting the possibility of reorganization even in the case of those "zombie" companies with the "domino" effect of economic decline on trading partners, and the list goes on.

Conclusions

Our research began with the affirmation that any crisis brings with it an opportunity for change. Perhaps this is the opportunity that will positively restart society, the economy and, why not, the legislative system. Perhaps it is time for a well-deserved new beginning, in a well-deserved "fresh start", in which the pandemic will trigger a "phoenix" phenomenon - the rebirth of the economy from "the ashes". The experience of the Coronavirus pandemic followed by the materialization of the economic crisis has somewhat confirmed our need to emphasize this indisputable link between the social dimension and the economic dimension of insolvency, which is a reality we must not be afraid of, the "rescue culture of salvation" through insolvency proceedings being currently claimed by the company itself, through the need for revival and reset. We believe that this perspective of giving a second chance to the debtor in financial difficulty is no longer just at the stage of giving satisfaction to some Union and international bodies that have long strived to shape it, and which the States have embraced gradually and implemented it timidly. This perspective becomes a reality, which appears to us more than ever and is a second chance for Romania, a country where social and economic challenges are becoming increasingly complex, an effective approach to legal institutions, such as insolvency, becoming essential for reactivating the levers of economic and social progress.

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[6] The President of the European Commission, Ursula van der Leyen, stated the following: "*The pandemic is testing us all. This is not only an unprecedented challenge for our health systems, but also a major shock for our economies. The important economic package announced today refers to the current situation. We are ready to do more as the situation evolves. We will do whatever it takes to support Europeans and the European economy".* In this context, The President of the European Commission, Ursula van der Leyen, assured Member States that all instruments will be used to mitigate the consequences of the pandemic, in particular: "ensuring the provision of health systems by maintaining the integrity of the single market, the production and distribution of value chains, supporting people so that incomes and jobs not be disproportionately affected and avoid the lasting effects of this crisis, support businesses and ensure that the liquidity of our financial sector can continue to help the economy, enable Member States to act decisively and in a coordinated manner, using the full flexibility of State aid and the Stability and Growth Pact". https://ec.europa.eu/romania/news/20200313_raspuns_coordonat_covid19_ro;
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[12] Published in the Official Gazette of Romania no.230 of 21 March 2020;
[13] Published in the Official Gazette no.648 of 5 August 2019;
[14] Compared to European tax rules, Member States are required to keep the budget deficit below 3% of Gross Domestic Product and government debt below 60% of GDP. However, the rules allow Member States to spend more in emergencies, such as the coronavirus pandemic which certainly justifies exceptional spending. At the same time, we note that EU rules also limit the state aid that Member State governments can offer to companies in difficulty, except for emergency support in certain circumstances. We can mention here that even during the global financial crisis of 2008, a policy of relaxing the deficit provisions was implemented and State subsidies allowed European governments to spend billions of euros to save the banks and revive the economy. The same could be done in the context of the pandemic and the current socio-economic crisis, which is much more serious;
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[26] See AndreeaArtenie, MihneaGalgoţiu-Săraru, Ana Galgoţiu-Săraru, DiferenţeledintreCertificatul de Situaţie de Urgenţăşiavizul de forţămajoră, https://www.universuljuridic.ro/diferentele-dintre-certificatul-de-situatie-de-urgenta-si-avizul-de-forta-majora/.

GENERAL ASPECTS REGARDING LABOR INSPECTORS AND THE ATTRIBUTIONS OF LABOR INSPECTION

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Abstract
Labor inspection exercises control over the unitary enforcement of legal dispositions within the compatible areas in the public, mixed or prívate units to the local and central public administration authorities, judicial people, individuals, and non-governmental organizations as well as in other employer categories. Its main purpose is to ensure the fulfillment of legal obligations by employers regarding labor relations as well as labor conditions, the protection of life, body integrity and health of employees and other participants in the labor process while performing activities.
The present material briefly presents elements referring to the notion of labor inspection and its general and specific attributions as well as the rights and obligations of labor inspectors as public and independent clerks.
Keywords: *labor inspection, general attributions, specific attributions, labor inspectors.*

Introductive considerations regarding labor inspection and its attributions

Regardless of how the state interferes or not within the sphere of labor relations, the Labor Inspection is an indisputably necessary administrative organ. It is true that without the organization and development of Labor Inspection a normal evolution of labor relations, as well as the protection of employees' interest, could not be conceived. [1, 160]

The institution also existed during the interwar period through the Law regarding the organization of the labor inspection service but during that time Labor Inspection did not have a self-standing judicial personality and was integrated within the Ministry of Labor and there were no inter-county Inspectorates on a local level.

Labor Inspection is a specialized organ of the central public administration subordinated to the Ministry of Labor and Social Protection that has judicial personality. [2, Art. 1] Through its attributions of authority in the state are exercised within the labor domain, labor relations, labor security, and health, specifically controlling the unitary application of legal dispositions within its competence domains in its units of the public and private field as well as other categories of employers.

The Labor Code also regulates Labor Inspection; according to the Code "the application of general and special regulation within labor relations, labor health and security is controlled by Labor Inspection is a specialized organ of the central public administration, with judicial personality, that is subordinated to the Ministry of Labor and Social Protection". [3, Art. 237]

According to the dispositions of the specialized legislation, this organ is lead by a general inspector of state who represents Labor Inspection in relations with the public administrative authorities, with individuals and judicial people; he has two general inspectors of state deputies and a control group for the quality of the inspection. [2, Art. 10 - 12] and [4, Art. 6 - 14, 20]

Labor Inspection exercises the control of the unitary application of legal dispositions within its competence fields, in its public and private units, ensuring the fulfillment of legal obligations by the employers regarding labor relations, labor conditions, the protection of life, body integrity and health of employees as well as of other participants to the labor process. [1, 86]

Labor Inspection has as subordinates the territorial Labor Inspectorates, judicial units that are organized in every county and Bucharest.

1. Attributions

Labor Inspection has a series of attributions provided by the law for the foundation and organization of Labor Inspection as well as by the Regulation for its functioning and organization, approved by Governmental Decision no. 488 of July the 13 th 2017.

The general attributions of Law Inspection are the following: [2, Art. 6 Alin. (1)]

- controlling the application of general and specific legal provisions within labor relations, labor health and security and supervising the product market of the competence field;
- informing the employers and employees of the means of applying the legal provisions within the competence field;
- informing the competent authorities on the deficiencies or abuse regarding the application of the legal dispositions in forcé;
- performing services that are specific to its activity field;

- Initiating proposals for the improvement of the legislation for its activity fields that are forwarded to the Ministry of Labor, Family and Social Protection.

The ones provided by the Regulation for its functioning and organization are added as follows: [4, Art. 12 Alin. (1) pct. A]

- develops and applies annual actions for implementing the politics of the Ministry of Labor and Social Justice within the competence field of the Labor Inspection;
- coordinates, guides, and controls the activity of the territorial labor inspectorates and the other subordinate institutions;
- represents the Ministry of Labor and Social Justice as a specialized organ in the international cooperation relations within its competence field during the mandate granted by the Minister of Labor and Social Justice;
- ensures the representation, on behalf of the Romanian State and Government, both internally and externally, in the cooperation relations with national and international institutions and organs within its competence fields, during the mandate granted by the Ministry of Labor and Social Justice;
- elaborates unitary control methodologies and procedures within its competence field;
- controls the keeping of employment criteria in special conditions and the means for normalizing labor conditions enforced by the employer;
- fulfills attributions according to the legal regulations in forcé regarding the training and its perfection for its staff;
- cooperates both internally and externally within its competence fields with similar institutions, inspections from other fields, prívate or public institutions, organizations of social partners and with any other organization that is founded and is functioning according to law;
- earns income by performing services, calculated based on the rate approved by the order of the Minister of Labor and Social Justice as well as other income obtained under legal provisions that become part of the state budget according to art. 7 of Law no. 108/1999 for founding and organizing Labor Inspection, republished with ulterior modifications;

- solves, within legal competence, the petitions of individual or judicial people;
- ensures the Exchange of information with central and local public administration authorities as well as with individuals or judicial people, according to law;
- manages the budgetary funds that are at its disposal as well as the state goods of the public or prívate field that are in its management and/or usage;
- elaborates the annual budgetary plan that is subjected to the approval of the Minister of Labor and Social Justice and ensures the financial-accounting exercise of the institution under the law;
- organizes the informational system that is necessary to its activity and manages the electronic registries of its competence field;
- Initiates proposals for the improvement of the legislation regarding the activity fields which are forwarded to the Ministry of Labor and Social Justice.

In what regards the specific attributions of Labor Inspection, there are attributions regarding labor relations, attributions regarding labor health and security as well as other attributions regarding the market surveillance.

A. Regarding labor relations

- controls the application of legal regulation, both general and specific, regarding closing, execution, modification, suspension, and termination of individual labor agreements;
- controls the establishment and granting of the propper rights of employees following the law, the applicable collective labor agreement and the individual labor agreements;
- controls the application of measures regarding the keeping of equality of chance and treatment between men and women;
- ensures on a national level the records of performed labor based on the individual labor agreements through the general record book of employees as well as the record of day laborers and their beneficiary;
- controls the use of labor forcé to identify undeclared labor;

- electronically receives and transmits through the territorial labor inspectorates the data forwarded by employers and beneficiaries referring to employees and day laborers;
- ensures the registration of collective labor agreements on a unit level and verifies their provisions according to the procedure approved by the general inspector of state and reconciles labor conflicts triggered on a unit level.

B. Regarding labor security and health

- methodologically controls, coordinates and guides the application of provisions referring to labor security and health that derive from the national and European legislation and the Conventions of the International Labor Organization;
- investigates events according to competence, approves the investigation, establishes or confirms the character of the accidents, collaborates with the involved institutions regarding the record and report of labor accidents and professional diseases;
- controls the activity of instruction, information, and consultation of employees and gives information on its improvement;
- authorizes base don labor security and health the functioning of individuals and judicial people and withdraws or proposes the withdrawal of authorization according to law;
- analyses the activity of external services of prevention and protection and proposes, as appropriate, to the committee of empowerment of external services of protection and prevention and of approval of technical documentation of information and instruction about labor security and health within the territorial labor inspectorates, the withdrawal of empowerment;
- issues notices and authorizations according to the competence established by the applicable normative acts;
- orders the cessation of activity or stopping the functioning of labor equipment if there is a state of the imminent and grave danger of professional accidents or disease and notices, as appropriate, the prosecution organs;

- orders the employer to take measures, perform expertizes and determination to prevent some events or to establish the cause of former events as well as to verify with the help of competent organs the inclusión of the professional emissions level within admissible limits at the workplace, the expenses being paid by the employer;

C. Regarding market surveillance

- controls the keeping of legal provisions referring to the introduction on the market of products for which it takes actions to oversee the market, according to its competence;
- restricts through legal measures established by the legislation in forcé the marketing of inconsistent products and disposes of measures to eliminate the observed inconsistencies;
- collects evidence and makes tests to identify the products that are believed to be inconsistent;
- collaborates with custom authorities and other organs that are responsible for custom control to Exchange information regarding the products that have utilization risks;
- Collaborate with the competent national and the European Union authorities for all market surveillance issues including in what concerns the safeguarding clause for inconsistent products.

Labor inspectors

Labor Inspection and territorial labor inspectorates' personell is made of labor inspector and other staff cathegories.

Labor inspectors are public clerks that are independent of any governmental change or outside influence. [2, Art.6, Alin. (3)]

The inspectors have higher education and the necessary specialization to perform the control activities according to the objectives and attributions provided by law within labor relations, labor security and health. [5, 270 – 285]

Their employment is made through an exam or contest in a report with their professional training and their skills. The labor inspector position can be held by people with a bachelor's diploma in one of the fundamental fields: engineer studies, agricultural

and forestry studies, judicial studies, economic studies or the branches: sociology, psychology, medicine, public administration, and political studies. [2, Art. 16, Alin. (4)]

1. Obligation

According to the legislation referring to the foundation and organization of Labor Inspection, [2, Art. 18] labor inspectors have a series of obligations, as follows:

- to not have any direct or indirect interest of any nature in the units that he controls;
- to not divulge fabrication secrets and, in general, exploitation procedures which they might acknowledge during the exercise of their function or after the termination of the individual labor agreement for any reason;
- To keep the confidentiality of any reclamation that reports not keeping of legal provisions for the field that is regulated by the present law and to not divulge to the employer of the said individual or judicial person or their representative the fact that the inspection was made due to reclamation.

2. Rights

According to the specialty legislation for the field, labor inspectors benefit from a series of rights: [2, Art. 19 alin (1)]

- to have free, permanent access within the headquarters of any employer and in any other workplace organized by individual or judicial people without previous notice;
- to identify, based on the documents that prove the identity or other documents, the people at the workplaces or in any other places that are subjected to control or investigation of the events and to impose the completion of the identification form;
- to solicit from the employer or its legal representative as well as to the employees, alone or with witnesses, the necessary documentation and information for the ongoing control or investigation of events;
- to be given access by the controlled entity to copies of documents that are related to the control or investigation of events;
- to take written statements, alone or in the presence of witnesses, from employees, employers and/or, as appropriate, their legal representatives as

well as from other people that have information regarding the object of control or the investigated event;

- to collect to analyze with the help of specialized laboratories or to administrate evidence, samples, fabricated, used, deposited and manipulated substances or materials and to notify the owner or employer of doing so;
- to order the employer to take some measures, make expertizes and determinations for preventing certain events or to establish the causes of previous events as well as the verification, with the help of authorized organs, of the inclusion of the level of professional emissions withing appropriate limits within the workplace;
- to collect the necessary product samples for which the supervise the market and, if deemed necessary, to order the destruction of discontinuation of products that have a great risk;
- to give the employer measures to repair during a limited period the observed inconsistencies;
- to order the interdiction, restriction or withdrawal of a product of the market providing the reasons for this decision;
- to order the cessation of activity or the stopping of the functioning of labor equipment if they discover a state of the imminent and grave danger of professional injury or disease and to notify, if appropriate, the prosecution organs;
- to order the suspension or withdrawal of the functioning authorization;
- to apply distinct signs with seal value, following the law, in virtue of their state authority, during and regarding the fulfillment of labor tasks;
- to notify the prosecution organs regarding the cases or situations of breaching the legal dispositions of the field when there are incriminatory clues;
- to discover contraventions and apply the sanctions provided by the legislation in force;
- To solicit and unconditionally receive support from authorities and institutions of public order and protection, as appropriate, during the control.

Referring to the right of labor inspectors to have permanent free access to the headquarters of the judicial person and in any other workplace organized by them without previous notice [2, Art. 19, lit. (A)] there has been a controversy stating that the text that highlights this aspect might be unconstitutional because „it could create a discrepancy between the attributions and the power that labor inspectors have concerning police who, to enter a headquarters or a home, must obtain approval from the court whereas labor inspectors can enter anywhere anytime they want without any approval, being able to collect statements and evidence as they please, even in the absence of a representative of the management of the controlled society". [6, 252]

The Constitutional Court has decided that the certain text does not breach constitutional dispositions, nor the ones of article 16 paragraph 1 regarding the equality of citizens (that do not have incidence in question), nor the ones of article 27, paragraphs 1-3 referring to the inviolability of the residence. [7]

In the case of industrial or commercial headquarters that are not residences at the same time, the personalization of the place is not that highlighted such that the inviolability of the headquarters is not subjected to the same rules as the actual residence, the one where the private life of the person is carried through, so the authorities can exercise in other, much more permissive, conditions. The control that Labor Inspection exercises are not of the private sphere but the public one, aiming for the protection of general interest. [8,75]

The intervention of public authorities in the field of activity of judicial people has a legitimate purpose and is necessary for a democratic society taking into account that among the objectives of Labor Inspection there is the control of applying legal provisions regarding labor relations, labor security, and health, the protection of employees who work in special conditions and the legal provision referring to social insurance. The critiqued measures provided by the law dispositions are proportionate to the legitimate pursued goal since only in this way can the optimal development of the control operation performed by the Labor Inspection be ensured, the fulfillment of their attributions, and the rights of the labor inspectors regard both the specifics of the exercised control activity and the social importance of this public order activity.

Labor inspectors are competent to observe and punish the inconsistencies provided by Law no. 108/1999 and the ones regulated by Law no. 279/2005 regarding apprenticeship at the workplace.

In the case of independent directors (national companies or societies), the request for their dissolution must be addressed to their founding authorities, not to the court of law. Based on the decision of the competent organ the radiation of the certain judicial person from the commerce registry is to take place.

The measures taken by the labor inspector can be contested through the legal or administrative means provided by law [2, Art.19, alin (2)] but this requires a series of clarifications.

It has to be stated that the measures taken by the labor inspectors while exercising their attributions are the administrative acts of a public authority. [9, Art. 48 Alin. (1)]. The possibility to be contested by the legal or administrative means provided by law are materialized by the exercise of action of the administrative legal department, according to the law regarding the administrative legal department.

Previous to the introduction of the annulment of the administrative act, the employer must request from the issuing public authority, within 30 days from the date of the communication of the act, its total or partial revocation. [10, Art. 7]

It must be mentioned that the employer (plaintiff) can ask the court of the legal department for the suspension of the execution of the act, namely the measures taken by the labor inspector „for preventing the occurrence of imminent damage". [10, Art. 14, Alin (1)]

If a fine is issued the employer can contest it only by filing a complaint with the court of law within 15 days of its issue. [11, Art. 31]

If the action of the administrative-legal department and the complaint against the fine have been filed at the same time the provisions of the civil code of conduct regarding the possibility of suspending the judgment of the complained until the irrevocable solution of the action od the administrative legal department become applicable. [12, Art. 244, Pct. 1]

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