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CONTENTS

Ramona DUMINICĂ - THE ROLE AND PLACE OF THE GENERAL PRINCIPLES OF LAW AMONG THE SOURCES OF CIVIL LAW…….5

Mihaela Adina APOSTOLACHE - CONSEQUENCES OF BREXIT: THE LONG-AWAITED AGREEMENT ON THE FUTURE RELATIONS OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND WITH THE EUROPEAN UNION……..11

Emilian CIONGARU - SCIENCE OF LAW - SCIENCE OF KNOWLEDGE ELEMENTS OF CONSTITUTIONAL LAW (II) LAW - SCIENCE, ART OR TECHNIQUE ?.....19

Gheorghe CALCAN - THE ORGANIZATION OF RURAL COMMUNES IN THE ADMINISTRATIVE LAW OF 1929…….27

Carmina TOLBARU - PSYCHOLOGICAL AND CRIMINOLOGICAL ISSUES CONCERNING THE SEXUAL ABUSE OF MINORS……..39

Dana VOLOSEVICI - CONSIDERATIONS ON POSSIBLE APPROACHES OF DISCIPLINE AT WORK……47

Cristina Cornelia FEURDEAN - DECENTRALIZATION OF PRIMARY AND SECONDARY EDUCATION - EMERGENCY DURING THE PANDEMIC…..……57

Gabriel MICU - DIPLOMATIC FUNCTION OF THE CONSULAR INSTITUTION …….67

Monica Florentina POPA - THE SUBVERSIVE EFFECT OF UTILITARIANISM ON THE RIGHT TO LIFE IN EU COUNTRIES……...77

Eufemia VIERIU - LABOR MARKET, PROFESSIONAL TRAINING OF THE EMPLOYER AND DISABLED PEOPLE……...89

Valentin- Stelian BĂDESCU - BRIEF CONSIDERATIONS ABOUT JUSTICE AND TRUTH DURING THE EMERGENCY PERIOD. THOUGHTS AT THE TIME OF RESTRICTION…….104

Adrian Cristian MOISE - CYBER-CRIMINOLOGY – A NEW FIELD OF SCIENTIFIC RESEARCH AND CRIMINOLOGICAL INVESTIGATION……121

Adriana Iuliana STANCU - CYBERCRIMINALS AND THE VICTIMS OF CYBERCRIME……..127

THE ROLE AND PLACE OF THE GENERAL PRINCIPLES OF LAW AMONG THE SOURCES OF CIVIL LAW

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Abstract:
The general principles of the law are of special importance in the process of creating the law, by insuring its unity and coherence, but also in the application of the law and in its interpretation. Their role is highlighted especially when, in the absence of detailed regulations or legislative gaps, they are used to resolve a wide variety of situations given to the courts. Undoubtedly, the principles are the result of social experience and draw the guidelines for the entire legal system, exercising both a constructive action, guiding the activity of the legislator, but also a valorizing one. Starting from these considerations, the current paper aims to emphasize the role and place of the general principles of law among the other sources of the Romanian civil law.
Keywords: *general principles of law, sources, civil law.*

1. About the general principles of law

The law of a society, as ensemble of legal norms in force at a certain given time, is formed by numerous rules stating the most varied social relations. Despite this diversity of norms, the legal system has a series of fundamental rules, guiding ideas or principles, essential, which underlie most of the rules and branches of law in which they are brought together.

The general principles of law are metaphorically defined as being “a heteroclite category of uncertain boundaries, which strongly intrigues the jurists” [1], sometimes being treated either as “a given”, namely as an ideal or base for science, or are assimilated to the “built”, when are drafted or transposed in legal norms through the law-making activity [2].

Etymologically, the notion of principle originates from the Latin principium which means beginning, origin, fundamental element. Thus, every principle is a beginning in an ideal plan, being able to the be in the same time a source, a cause of action.

Therefore, the general principles of law represent the ensemble of guiding sentences to which are subordinated both the structure and the development of the

system. It follows that the general principles of law are normative both in relation to reality and to the system itself, they are principles of structure and development of the legal system [3].

The notion of general principles of the law is permanently invoked not just by the Romanian law, but also by the law of other states, such as the French legal system (principes généraux du droit), German legal system (Grundsatze), the English legal system (leading principles). Moreover, these are included in the international law expressly in the category of the sources of law in Art 38 of the Statute of the International Court of Justice.

Concerning their origin, a part of the general principles of law are stated by the Constitution or by treaties or conventions, having not just material, but also a super-legislative formal value, as the case of the principle of equality, sovereignty, political pluralism etc., others not being expressly stated by normative documents, but the legal texts still apply them.

In legal literature [4], for the general principles it has been proposed, by considering their authority, their division into fundamental principles – as principles imposed to the legislator itself, having constitutional value and general ordinary principles, which do not have this quality.

Also, the general theory of law lists the following general principles: insurance of the legal basis for the functioning of the state, the principle of freedom and equality, the principles of equity of justice, the principle of responsibility.

These general principles are characterized by stability in time and by the possibility to be applied to any system of law due to their high degree of generality. The law can recognize their existence, as it happens, for example in the case of civil law. Also, it has been showed that the general principles of law give measure to the system of law existing at a certain time, because the general principles represent the fundament of the legal system which provides unity, homogeneity, balance, coherence and capacity of the entire social system. The rapidity of transformations in the economy and society, the mobility of current social relations require flexibility and dynamism for legal regulations and, in order to achieve this objective, it is necessary that the general principles show flexibility and dynamism [5].

The subject of the principles of law is extremely vast and complex, it is not relevant for our research to present in detail the principles that govern the rule of law, thus existing, as we have shown above, principles that cover the entire legal system, a subdivision of it or a branch of law. Which is of interest here is their role among the sources of civil law.

2. The importance and place of the general principles of law among the sources of civil law

The analysis of the notion “source of law” has emphasized two meanings of its meanings: source of law in a material sense and source of law in a formal one.

The material sources (social, economic, cultural, ideological etc.) are defined as the entirety of the conditions of the material and spiritual life generating the emergence of a regulation or the entirety of the material life conditions determining the content of the general social will, by forming the infrastructure of any system of positive law.

The formal sources of law the form that takes place or through which the general social will is externalized in order to become mandatory for the individual and the community. In turn, the form of the law can be internal, i.e. what and how the legal regulation is expressed and the external form, i.e. through what the legal regulation is expressed (respectively by law, decree, decision, etc.).

According to Art 1 Para 1 of the Civil Code are sources of civil law: the law, customs and the general principles of law.

The formal sources of civil law are first of all, the normative acts, i.e. the acts emanating from the state bodies vested with the prerogative of legislation.

According to the state body from which they emanate and their nature, there are the following categories of normative acts that can be sources of civil law: laws (constitutional laws, organic laws and ordinary laws); ordinances and emergency Government ordinances; Government decisions; orders, instructions and regulations of the heads of central organs of state administration; normative acts issued by the authorities of local public administration. Are included in the category of the sources of civil law the normative acts issued prior to 1990, to the extent to which they are still in force (laws, decrees, decisions of the Council of Ministries, orders and instructions), as

well as international regulations (conventions, treaties, covenants, agreements etc.) to which Romania has adhered or has ratified.

The main source for the Romanian civil law is represented by the Civil Code – Law No 287/2009, entered into force on 1st October 2011. It preserves the classic structure of codifications and is divided into 7 books: Book I – "Persons"; Book II – "Family"; Book III – "Assets"; Book IV – "Inheritance and liberalities"; Book V – "Obligations"; Book VI – "Extinctive prescription, forfeiture and calculation of terms" and Book VII – "Provisions of international private law". Because it can state in every matter and may modify at any time the preexistent rules, the law is the main formal source of civil law.

The Civil Code includes in the category of the sources the usages, namely the custom and the professional usages. The custom represents a long-time practice, rooted and continuous, considered mandatory by the persons applying it. It has a structure formed of a material element and a psychological one. The material element resides in the general and prolonged use in time of a rule of conduct that has not been adopted and imposed by any public authority. The psychological element consists in the faith that the customary rule has a mandatory feature (opinio necesitatis) [6].

Professional uses are rules for exercising a profession, developed in practice and recognized as mandatory by the professionals concerned, regardless of their inclusion in a normative act. Essentially, professional uses are some "specialized customs", reason for which the Romanian legislator has included them in the category of usages, together with the custom. Therefore, their structure and effects are the same with those of the custom [7].

Are recognized as source of law only the usages (namely the customs and professional uses) in accordance with the public order and good behaviors, as it results from Art 1 Para 4 of the Civil Code. The uses may be applied both in the cases in which the law does not regulate a certain situation (Art 1 Para 2, first line of the Civil Code), as well as when the law refers to them (Art 1 Para 3 of the Civil Code).

The quality as source of law of the general principles for the civil law is expressly stated by the Civil Code in Art 1 Para 1-2, where it states that "are sources of the civil law the law, the uses and the general principles of the law". For the cases not stated by

the law shall apply the uses and, in their absence, the legal provisions referring to similar situations, and when such provisions do not exist, the general principles of law".

From the legal provisions it results that these categories of sources are not on equal positions. As such, the legislator enshrines a hierarchy of them. First of all, the law considered in its broad sense will be applied, then if there is no text of law, the customs will be applied, and if there is neither appropriate law nor customs, another law will be applied that regulates a similar legal situation.

The general principles of law are secondary sources for the civil law, in the meaning that they are invoked only in the cases not stated by the law, when there are no uses or similar legal provisions to be applied by analogy. The principles considered as sources of civil law shall be in accordance with the public order and good behaviors.
In the doctrine [8] regarding the importance of the general principles of law within the sources, a distinction was made between their fundamental function and the technical function.

The fundamental function refers to the substantiation on principles of any legal construction, the legal norms cannot be elaborated and cannot evolve, except in accordance with the general principles of law, the legislative activity cannot take place outside the general principles.

The technical function of the principles is emphasized in the area of interpretation and application of the law, especially when, in the absence of detailed regulations or due to legislative gaps, are invoked for solving a wide diversity of situations to be solved by state organs. Thus, the principles of law replace the legal norm. As a conclusion, the judge cannot refuse to solve a litigation by invoking the absence of the legal text based on which he could rule, because he would be accused of degenerating the justice and shall proceed to the solving of that litigation based on the principles of law.

Conclusions

The general principles of law have a constructive and a valorizing role, these two features comprising the objective requirements of society. The constructive role is manifested in the contribution of the principles in the creation and permanent modernization of the law, and the valorizing role consists in their capacity to put in value

and to regulate, as legal norms, new areas [9]. Even if their recognition as direct formal sources of law is not unitary, the general principles are still secondary, indirect sources, because are at the base of the legal norms, which must agree with them, and the application of the rules to concrete situations is done according to the same principles.

The legislative construction cannot be performed outside the fundamental principles of law because “they are normative in relation to the positive system itself; they are imposed as mandatory to the very norms. The general principles not only have the role of filling the ambiguity or non-existence of the law, but also of limiting the law, substantiating it. They regulate the norms, being a kind of super-legality, which is why the control of legislation must be done not only in relation to a written constitution, but also to the general principles, in relation to what is called, through a conceptual unification, a block of constitutionality” [10].

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CONSEQUENCES OF BREXIT: THE LONG-AWAITED AGREEMENT ON THE FUTURE RELATIONS OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND WITH THE EUROPEAN UNION

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Abstract:
The paper considers the pressing issues that led to the intensification of negotiations for an agreement on future UK-EU relations starting with 1 January 2021. According to a scenario based on the lack of agreement, the UK's relations with the EU would have been regulated by public international law, including World Trade Organization rules. The post-Brexit transition will end on 1 January 2021, when the separation of the United Kingdom from the European bloc is finalized. The surprises did not take long to appear, with European and British leaders succeeding in concluding the long-awaited Trade and Cooperation Agreement on Christmas Eve, along with two other agreements, the Cooperation Agreement on the Safe and Peaceful Uses of Nuclear Energy, and the Agreement on Security Procedures for Exchanging and Protecting Classified Information. The documents, contained in the draft Agreements reached between the United Kingdom of Great Britain and Northern Ireland and the European Union, to which a series of joint statements have been enclosed, in order to be applicable, must be approved by the British parliamentarians and the European Parliament.
Keywords: *agreement, future relations, post-Brexit transition, third-party state, standards.*

Preliminaries

The transition period established following the negotiations by the two parties, UK and EU, due to the initiation of the exit procedure from the Union, finalizes at the end of 2020, and the hope of reaching an agreement was quite low. But once concluded, the agreement should be ratified by the London and European Parliaments. At the European Council meeting of 15-16 October 2020, it was clearly stated that all Member States and all EU institutions should be prepared for the scenario of a lack of an agreement with the United Kingdom on 31 December 2020.

The lack of an agreement would have forced the Union to immediately apply its customs rules and tariffs at the borders with the United Kingdom, which includes checks and controls on compliance with customs, sanitary and phytosanitary standards and

verification of compliance with EU rules. These controls would have inevitably lead to significant delays at the borders, although extensive preparations have been made by the customs authorities of the Member States. In addition, entities in the United Kingdom would have no longer been eligible for EU grants and would have no longer been able to participate in EU public procurement procedures under the conditions covered by the status of Member State, still in force during the transitional period.

The European summit addressed the issue of the post-Brexit relationship between the EU and the United Kingdom, but again, insufficient progress was made in the negotiations. The British Prime Minister, Boris Johnson, declared that he is willing to negotiate with the European Union if "European leaders will come with a fundamentally different approach".

The conclusions of the European Council [1] reaffirmed the Union's determination to have the closest possible partnership with the United Kingdom on the basis of the negotiating directives of 25 February 2020, while respecting the previously agreed European Council guidelines as well as statements and positions, in particular those of 25 November 2018, especially with regard to a level playing field, governance and fisheries.

In this context, the Union has shown its readiness to continue negotiations in the following weeks, calling on the United Kingdom to take the necessary steps to make it possible to reach an agreement.

Agreements reached between the United Kingdom of Great Britain and Northern Ireland and the European Union

After ten months of grueling negotiations, the European Union and the United Kingdom reached a historic agreement on their future trade relationship on December 24th, just days before the end of the transition period, which will allow them to avoid a "no deal" with strong effect for their economies. The agreement reached by the UK and the European Commission contains three key elements: a trade agreement, a security partnership and a framework on governance standards, according to a plan posted on the European Commission website [2]. There are also stipulated rules on social standards and conditions for the UK access to Community programs.

Under the name Agreements reached between the United Kingdom of Great Britain and Northern Ireland and the European Union [3], together with the Trade and Cooperation Agreement, another 2 agreements have been concluded: the Agreement for Cooperation on the Safe and Peaceful Use of Nuclear Energy, the Agreement on Security Procedures for Exchanging and Protecting Classified Information, as well as a series of joint statements.

The draft of the EU - UK Cooperation and Trade Agreement is 1246 pages long. This means that from 31 December at 23.00 GMT, when the UK leaves the EU single market, there will be zero customs duties and zero quotas for all products complying with the rules of origin.

Great Britain published the text of the Trade Agreement with the European Union [4] just five days before leaving one of the largest trading blocs in the world. Its full name is "Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part". The document is structured in 7 parts [5]:

I. Common and constitutional provisions;
II. Trade, Transport, Fisheries and other provisions;
III. Law enforcement and judicial cooperation in criminal matters;
IV. Thematic cooperation;
V. Participation in EU programs, sound financial management and financial arrangements;
VI. Dispute resolution and horizontal provisions;
VII. Final provisions.

To these are added a number of annexes and 3 protocols: the Protocol on administrative cooperation and combating VAT fraud and mutual assistance for the recovery of claims relating to taxes and duties; the Protocol on mutual administrative assistance in customs matters; the Protocol on the coordination of social security.

The Free Trade Agreement, considered a "new economic and social partnership with Great Britain", covers both trade in goods and services and a number of areas of interest to the EU, such as investment, competition, subsidies, fiscal transparency, air

transport and road transport, energy and sustainability, fisheries, data protection, coordination of security policies.

"Both sides are committed to ensuring equal, strong standards by maintaining high levels of protection in areas such as the environment, tackling climate change, carbon taxes, social and labor rights, fiscal transparency and subsidies, by applying effective internal law, through a binding dispute settlement mechanism and the possibility for both parties to apply remedial measures", underlines the European Commission.

The EU and Great Britain have agreed on a new common framework for the management of fishing stocks. Despite its low economic weight, European fishermen's access to British waters was the last stumbling block in the negotiations, due to the political and social importance of the sector in several Member States, including France, the Netherlands, Denmark and Ireland. The British, who regained control of their waters, made this a symbol of their regained sovereignty.

The agreement provides for a transition period of 5 and a half years (until June 2026), at the end of which European fishermen will give up 25% of their quota, which amounts to 650 million euros annually; access to British waters will then be renegotiated annually.[6]

European negotiator Michel Barnier promised that the EU would be "alongside European fishermen", emphasising that despite this agreement, there would still be "real changes" from 1 January for many citizens and companies as a consequence of Brexit.

The agreement provides for the maintenance of air, road, rail and maritime connections, although British access to the common market will be lower than what the Community space can provide. In the field of energy, the agreement includes a new model of trade and interconnectivity, with guarantees of fair and transparent competition.[7]

Through this trade agreement, the EU gives its former Member State unprecedented duty-free access and market share to its huge market of 450 million consumers. But this opening will be accompanied by strict conditions: British companies

will have to comply with a number of environmental, labor rights and tax rules to avoid any dumping. Guarantees also exist for state aid.

A mechanism will allow the two sides to quickly activate countermeasures, such as customs duties, in case of divergences on these rules.

In the absence of an agreement, trade between the EU and London would have been governed by World Trade Organization rules, synonymous with customs duties, quotas and administrative formalities that could lead to inconsistencies and delivery delays.

The EU has earmarked € 5 billion in its budget to support its most affected sectors.

The European Commission stated that "in the field of social security, the agreement aims at ensuring a number of rights for EU and British citizens. This applies to EU citizens working, traveling or settling in the UK, as well as to British citizens working, traveling or settling in the EU after 1 January 2021".

At the same time, the Commission emphasized that "the agreement allows for the continued participation of the UK in a number of EU programs between 2021 and 2027, provided that the UK financially contributes to the EU budget, an example being the Horizon Europe Programme".

European Commission President Ursula von der Leyen [8] stated during a press conference that the agreement was fair, balanced: "It has been a long and winding road. But we have a good deal. It is a fair, balanced agreement, and it is a good and responsible thing to do for both parties". "Negotiations have been very difficult. There was a lot at stake for so many people, so we had to fight for this agreement". "I also believe that this agreement is in the interest of the United Kingdom. It will lay a solid foundation for a fresh start with a long-term friend. And it means that we can finally leave Brexit behind and Europe can move forward".

The British Prime Minister Boris Johnson gave a statement on the outcome of negotiations with the European Union [9], saying that Britain will remain the "friend", "ally" and the European Union’s "first market" despite Brexit: "I say this directly to our friends and partners in the EU: I believe that this agreement means a new stability and a new certainty in what has sometimes been a bitter and difficult relationship". "We will be your friend, your ally, your support and, let's not forget, your first market, because

even if we left the EU, this country remains culturally, emotionally, historically, strategically and geopolitically attached to Europe".

The British Minister for International Trade, Liz Truss, welcomed the news of the conclusion of the trade agreement [10]: "We will have a strong trade relationship with the EU and we will deepen trade with our partners around the world through our independent trade policy".

At a meeting of the 27 Member States representatives with Michel Barnier, the EU's chief negotiator on Brexit, it was agreed that if a UK and EU agreement was reached, a new meeting would be scheduled for 28 December in Brussels, to launch the signing of the project by the Member States. They will also have to decide on a provisional application, as the European Parliament will not be able to ratify it until early 2021. On the other hand, the British Government has announced that it will call on British parliamentarians to return from holiday to debate the text on 30 December. However, they will not have enough time to debate and analyze the details carefully. It is estimated that its adoption leaves little doubt, as even the Labor opposition intends to support it.

Conclusions

The issue of future relations between the UK and the EU from 1 January 2021 has long been a matter of concern, as no common denominator has been reached on certain pressing issues.

The negotiations led to the expected result - a draft agreement considered mutually beneficial. The recent draft agreement between the European Union and the United Kingdom on post-Brexit relations takes into account trade, fiscal and budgetary relations, the norms on judicial and security cooperation, as well as legal guarantees on governance standards.

The agreement sparked a backlash from British and European leaders. The main British negotiator, Lord David Frost, said the agreement would "fully restore Britain's sovereignty: EU law ceases to apply; the jurisdiction of the European Court of Justice shall end; there is no alignment with EU rules; Our parliament (i.e. British) re-establishes all the laws for our country".[11]

From 1 January 2021, the UK will leave the Single Market, the Customs Union and all EU political systems and also from that date on, the free movement of people, goods and services and capital between the EU and the UK shall cease. The free trade agreement is considered a "new economic and social partnership with the UK", covering both trade in goods and services as well as a number of areas of interest to the EU, such as investment, competition, subsidies, fiscal transparency, air and road transport, energy and sustainability, fisheries, data protection, coordination of security policies.[12] The European Commission, through the voice of its President, emphasizes that "the EU and the UK will have two different markets, two different regulatory and legal areas. This will create barriers that do not currently exist in trade of goods and services, as well as in cross-border mobility and bilateral exchange, in directions".

It is necessary to apply Agreements reached between the United Kingdom of Great Britain and Northern Ireland and the European Union. Ursula von der Leyen, stated that the agreement means that "EU rules and standards will be respected with sufficient tools of reaction", in case the British side, in search of a competitive advantage, does not comply with the provisions of the agreement.

It remains to be seen how things will turn out, in the context in which the draft agreement [13] must be ratified by the European Parliament, by the British Parliament and by the parliaments of the 27 EU Member States. Given that it was completed so late, could the European Parliament approve it before the end of the year, so that this does not leave its mark on the entry into force of the agreement on 1 January 2021? One proposal launched by the Commission was the provisional application of the agreement. In addition, the Agreement signed at the time of Britain's withdrawal from the EU (Brexit Agreement) remains in force.

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SCIENCE OF LAW - SCIENCE OF KNOWLEDGE ELEMENTS OF CONSTITUTIONAL LAW (II)
LAW - SCIENCE, ART OR TECHNIQUE ?

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Abstract:
It was thought that science was only the privilege of the lawmaker or of specialists in other fields and less that of those studying law, and lawyers merely had the role of analysing legal or jurisdictional texts. The ideal was faithfully expressing will in the sources of law. However, an object for investigation was clearly defined in this activity, a series of legal concepts became more precise, a more rigorous methodical spirit manifested, and, in this context, the undeniable contribution of legal positivism, through Kelsen's contribution, namely through his distinction between legal regulations and texts regarding law, through the necessity of not confusing law with the science of law, must be mentioned. A reinvigoration of the scientific research of law has benefited from the contemporary epistemiological achievements, which have highlighted, among others: the opposition between natural sciences and humanistic sciences does not have insurmountable borders; the introduction of the concepts of chance, order and disorder, which significantly nuance the traditional opposition between determinism, specific to natural sciences, and finality, specific to humanistic sciences, the role of the observer in scientific research has been re-evaluated, noting the impossibility of ignoring the topic; the theories of all the sciences are not verified directly and have a provisional value.
Keywords: *science of law, legal phenomenon, general theory of law, constitutional law, legal thinking, legal philosophy*.

The concept of science and the science of law

The history, dynamics, but also the insufficiency of knowledge of the science of law have been revealed by the juridical literature [1], only inasmuch as they limit themselves to the classical fields, in a series of main areas, of which the following can be enumerated: the analysis and interpretation of legal texts, of jurisprudence, putting law in a logical order; a certain danger of passion in the content and form of law and its tendency to block and limit legal knowledge; a need for overcoming the crisis in law through increasingly resorting to scientific criteria in the field of legislative ideology and creation of law. [2]

A reinvigoration of the scientific research of law has benefited from the contemporary epistemiological achievements, which have highlighted, among others: the opposition between natural sciences and humanistic sciences does not have insurmountable borders; the introduction of the concepts of chance, order and disorder, which significantly nuance the traditional opposition between determinism, specific to natural sciences, and finality, specific to humanistic sciences, the role of the observer in scientific research has been re-evaluated, noting the impossibility of ignoring the topic; the theories of all the sciences are not verified directly and have a provisional value.

Seen from the perspective of the science of law, the following may be added to the above: the history of law provides past experiences; the legal experience of mankind may be approached as a social experiment in relation to the genesis of the science of law, of legal concepts and theories; the possibility of subjecting law to a systemic representation; law may have an experimental character; lawyers currently have at their disposal procedures for systematic verification and use.

Therefore, it may be stated in a substantiated manner that discovering the limits of scientific objectivity and the complex contemporary aspects of the term science may free the knowledge of law from an old complex, namely that it is only a doctrinal knowledge, which does not reach the level of science, not even in contemporary times.

Law - science, art or technique

Within an analytical look on law in the sense whether law is a science, an art or a technique, the idea of science appeared relatively late, towards the end of the 19th century and the beginning of the 20th century, having a rather sinuous and contradictory evolution, but not without transformations. [3] The concept of science referred to an initial step of the process of creating law required by knowing the social reality which must be regulated, and, in this context, it was thought that science transpired in law only inasmuch as legal regulations were well created and clearly expressed. It was thought that science was only the privilege of the lawmaker or of specialists in other fields and less that of those studying law, and lawyers merely had the role of analysing legal or jurisdictional texts. The ideal was faithfully expressing will in the sources of law. However, an object for investigation was clearly defined in this activity, a series of legal

concepts became more precise, a more rigorous methodical spirit manifested, and, in this context, the undeniable contribution of legal positivism, through Kelsen's contribution, namely through his distinction between legal regulations and texts regarding law, through the necessity of not confusing law with the science of law, must be mentioned.

Overcoming the position of law as technique, of course without abandoning it, but in order to integrate it into a more ample knowledge, on several levels, the aspiration of law towards a certain scientific status, is not clear and distinct at present, not even from a terminological point of view, with all the efforts for standardising and formalising it, through the use of the English language as a common linguistic system. In this respect reference can be made to the English term legal doctrine which represents the space of multiple approaches, of controversies [4] and different and sometimes coexisting options. Moreover, other English terms may be observed, namely: the term legal dogmatics which represents the normative knowledge specific to law, reserved par excellence to specialists interpreting the law, relatively captive in their field of activity and who have very little inclination towards an interdisciplinary approach, towards interfering with issues of juridicity; the term jurisprudence which represents a theory of case study par excellence: the term general jurisprudence which designates a strictly necessary theory of case study; the term legal science being seen as an aspiration towards the knowledge of law which reaches principles and regularities in the legal field as well, similar to other sciences. Nevertheless, it is an inconsistent terminology for Scientia juris, [5] a notion relatively synonymous in meaning around the common note, actually being the result of scientific research of the legal phenomenon. [6]

The field of knowledge of law cannot and must not remain singular, currently having connections, interferences, transfers of concepts, methods and techniques with and from other sciences, and which can no longer be listed as only having a secondary role in the knowledge of the legal system. After all, the power lines of contemporary knowledge, of the conceptual revolution in science, with its major tendencies towards unification, but also towards specialisation, which the law, without denying its specificity, cannot eschew, are found in this process. It is without doubt that the unity of science manifests in diversity and it does not represent an unexplored area of knowledge or the

absence of the configuration specific to a field at all. A complex approach, without limitations, of the legal phenomenon, is necessary, confirming in this case also the epistemiological thesis according to which any absolute limit proposed is marked by a problem wrongly expressed, rather being a momentary pause in thinking which must be treated in terms of a programme establishing what is to be done from then on. The borders between subjects are useful for deans and booksellers, they must not, however, be overestimated, and, similarly, legal systems must not be separated from their non-legal context because the principles of law and the legal precedents can be explained by placing them in a certain social, political and historical context. [7] The need for an integrating legal knowledge in the postmodern era, which articulates legal dogmatics - that is, the totality of general and sectorial theories on law which deal with describing and rationalising legal regulations - with the interpretation and systematisation, with legal philosophy and sociology, has also been highlighted.

Thus, it has been shown that the paradigm the general theory of law as an encyclopaedic synthesis regarding law, with all its traditional values - which must be and can be safeguarded - is not satisfactory any more in terms of the totalising knowledge of law. The acts of knowledge in the field become increasingly numerous and complex, follow one another in an accelerated manner, such as, for example, the impact of the informational society on law, they cannot merely be collected in a simple, even if perfect, archive any more. They connect, interfere, transfigure one another, place known facts in a different light, impose new clarifications in terms of meaning, fundamental structures, functionalities, which in the socio-human context of juridicity make reference to the nature and possibilities of the science of law, involve new levels in which knowledge is of an integrative type.

Statements regarding legal thinking have revealed that : Legal thinking, just as any thinking has always been, throughout eras and everywhere in the world, an effervescent dialectic, a battlefield for debating justice, utility, good, evil : the great stakes of life. [8] Final answers were not given in the battlefield of debate on Law, since, indeed, scientific culture on the one hand, the humanistic one on the other, have not kept their promise of giving final answers.

The struggles in the world of ideas, the modern and contemporary experience of science have shown that the absolute foundation on knowledge, either on principles or facts, is illusive, that there is no absolute measure of truth independent of the corresponding life situation, that a theory may be false although it successfully passes the tests it is subjected to, that we cannot actually test one single theory, since it is connected to an entire network of hypotheses, that in certain moments in the history of science only persuasion and propaganda, and not scientific arguments, are used for fighting. [9]

The concept of integrative knowledge would be configured as a concept for coordinating a kaleidoscopic picture of legal knowledge which blurs dogmatic exclusion and intolerance. [10] It tries to correlate different ways of thinking - some neglected or wrongly interpreted, into a common activity for solving legal problems.

The concept of integrative knowledge may be looked at with distrust due to an excessive caste solidarity, not willing to cease preserving certain elitist positions, being seen as between specialities, thus not being trustworthy, difficult to publish, with effects judged as modest in relation to different costs.

The epistemiological approach on the concept of integrative knowledge is able to overcome the scientific specialisation seen as dogma, for instance when the quantitative approach is judged as being the only scientific one in relation to the qualitative approach, the hegemony and the colonisation of knowledge. The move from the epistemiological sovereignty proclaimed by certain conceptions or from the divergent epistemiological approach may be achieved by overcoming segmentation, from simultaneity and integration into structures and configurations, to an epistemiology of cooperation, collaboration and coagulation, which exploits the entire experience of science in solving problems.

It is not just a simple requirement, objective interactions are the basis for integration, the epistemiological pluralism is supported by the principle that any single way of understanding a complex phenomenon is insufficient. This involves:

- recognising the value and validity of several types of knowledge in solving problems.
- finding a common denominator of particular epistemiologies, for instance the person as a legal being in the legal field.

- making the different ways of approach operational through continuous negotiations in the field of knowledge, highlighting the ways of moving closer rather than making compromises.

The coalition of perspectives, the convergence towards contextual values, the action based on multiple epistemiologies, outlines integrative knowledge as a new paradigm of scientific production, distributed socially, oriented towards transdisciplinarity and application, with multiple responsibilities, able to overcome epistemiological boundaries, to use integrative concepts and suitable methodologies.

Therefore, in this context, the virtues of the integrative approach seem to be promising in legal knowledge as well. It may be able to inspire a minimal integrative epistemiological programme in which to combat dogmatism using arguments, to re-analyse epistemiological boundaries as closures which open, emphasising cooperation and not exclusion. [11]

In this approach, the paradigms of legal knowledge - even contrasting ones - are stimulated to communicate, to accept new paradigms with a greater potential of integration, as, for instance, the communicational paradigm. [12]

In conclusion, the science of law [13] is not and cannot be the expression of strong thinking - like exact sciences - but of a weak thinking and perhaps the term supple or subtle thinking, which, however, may frequently win in the field of scientific knowledge, if it is reasonable, might be preferable.

The nucleus [14] of this science might be the legal rationality, scientifically configured, which confirms its status only if it is based on logic but also on history, it integrates social experience and the practice of law, the achievements of contemporary science, gives satisfaction to the human condition within this historical era, does not ignore the contradictions of juridicity, the aspiration towards interrogation, foresight and creativity, declaring itself always perfectible, upon critical endeavours, open and evolving.

Thus, legal science can more significantly affirm its status of socio-human science the specificity of which is given by the object of research - the legal phenomenon - that socio-human space which has Law as an imperative normative nucleus, susceptible to public constraint, given in the name of Justice, in a society

particular to a certain historical time and which makes the values of that time operational, regulates the main social relationships, incorporating ideas, conceptions, legal theories, influenced by the culture and state of that society. [15]

Conclusions

Exploring the legal dimension of the human, legal science is complex, multi-levelled, shows its nature at the confluence of defining features such as : a cognitive potential which cannot be simply reduced, in a strictly hermeneutic manner, to the postfactum reconstruction of the behaviour of the legal actors in order to understand it, but fully exploited for its explicative and predictive features, within reason, as any socio-human science ; an interdisciplinary methodology inherently required by the complexity of the legal phenomenon; an integrative exigence, given the fact that legal knowledge cannot eschew the connections to the human network of knowledge, as the legal phenomenon cannot eschew the connections, interdependencies and interferences from other socio-human phenomena. This integrativity does not encroach upon the specificity of certain legal entities or specialisations, such as the branches of law, legal concepts, principles or theories. However, it combats bad practices such as dogmatism, exclusivism, ignoring others, boycotting them, cultivating the non-discriminatory and non-hierarchical extension, opening up epistemiological boundaries, informational exchanges, recognising the generic ability of each entity towards knowledge in order to participate in solving human problems - including legal problems - based on relevant arguments; a practically applicative, jurisprudential dimension, which cannot be separated from the meta-theoretical and theoretical level and reduced to legal empiricism, without negative consequences such as a significant normative dimension, which must not be transformed, as the legal system is not an empty normative form, but is full of political, socio-economic, cultural content, an approach which does not dilute legal normativity, but explains it.

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THE ORGANIZATION OF RURAL COMMUNES IN THE ADMINISTRATIVE LAW OF 1929

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Abstract:
According to the Law for the Organization of Local Public Administration of 1929, August 3rd, rural communes were large administrative units, with a minimum of 10,000 inhabitants. They consisted of one or more villages that were considered sectors of the commune. Both the commune and its sectors had legal personality. Villages were considered small or large depending on the number of their inhabitants, the threshold of this division being the number of 600 inhabitants. All the villages of the commune, as well as the commune itself, were headed by elected mayors.
Keywords: *administrative law, rural commune, village*

1. Introduction

The Law for the Organization of the Local Public Administration of 1929 was promulgated on July 29th 1929 and it was published in the "Official Gazette" of Romania, no. 170, of August 3rd 1929. This law was voted by the Assembly of Deputies on July 22nd, with 271 votes in favour and 7 votes against, and by the Senate on July 25th, with 159 votes in favour and 4 votes against. The position of President of the Chamber of Deputies was held at that time by Ștefan Ciceo Pop, and that of President of the Senate by Traian Bratu. On behalf of King Mihai I, a minor at that time, there signed Prince Nicolae, Patriarch Miron Cristea and Gheorghe Buzdugan, President of the High Court of Cassation and Justice. The position of Minister of Interior was held by Al. Vaida Voevod, and that of Minister of Justice by Grigore Iunian [1]. The law had 572 articles and was organized under eight titles.

In our study, we will focus on the provisions regarding rural communes, that are to be found in the beginning of the law, articles 1-70.

2. The organization of rural communes

Article 1 of the Law on the organization of local administration of 1929 stipulated that, from an administrative point of view, the territory of the country was organized into counties, and that these were divided into communes. Each of these two fundamental administrative units had their own subdivisions: the counties were subdivided into the so called "plăși", and the communes had one or more villages, considered by law, as sectors of the commune (art. 6). Counties, communes and sectors had legal personality [2].

Ever since 1864 [3], the communes were classified into urban and rural. Rural communes had to have a population of 10,000 inhabitants (art. 5). There could be exceptions from this number of inhabitants, if either certain villages were too far away from each other or one or more villages were able to provide the necessary financial means for their communal administration. Nevertheless, in order to do so, it was necessary for them to have the decision of the county council, approved by the directorate of the ministry (art. 21). Considering this provision of the number of inhabitants, it is noteworthy that none of the previous administrative laws had stipulated the existence of such large rural communes. The law of 1864 provided that the number of inhabitants should be 500 [4], the laws of 1887 [5] and of 1904 [6] stipulated that each commune should have at least 200 taxpayers, and the law of 1925 did not contain any provisions on the number of inhabitants of a commune, specifying only that they were made up of one or more villages [7].

Another new clarification included in this law was that the villages were considered to be small or large depending on the number of their inhabitants, the limit of this division being the threshold of 600 citizens [8]. It should be noted that the previous administrative laws had used the names of villages and hamlets, and that the law of rural communes of 1904 had established that a hamlet's number of inhabitants was less than 100 [9]. Moreover, the law of 1929 specified that those rural villages and communes located at a distance of no more than 3 kilometers from municipalities or cities, and in the case of Bucharest those mentioned in a special law, were declared suburban communes (art. 7) [10]. Villages and communes could officially bear only one name, and its change could be made with the approval of the Council of Ministers, "after

the report of the Ministry of Interior and with the approval of the guardianship authority" (art. 9).

Chapter II of the second title referred to getting or losing membership of a commune and contained provisions for both rural and urban communes. Like previous administrative laws, the law from 1929 contained the obligation of every citizen of the country to be a member of a commune and to participate in its fiscal and economic tasks [11].

The quality of a member of a rural commune was acquired by right by all the inhabitants of the villages living in the commune. Romanian citizens could move freely from one commune to another without "prior consent", but with the obligation to make this approach known to the local authorities. Foreigners were obliged to complete the formalities of the special law when they wanted to settle in a commune [12]. Temporary housing, defined as "temporary or short-term", was subject only to order and security measures.

All the inhabitants of a commune would receive an identity card in which there were mentioned the domicile and the physical characteristics of each citizen. This card also included the voter card, valid for 5 years, with a photo that was obligatory for the inhabitants of the cities and optional for those of the villages (art. 17) [13].

The territory of rural communes was subdivided between the villages of the commune following the vote of the communal council and approved by the delegation of the county council. Communal territory could be modified only with the approval of the local councils, also approved by the superior forums.

Part I of Chapter IV (Organization of Communes), of the Second Title of the Law (i.e. The Commune), was specially reserved for the Rural Commune. Section I of this part of the law referred to the obligation for the municipal administration to take into account all aspects of local interest and to collaborate with the ministries for the proper functioning of local activity. Article 22 of the law outlined 15 directions of rural interest, as follows:

1. The administration of communal property.

2. The stimulation of agricultural productivity, of industrial and commercial activities. This orientation was promoted by means of founding several societies destined to

“shopping and local products”, the establishment of model farms and experimental lands, the establishment of warehouses for agricultural tools and machines, warehouses for storing seeds and agricultural fertilizers, the organization of animals and agricultural or industrial products fairs (called “Exhibitions”), through efforts to improve animal breeds, which resulted in the “acquisition of breeding bulls and stallions to be made available to local households”, by setting up prizes to stimulate farmers and craftsmen.

3. Ensuring public education mainly through the maintenance of the existing schools and the construction of new ones. The law brought to the attention of local rural authorities the organization of courses for adults, the foundation of libraries and bookstores.

4. The concern for public health by means of maintening and developing health institutions and the fight against epidemics.

5. Taking care of the disabled and the concern for charity organizations, for orphanages and asylums.

6. Combating epizootics, the presence of veterinarians and the establishment of slaughterhouses.

7. Ensuring the protection of agricultural fields, combating insects and pests.

8. Stimulating employees by organizing the job market, by complying with the legislation and ensuring decent living spaces.

9. The support of the rural population in resolving their legal interests by setting up counseling and notary offices.

10. The organization of the popular credit society.

11. Carrying out works for irrigation, sanitation and afforestation.

12. Carrying out urban works, such as systematization, paving streets and paving roads with cobble stones, water supply, ensuring public lighting, sewerage, the arrangement of public gardens.

13. Supplying localities with food and seed material, building warehouses, bakeries and shops.

14. The concern for tax collection and a good financial management of the villages.

15. Raising the awareness of central authorities with respect to local interests.

In order to achieve all these objectives, the law provided for the possibility of communes to associate.

The governing bodies of the commune were: the Communal Council, that had a deliberative role, the mayor and the Delegation of the communal council, the last two playing the executive role. The election and constitution of these bodies was different in communes made up of several villages and in the communes consisting of only one village.

The communal council from the communes with several villages was elected by universal suffrage. The council had to include the representatives of the minorities and the mayors of all the villages in the commune. The number of councilors varied according to the number of inhabitants, the proportion being 1 councilor per 1000 inhabitants. The minimum number of councilors had to be 6. If this threshold was not reached, the number of councilors was supplemented. The mandate of the communal council was 5 years. The mandate of the counselors was free.

The communal council elected the mayor and the council delegates. The council also appointed the notary, the cashier and the other communal officials, establishing at the same time their remuneration.

Among the attributions of the communal council, there were also: voting the communal budget; setting taxes, contributions and benefits in kind for residents; coordination of the activity of the executive bodies; establishing the regulations for carrying out communal services and the activities of institutions; management of communal property, loans and legal interests; control of the management of the mayor and the villages; promoting interests before higher forums and so forth.

The councils of rural communes made up of several villages, as well as their delegates, were set up and functioned like those of urban communes. The newly elected councilors took the oath before the prefect or the delegated praetor; they could not begin their office before taking the oath.

The mayor of the commune was elected by the communal council, with the majority of the cast votes. The election meeting was chaired by the mayor of the village where the commune's residence was located, and in his absence, the meeting was chaired by the oldest councilor. The election of the two members of the council

delegation was carried out in the same way. Like other previous administrative laws [14], the mayor and the council delegates were appointed as a result of the indirect vote of citizens. The elected ones could not be related to each other up to the fourth degree kinship. The election was made for the entire term of office of the communal council [15]. The Council could form various commissions from its members for the good coordination of the activity, including a special annual commission appointed with the supervision and verification of the budget and of the communal house.

The communal council met in monthly sessions or whenever necessary, based on written invitations. The presence of the majority of council members was needed. The communal doctor was summoned to all meetings and other specialists could be invited occasionally. The decisions were adopted by absolute majority, and in case of parity the proposal was rejected. Whenever the vote of persons was in question, it was secret.

Special attention was paid to the Delegation of the Communal Council (art. 34 - 35), which exercised an executive role, dealing with all the daily trials of the commune. It consisted of the mayor and two council-elected members. The village mayors, who had the right to deliberative vote, had to attend the meetings in which issues of interest to the villages from the commune were discussed. Among the attributes, there were new ones, non-existent in previous administrative laws, such as those on “issuance of identity cards … and certification of signatures ”, as well as the establishment of Civil Registry offices in small villages [16].

The mayor of the commune had full responsibility of the administration and of the economic, social and cultural activity of the commune. He was the chairman of the Communal Council and of the Council Delegation. He had to publish all government laws and decisions and he could be substituted by the mayor of the village of residence, who was also his “first assistant”. The text of the law insisted on the role of the mayor in maintaining order, with the mayor’s right to take all the necessary measures until the “arrival of the police authorities”, including the detention or the “arrest of the guilty” [17].

Rural communes consisting of only one village were organized and functioned, generally, according to the principles set for the rural communes made up of several villages. The number of councilors varied between 8 and 16, depending on the number

of the inhabitants in the village [18]. The mayor, the deputy mayor and the cashier were elected by public vote, in the same way as the communal councils were elected. Mayors, just like the village mayors elected by public vote, could be removed from office only through administrative means (art. 42).

Section II stipulated the organization of the rural commune, namely of the villages' administration. The villages were considered sectors of a commune, a term used for the first time in the Romanian rural administration.

Small villages were administered by a village assembly or a village council, and large villages were compulsorily administered by a village council, bodies that were elected (art. 43).

The law regulated the possibility for the villages to associate to form a certain "administrative unit" (art. 44). All the villages involved in a project should express their consent, the further step being the approval of the county council. The villages that could not support their expenses could associate for the payment of the administrative, technical, sanitary personnel, "and especially for the remuneration of a village secretary" [19].

The principle of association for the payment of civil servants was old in the communal administration, ever since 1864, but it referred to the association of communes [20]. The provision regarding the association of villages within a commune was new and somewhat unnatural, as, by association, villages constituted an administrative unit within the commune.

The village assembly was made up of heads of the families that were over 25 years old and "fully enjoyed civil and political rights" (art. 47). They had the obligation to register in a special list similar to that of communal voters, list that was updated annually. At their first meeting, the heads of the familes took the oath of allegiance to the king and to the Constitution [21]. If taking the oath, due to the solemnity of the moment and to the content, was meant to increase the responsibility of the inhabitants, not taking this oath invalidated the right to be a member of the village assembly. The involvement of the villagers in a deliberative body of the locality in which they lived was meant to sensitize their pride and dignity and to demonstrate their importance in the management of the locality.

Active soldiers, gendarmes and policemen working in the commune, as well as monks, sellers of alcoholic beverages and convicts who had lost their civil and political rights, could not become members of the Village Assembly (art. 48).

The attributions of the Village Assemblies were generally similar to the communal ones, aiming at the good organization of the entire economic and social life of the locality, the defense of the patrimony, order maintenance. There were also some specific adaptations. The village mayor was elected in the villages where the village assembly functioned by the vote of the heads of the families, whereas in the villages where the village council functioned, by universal suffrage. He could not refuse this position unless he had reached the age of 60, in case of incapacity due to illness, or if he had already exercised some services for the village during the entire period he had been elected. Both the village assembly and the village council were entitled to accept the resignation of a mayor, for the above-mentioned exceptions.

The mayor played the role of the executor of the village assembly. Among the responsibilities, one can mention: compiling the budget, monthly verification of financial management, compiling the register of members of the village community and heads of the households, the ensuring of all conditions for good agricultural activity, as well as of the health and order in the locality.

Among the village clerks, the law mentioned the existence of a secretary, of guards and of the cashiers. The village secretary was appointed by the village council and confirmed by the county council delegation. The secretary had to be a high school graduate with a diploma. In special cases and only with the approval of the Ministry of Interior, the graduates of lower schools could also be admitted as a secretary, after passing an exam and for a determined period. When several villages joined for the payment of a secretary, there was formed a commission from the mayor and two delegates from each village, commission that proposed three candidates, from which the county delegation would choose the secretary.

The guards were elected for a year. The cashiers had to be primary school graduates. If this condition could not be met, educated candidates were provisionally admitted, only after an examination and with the approval of the Ministry of Interior. The mayor, the cashier and the guards could be elected, only with their consent. The village

assembly, with the approval of the communal delegation could appoint other administrative officials.

In small villages, there could function village councils as well. The proposal had to come from 20 heads of the households and to be announced to the village assembly, which would meet a month after the news was announced. The decision was taken with the participation of two-thirds of the members of the assembly and was approved by the absolute majority of the participants. If five heads of the families formulated a notification for the abolition of the village assembly, the county council would investigate the situation and could decide to repeat the vote [22].

Although councils could be set up as deliberative bodies in small villages as well, their power was still relative. Some of the important decisions of these councils, however, had to be submitted to the approval of the village members. This category included: the approval of the budget, the establishment of new taxes, contracting loans, carrying out expensive works, the reception of new members in the village community or the affiliation to another commune. In small villages, the mayor was elected by "public suffrage" for five years as well (art. 62).

Village assembly could be re-established at the proposal of the council or of 20% of the heads of families of the village, on condition that the council's term of office had expired and if the assembly had already had a period of existence equal to that of the council.

For large villages, the existence of the village council was mandatory.

In large villages, the executive bodies of the local administration were, according to this law, the mayor, the mayor's office, the Delegation of the village council and the village cashier (art. 65). The council delegation was elected by the council, the mayor and the assistant mayor were elected by public vote, whereas the cashier was appointed by the council for two years and had to be approved by public vote.

The cashier collected both local and communal or state taxes, under the supervision of the mayor, of the delegation and of the village council. The village and the commune had the responsibility of solidarity towards the collector's management (art. 69).

The secretary of the village was appointed by the council and confirmed by the chairman of the county council delegation and had to meet the above-mentioned conditions imposed to the secretaries in the small villages.

3. Conclusions

The law of 1929 for the organization of local public administration paid special attention to the rural commune and brought a series of innovations, the most visible ones being the formation of large communes and the classification of villages into large and small. Communes made up of one village or of several villages, large and small villages were organized on the same fundamental administrative principles, but, however, there were several institutional, organizational and functional nuances, that made the administrative organization of the Romanian rural world more difficult. The "gigantic" rural communes constituted based on this law had a complex structure, subject to a procedure that allowed the emergence of villages administration inside communal administration. The commune had as many mayors and councils or public assemblies as there were localities in the respective commune.

One could obviously identify a positive aspect, in the sense that this law led to an increased democracy, as it gave each village and head of a household the opportunity to get directly and personally involved in making decisions in the locality where everyone lived. On the other hand, one could notice the obligation for the function of mayor for small villages to be exercised (except in special situations).

The law brought several innovations associated to modernity itself, among which we mention the issuance of identity cards, the presence of the photo and of the signature on these documents. The adoption of the law during the parliamentary legislature of the National Peasant Party determined the introduction of principles specific to the peasant doctrine, namely those focused on the theory accordind to which economic development had the agricultural farm as an emerging element.

The law of 1929 must be considered an important law in the evolution of local public administration that brought a number of innovations, some of which have been later validated and developed, whereas others did not withstand the test of time (such as the existence of "giant" communes). To conclude, this law can be considered a

referential one and its value of experiment is appreciated as it offered a certain expertise to the Romanian administrative practice. In contemporary studies, it is interpreted as a good intention to decentralize administration [23], attempt that failed because, although it had projected large communes in order to easier ensure financial resources [24], it also led to an accentuated increase of the bureaucratic apparatus [25].

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PSYCHOLOGICAL AND CRIMINOLOGICAL ISSUES CONCERNING THE SEXUAL ABUSE OF MINORS

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Abstract:
The cases of sexual abuse and sexual exploitation of children have increased significantly over time, and at present, the coronavirus pandemic has determined an increase of such situations. The measures that the Member States adopted in order to fight Covid-19 virus, such as isolation and quarantine, led to an increase in the cases of sexual abuse and sexual exploitation of children, both in the physical and family environment, by his/her parent himself, and also in the online environment, by strangers.
Keywords: *sexual abuse, children, causes, factors, family environment, virtual environment.*

Introduction

It is an undoubted reality the fact that, nowadays, as a result of technological progress, Internet has represented a solution to several of our problems. We do not challenge that it is an ingenious invention, but nonetheless, we have to be aware that its use also has a negative impact. The phenomenon of child pornography has spread using the new technology and the Internet, showing images with sexual abuses of children, as well as other extremely serious forms of sexual abuse and sexual exploitation of them, whose ampleness is very difficult to hold back.

Both isolation and quarantine, as measures adopted in order to fight Covid-19 virus led to increasing the cases of sexual abuse and sexual exploitation of children in family environment, by his own parent, but also in the virtual environment, by strangers. We need to carefully identify the risk factors, especially during a crisis period such as the one we are experiencing now, and also to adjust all the instruments held by each State separately, by reference to the gravity of the consequences made. This could be a first step in preventing such forms of criminality which continue and emphasize in time.

1. The children – a category with high vulnerability indicator

In terms of the specific psychological, behavioural and age characteristics, children represent the category of high victim vulnerability persons, being almost defenceless and therefore, they can easily be engaged into victimising actions [1]. Their tender age makes them vulnerable, therefore we cannot talk about a valid consent expressed on their behalf. Moreover, we also have to take into account the constraint exerted by the adult person to which the minor child is in relation of dependence. Their dependence, specific to the tender age, makes them to adjust to the behaviour imposed by the aggressor. They become an instrument in the carrying out of the whole process, thus resulting in a series of psychological and traumatizing consequences.

The most serious forms of child victimisation are made within the family and have dramatic consequences, both immediately, on the physical and mental health, and on long term, reflected in his/her psychological and behavioural development and growing-up.

Ill sexual treatments refer to those acts by which the grown-up abuses his/her power and authority to the detriment of the child, such as pornography, abetting prostitution, sexual exploitation etc.

This problem is taken note of and publicized at high level, a series of legislative texts being drawn up in the matter in order to guarantee the child safety against any forms of violence, including of sexual nature, harming or physical abuse, ill treatments or exploitation [2].

The Convention of the European Council on the protection of children against sexual exploitation and sexual abuse, still remains the most comprehensive international legal instrument to protect the children against sexual abuse and exploitation [3], incriminating offences such as sexual abuse, children's exploitation through prostitution, offences related to materials containing images with abuse and exploitation over a child in pornographic shows, children's corruption, as well as luring children for sexual purposes (grooming). Sexual violence is in itself associated to a continuous pandemic to which they have to face not only during this crisis period of health generated by coronavirus, but also through constant effort in this regard.

2. Clarifications about the meaning of the terms of sexual abuse and sexual exploitation of children

By sexual abuse of minor children, one can understand engagement in sexual activities, by adults, in order to satisfy the latter, of the still immature and dependent minors, who can neither understand very well the meaning of such actions, nor give their consent [4].

The World Health Organisation defines the abuse in a way that completely covers this concept: The child' abuse or mistreatments represent all forms of ill and /or emotional treatments, sexual abuse, neglect or negligent treatment, commercial exploitation or of any kind, made by parents or any other person found in a position of responsibility, power or trust, whose consequences cause current or potential damage over the child's health, survival, development or dignity [5].

The sexual abuse of the child is a term which qualifies any sexual relationship, consented or not, when taking place between an adult and a minor child. Sexual relationships between an adult and a minor child are generally banned and condemned by the current societies [6]. The term of sexual abuse of the minor child is sometimes challenged, due to different reasons, some pseudo-psychiatrists construing this notion in the sense that "only the excess could be traumatising for the child and reprehensible", while others believe it as being a concept grouping all the problems regarding paedophilia, without making a distinction between the types of gravity involved [7]. On the general background generated by Covid-19 pandemic which determined an increase of the forms of sexual violence, the sexual abuse and sexual exploitation of children has multiple forms that can be encountered both in the virtual environment, by forcing a child to be involved in sexual activities broadcast by live steaming or by online exchange of materials containing forms of sexual abuse of children, or in the physical environment, by practicing sexual activities with a child or making the child take part in acts of child prostitution [8] .

3. Criminogenic situations. Generating causes and factors

Sexual abuse is a phenomenon with roots in the tensions propagated from generation to generation, thus being transmitted to descendants. Of course, each

individual is influenced to a certain extent by his/her own genealogy, leaving room for the manifestation of his/her individual freedom, thus contributing to the self-construction of his/her own human being. Therefore, one can talk about the determinism of the family tree, which, although it is not a priority one, it can generate some features that would represent the prerequisite of actually acting. Moreover, the burden integrated in the social environment, such as this critical stage we are all experiencing, at world level, can irrationally and unconsciously determine an antisocial reaction, especially from the persons having a fragile structure.

The sexual abuse can be exerted both by a parent, and by a person who is not a family member, most often being a close person who can or cannot have an influence on the child.

The sexual abuse committed by the father. It represents the most often type of sexual abuse and it takes place under the form of a neurotic incest based on the father's affective insecurity. In most cases, such abuse remains a secret or, at the latest, it will be revealed during the child's teenage period. In both situations, traumas are difficult to repair and it takes huge efforts to be able to change something in someone's inner structure and the family itself. Unfortunately, in reality, traumas most often propagate in time, they even get emphasized. The lack of or incompetence of the competent authorities or of the psychological-social teams, together with the depressive or anxious opposition of the family in doing what they need to, make the disaster continue and get worse.

Beyond such situations of neurotic incest, they have also identified other types of incest, also chronic, named rigid, absolutist, totalitarian. In such cases, the father is a domestic tyrant, and the mother is either crushed by him, or let herself be dominated by some very rigid rules or rituals of the family, accomplishing them in a natural way [9]. One of the characteristics is isolation and lack of communication between the family members. When such an abuse is discovered, mother is the main ally of the father, and the incest committed is considered an invention of the daughter.

Of course, other incest takes place either in families where there is a devoted, close and altruistic organisation, or in chaotic, promiscuous, non-differentiated families.

There are cases where there is not the case of a relation of affection, just one of satisfying his own sexual impulses, a strictly perverse incest.

Among the rarest forms of sexual abuse, but with the most traumatising effects, there are the sexual abuses under the form of mother-child.

The sexual abuse committed by a stranger, called neurotic. The antecedents of a paedophile have many analogies to the ones of the neurotic-type incestuous father. Therefore, in his case also there is a dynamics of time, in terms of tensions registered along generations, the antisocial manifestation being only a symptom. In such cases, most often it is about children with the same affective deficiencies as the paedophile's himself. Generally, even if they are or not children with affective deficiencies, these children are estranged from society and just because of that, either from revenge, hate, frustration or desire to defy, they tend towards stigmatised or forbidden behaviours. But there are situations when the children are forced by their parents to have such manifestations or when children get into contact, totally by accident, with a friendly paedophile who offers them a pleasant affective experience, from which they cannot disengage anymore and cannot reveal it, for fear their parents would find out. Often the child's family has a diffuse ambiance of dissatisfaction and vague depression, quietness, social isolation, lack of joy, of enthusiastic projects, the mother and the daughter have a cold or even hostile relationship etc.

4. The traumatic consequences of sexual abuses committed on children

The specialised research has shown that sexual abuses can engage serious physical lesions and not only, certifying that the persons who were abused in childhood come to suffer later from important and lasting psychic disturbances [10].

The traumatic consequences felt by the children victims of sexual experiences to which they were submitted, appear as a result of the fact that, in such situations, these children conform themselves the abusive situation as their only alternative. Their vulnerability and dependence make them submit to the law of the toughest.

Even if it is about a child assaulted by a family member or by a stranger, such abusive experiences maintain a real traumatic character.

- all children feel affected by such experiences, having the feeling that they are no longer normal children. They feel ”stained”, ”marked”, their body preserving the traces of denigration.

- the child feels blamed and stigmatised in the entourage he/she belongs to, as a result of the reactions created by such manifestations. The child victim is often blamed by the people around him/her, which only makes his/her fears and worries increase.

- the abused children live in constant fear of a new aggression on behalf of the aggressor. Such fears often manifest themselves by sleeping disorders, especially nightmares.

- the children who were exposed to sexual aggressions for a long time show signs of depression and anxiety. The child seems sad, preoccupied and withdrawn. Depression can manifest concealed as tiredness or illness. Certain children manifest their anxiety and despair by self-mutilation or suicide attempts.

5. The development of the feeling of guilt. The process of depersonalisation

Children are not born guilty, they get blamed through an interactional process with grown-ups. In this case, the grown-up uses his dominant position towards the child, presenting the sexual manifestation itself as a beneficial element for both of them. Also, the grown-up shows ”concern” towards an eventual exposure of such relationship which would attract drastic consequences on them. There are here the two points of the feeling of guilt. On one hand, the fear of the danger created for himself/herself, on the other hand, the fear for the danger created for those around them. The society does not help too much, too, from this point of view. As a result of revealing such situations, the society remains frozen in its tendency to give more attention and credit to the grown-up aggressor than to the child victim. Both the family members, and the authorities involved, judges, prosecutors, police agents, physicians, social security workers, are reserved in giving credit to the child’s stories, making him/her feel responsible for what happened. Frequently, the child is transmitted, through different verbal or non-verbal ways, the fact that he/she is not believed and that he/she is the author of some inventions. And this can only increase more the feeling of guilt the child is experiencing.

At the same time, sexual violence leaves a mark on the today's minor's affective structure or the grown-up of tomorrow. We witness an on-going process of depersonalisation where the lack of self-esteem plays a significant part. Both the feeling of guilt felt by the child, and the hostile attitude of his/her own family or the negative reaction of his/her entourage, create deep effects in the child's personality and identity. The impact on the psychic of the child is extremely overwhelming, these children being overwhelmed by the feelings and experiences they go through, losing their self-confidence, self-respect and self-esteem. As a consequence, they will be in permanent search of their own identity and they will face serious problems of socialisation. As a product of some abusive systems and due to lack of a proper social life, the children-victims of sexual abuses will manifest behaviours by which they will repress anger, frustration and any other hostile feelings accumulated. Such attitudes, sexualised or not, accentuate their already created deficient image into the opinion of the others.

Conclusions

Child victimisation can cause serious consequences into the society structure on long term. There is an early growing-up, at this level occurring a blockage regarding his/her own sexual identity and affectivity. Children victims of sexual abuses feel this trauma at the level of the whole process of psychological and social development, which is deeply shaken concerning the moral marks of evolution.

Most frequently, children are assaulted by persons around them, whom they trust, whom they show attachment to or whom they feel dependant of. That is why such aspects can make it difficult to track down this type of criminal offence and therefore to prevent or fight it. The problem of the sexual abuse of children increased during the Covid-19 pandemic, both due to the physical isolation, when the children do live together with their abusers, and due to the increase of online activity. Thus, the present reality we are facing is the one placing the children in the virtual space where they spend most of their time and, most often, without supervision. The family environment, where the child should benefit from the safest protection, becomes a risky online or offline environment.

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CONSIDERATIONS ON POSSIBLE APPROACHES OF DISCIPLINE AT WORK

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Abstract:
This paper aims to open a debate on the opportunity of a broader understanding of the relational matters that occur within organizations when interpreting and applying the provisions of the labour code.
Keywords*: disciple, work, work deviance*

Organizations are communities governed by a series of legal and statutory provisions in order to regulate the social relations between their members and those established between the organization and third parties. This paper aims to address some general issues related to discipline at work and to open a debate on the opportunity of a broader understanding of the relational matters that occur within organizations when interpreting and applying the provisions of the labour code..

From a legal point of view, the employer is the one who establishes, within the limits of the law, the framework for the legal management of discipline at work. Discipline at work is defined in the legal literature as "the required procedures for the development of the work process, which involves the fulfilment of duties and compliance with the rules of conduct by participants in this process" [1].

According to Article 247 Para. 1 of the Labour Code, the employer has the disciplinary prerogative, having the right to apply, according to the law, disciplinary sanctions to his employees whenever he finds that they have committed a disciplinary offense. Furthermore, Article 40 Para. 1 of the Labour Code, which establishes the main rights of the employer, expressly stipulates the employer's right to ascertain the commission of disciplinary offenses and to apply the corresponding sanctions, according to the law, the applicable collective labour agreement and the internal regulations.

However, the issue of discipline in organizations goes beyond the legal limits, being a topic of debate in human resource management and organizational psychology. Thus, one of the main elements related to the discipline is counterproductive behaviour. Workplace deviance has been defined as voluntary behaviour that violates significant organizational norms and, in so doing, threatens the well-being of the organization and its members, or both [2].

In order to establish the limits of desirable behaviour, the employer shall establish, in consultation with the trade union or employee representatives, the concrete rules on discipline in the workplace, disciplinary violations and applicable sanctions, and the rules on disciplinary procedure (Article 242 (e), (f) of the Labour Code). All these are mandatory elements of the internal regulations, a mandatory document for all employers. Organizational norms consist of basic moral standards as well as other traditional community standards, including those prescribed by formal and informal organizational policies, rules, and procedures [3].

In organizational psychology, counterproductive behaviours comprise several categories of behaviours. For example, Gruys and Sackett [4] identified 11 categories of counterproductive behaviours:

- Theft and related behaviour - Help another person or advise them how to take company property or merchandise; Take cash or property belonging to the company; Misuse business expense account; Take cash or property belonging to a co-worker; Take office supplies from the company; Take petty cash from the company; Take cash or property belonging to a customer; Give away goods or services for free; Provide goods or services at less than the price established by the company; Misuse employee discount privileges.
- Destruction of property - Deface, damage, or destroy property, belonging to a co-worker or to a customer; Deface, damage, or destroy property, equipment, or product belonging to the company; Deliberately sabotage the production of product in the company.
- Misuse of information - Destroy or falsify company records or documents; Discuss confidential matters with unauthorized personnel within or outside the organization; Intentionally fail to give a supervisor or co-worker necessary information; Provide the

organization with false information to obtain a job (i.e., regarding education or experience); Lie to employer or supervisor to cover up a mistake.

- Misuse of time and resources - Conduct personal business during work time; Spend time on the internet for reasons not related to work; Take a long lunch or coffee break without approval; Waste time on the job; Waste company resources; Use company resources you aren't authorized to use; Make personal long distance calls at work; Mail personal packages at work; Make personal photocopies at work; Use email for personal purposes; Play computer games during work time; Alter time card to get paid for more hours than you worked; Work unnecessary overtime.
- Unsafe Behavior - Endanger yourself by not following safety procedures; Endanger coworkers by not following safety procedures; Endanger customers by not following safety procedures; Fail to read the manual outlining safety procedures.
- Poor Attendance - Be absent from work without a legitimate excuse; Intentionally come to work late; Use sick leave when not really sick; Leave work early without permission; Miss work without calling in.
- Poor Quality Work - Intentionally perform your job below acceptable standards; Intentionally do work badly or incorrectly; Intentionally do slow or sloppy work.
- Alcohol Use - Come to work under the influence of alcohol; Have your performance affected due to a hangover from alcohol; Engage in alcohol consumption on the job.
- Drug Use - Engage in drug use on the job; Come to work under the influence of drugs; Possess or sell drugs on company property; Have the performance affected due to a hangover from drugs.
- Inappropriate Verbal Actions - Argue or fight with a co-worker; Yell or shout on the job; Verbally abuse a customer, a co-worker or a supervisor; Use sexually explicit language in the workplace; Argue or fight with a supervisor or with a customer.
- Inappropriate Physical Actions - Physically attack (e.g., pushing, shoving, hitting) a co-worker, a customer or a supervisor; Make unwanted sexual advances toward a subordinate, a supervisor, a co-worker or a customer.

The employer shall find particularly beneficial to use the above-mentioned category and items in order to establish the disciplinary rules in the company. Special laws (on such areas as data protection or health & safety) may require adding further

categories or items to the existent ones, but the structure remains reliable both from organizational psychology and legal point of view.

From a legal point of view, the Labour Code strikes a balance between the employer's right to establish and enforce the disciplinary framework at the level of the organization and the employee's right to defence.

First, the employer's freedom to establish the disciplinary framework is limited by the legal definition of disciplinary misconduct. Thus, according to the Article 247 Para. 2 of the Labour Code, the disciplinary offence is an act related to work and which consists in an action or inaction committed with guilt by the employee, by which he violated the legal provisions, internal regulations, individual employment contract or the applicable collective labour contract, the orders and legal instructions of the hierarchy.

First of all, therefore, the deed must exist, i.e. the employee must have committed a series of acts. The employer must therefore prove that the employee acted in a certain way or that, on the contrary, he failed to act even though he was obliged to do so. The proof of the negative fact will be made by proving the existence of all the elements that can lead to the undoubted conclusion of the non-fulfilment of the obligation.

Secondly, the law requires that the act committed by the employee be "related to work", i.e. be in relation to the quality of the perpetrator's employee, the duties provided in the job description, the specificity of the job and the general activity of the employer. However, the condition is not imposed that the act be committed during working hours or at work [5]. Therefore, the disciplinary offence may be committed during the delegation, during the activity of telework or even during the rest leave.

Another condition is that the act must be committed with guilt. The employee's action or inaction must be attributable to its perpetrator, ie the perpetrator was at fault when he acted or, on the contrary, failed to act even though he was obliged to do so. The analysis of the employee's guilt consists in determining the subjective attitude that the author had towards the deed and its consequences, at the moment when he committed it [6].

If the internal regulations provide that a certain act constitutes a disciplinary offense only under the condition that it is committed intentionally, the employer must prove both the guilt and the intent, whether the intent is direct or indirect.

Finally, the deed must have violated the legal previsions, the internal regulations, the applicable individual employment contract or collective bargaining agreement, the orders and legal provisions of the hierarchy.

The only sanctions that the employer can apply in case the employee commits a disciplinary violation are provided by art. 248 of the Labuor Code:

a) the written warning;

b) demotion from the position, with the granting of the salary corresponding to the position in which the demotion was ordered, for a duration that cannot exceed 60 days;

c) reduction of the basic salary for a period of 1-3 months by 5-10%;

d) reduction of the basic salary and / or, as the case may be, and of the management allowance for a period of 1-3 months by 5-10%;

e) disciplinary termination of the individual employment contract.

Disciplinary sanctions are expressly provided and limited by law, and their enforcement, both in terms of duration and amount, must be performed strictly within the limits of the law [7].

In addition to the substantive guarantees, the employee's rights are also protected by establishing an imperative procedure regarding the investigation of the deed, the establishment of the disciplinary sanction and the content of the sanctioning decision.

The Labour Code stipulates that, under the sanction of absolute nullity, no measure, except for the written warning, may be ordered before a preliminary disciplinary investigation has been carried out. As regards the written warning, the legal provision contradicts its own logic, since the sanction must be granted only after performing the disciplinary investigation, during which the employee is given the right to formulate and defend all defences, which could lead to proving the fact that the deed does not exist, in which case no disciplinary sanction may be imposed. However, if the employer is allowed to establish the sanction of the written warning in the absence of disciplinary investigation, then the sanctioned employee is created an unfavourable

legal situation compared to the other employees, being deprived of the exercise of the right to defence.

Consequently, we consider that Article 251 Para. 1 of the Labour Code must me amended, in the sense that disciplinary investigation should be mandatory in all cases. Only after the disciplinary commission has access to all the information and defences regarding the matter at stake it would be able to propose a certain disciplinary sanction.

Failure to comply with the employer's obligation to conduct the disciplinary investigation shall be sanctioned with the absolute nullity of the entire procedure.

The rules regarding the disciplinary procedure must be established in the internal regulation (Article 242 Letter g of the Labor Code), but the general principles are the following.

The person who is aware of the commission of an act that presents the elements of a disciplinary offence must inform the person who has the competence to represent the employer in the labour relations. The Labour Code does not specify the person entitled to represent the employer, but the Law on Social Dialogue provides that at the plant level, the employer is represented by its governing body, established by law, statute or operating regulations (Article 134 Letter a of the Labour Code). In general, the employer will be represented by the managing director or by the general manager, who may delegate the tasks related to human resources management to the human resources manager.

With regard to the notification received, the managing director, the general manager or, as the case may be, the human resources manager will decide on the initiation of disciplinary proceedings. In order to carry out the disciplinary investigation, the employer will appoint a person or will establish a commission or will resort to the services of an external consultant specialized in the labour legislation, which he will empower in this respect.

The external consultant in labour law may be a lawyer, an expert in labour law or, as the case may be, a mediator specialized in labour law (Article 2311 Para. 4 of the Labour Code).

The legal provisions do not endorse the presence of a human resources specialist or an organizational psychologist, which determines that, in fact, the

disciplinary procedure remains at a strictly legal level of analysis, ignoring the fact that work discipline is a much broader issue of the organization.

In order to carry out the preliminary disciplinary investigation, the employee will be summoned in writing by the appointed person, by the chairman of the commission or by the external consultant, specifying the object, date, time and place of the meeting.

The law does not establish the time that must elapse between the time of communication of the summons and the conduct of the disciplinary investigation. Given that the disciplinary investigation is established for the protection of the employee's rights, we consider that a reasonable interval must be established, which would allow the employee to organize all his defences. For these reasons, summoning the employee for the same day must be considered abusive.

The content of the summons is established imperatively and in order to protect the rights of the employee. In this respect, the "object" of the meeting must be clearly described in order to allow the employee to formulate his defences and present his evidence. For these reasons, we cannot agree with the jurisprudential solution according to which “from the grammatical interpretation of art. 251 it follows that the summons specifies the object of the meeting and not the preliminary disciplinary investigation ... In this sense, it is found that the object of the meeting as it results from the summoning of the respondent is represented by "clarifying the causes of labor legislation” [8]. In fact, another court of appeal noted that a general statement, such as "to clarify the issues in your unit" [9] does not meet the requirements of the law.

The summons is communicated directly to the employee, who will certify by signature the receipt of a copy. If the employee refuses to receive the document or if he is not present at work, then the summons must be sent by mail, with acknowledgment of receipt, to the address that the employee communicated to the employer. The jurisprudence [10] has ruled that the announcements from the newspaper, from the radio, from the local television station or from the headquarters of the unit do not constitute a written summons, within the meaning of Article 252 Para. 2 of the Labour Code.

Failure of the employee to attend the investigation without objective reasons entitles the employer to establish the sanction, without conducting prior disciplinary

investigation. If the employee has an objective reason for not being able to appear, he is obliged to inform the employer.

The disciplinary investigation implies the presence of the employee before the disciplinary investigation commission, the simple correspondence between the parties, even if it consists in communicating the accusation by the employer and the employee's response presenting his defences, not being qualified as disciplinary investigation within the law.

During the preliminary disciplinary investigation, the employee has the right to communicate and sustain all his defences and to provide the person or persons empowered to carry out the investigation with all the evidence and motivations he deems necessary. In order to facilitate the communication, the employer's representatives may draw up an explanatory note, containing questions that may clarify the issues related to the act committed. The employee's refusal to answer the questions in the explanatory note or to present his defences cannot generate the blocking of the procedure, the procedure being completed on the basis of the evidentiary support material prepared by the employer.

During the investigation, the employee has the right to be assisted, at his request, by an external consultant specialized in labour law or by a representative of the trade union of which he is a member.

After assessing the employee’s defence, the commission or the authorized person will establish the gravity of the disciplinary offence, taking into account the following aspects:

a) the circumstances in which the deed was committed;
b) the degree of guilt of the employee;
c) the consequences of the disciplinary violation;
d) the general behaviour of the employee in the service;
e) any disciplinary sanctions previously suffered by him.

The criteria provided in Article 250 of the Labour Code must be applied cumulatively, in order to establish as accurately as possible the gravity of the deed and the personal circumstances of the perpetrator.

Moreover, organizational psychology research suggests a wide range of reasons why employees engage in deviant behaviour, from reactions to perceived injustice, dissatisfaction, role modelling and thrill-seeking [11]. When assessing the gravity of the disciplinary offence, it may be relevant for the employer to establish the employee's reasons for engaging in such behaviour, to address the reasons and take actions. An important number of predictors of an employee's proclivity toward counterproductive work behaviours are related to the employee, but organizational constraints [12] and organizational justice [13] also play a role in such behaviours.

When the disciplinary commission reduces its activity to the strict and narrow application of the provisions of the Labour Code, this leads to the sanctioning of non-compliant behaviour that constitutes a disciplinary offence but will not allow a broader analysis of work deviances. In this case, employer's action is limited to the individual who acted in an undesirable manner, but no corrective actions aiming to address the discipline at organizational level are put in place.

The disciplinary commission, even if it finds its legal ground in the provisions of the Labour Code, should undertake a multidisciplinary analysis, both from a legal and organisational psychology point of view, in order to completely address the issue of discipline at work.

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DECENTRALIZATION OF PRIMARY AND SECONDARY EDUCATION - EMERGENCY DURING THE PANDEMIC

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Abstract:
One of the hard-fought areas during the pandemic due to the SARS-CoV2 coronavirus is primary and secondary education. The paper analyzes a short history of the decentralization process of this field, a process that has been going on for 30 years and is considered a decisive factor in creating these problems and proposes, based on conclusions appropriate to this analysis, some solutions to accelerate this decentralization process.
Keywords: *public administration, primary and secondary education, decentralization, principles, pandemic, primary and secondary education units, education*

1. Introduction

Both the central public administration and the local public administration were put to the test in 2020, given the pandemic period due to the SARS-CoV2 coronavirus. One of the fields of activity most affected by the effects of this pandemic is that of primary and secondary education, an area within the sphere of material competence of both types of public administration. If in the beginning of the mentioned period, due to the specificity of the pandemic, it was placed on a secondary place, the first place being mandatory occupied by the field of public health, after a short time, the problems in the field of education required due attention back to this field.

The problems faced by primary and secondary education in the pre-pandemic period have worsened, new problems have arisen, unknown and, unfortunately, unforeseen in some theoretical or practical way.

Thus, one of the problems that influenced the particularly serious state of primary and secondary education during this period is the dichotomy of coordinating this education by the central and local public administration, a dichotomy due to an insufficient, ambiguous and wrong legislative framework implemented by actors involved: central public administration authorities, local public administration authorities and primary and secondary education units.

Another problem, like the one mentioned above, prior to the pandemic period, is that of the material base, of the financial resources always insufficient to ensure a primary and secondary education at least decent, normal, equal for all beneficiaries of education and capable of correct results.

Last but not least, the way in which the problems resulting from the pandemic are managed at national level by both the central public administration authorities and the local public administration authorities, has contributed decisively to the aggravation of the existing problems in primary and secondary education, as well as to creating other new problems.

2. Decentralization of primary and secondary education - a process without an end

The process of decentralization of primary and secondary education began in 1991, with the adoption of the new Constitution, a process in which a number of stages have been completed over time, but it has not ended today, which creates many problems in the process, education issues, which are clearly exacerbated during 2020. Although the political position of all parties that have ruled during this long process of decentralization of primary and secondary education has reflected a quasi-unanimous agreement on the decentralization process, beyond the exaggerated long time period, suffered numerous syncopes, and sometimes even regressions.

On a theoretical level, the decentralization of primary and secondary education represents the transfer of the decision from the competence of the central administration, the specialized ministry, the school inspectorate, to the local authorities, respectively county councils, local councils, presidents of county councils and mayors. The management of primary and secondary education units is to be achieved through principals and boards of directors, which would make decisions for development, change of educational paths, employment of new teachers, ensuring the conditions for carrying out the activity within the educational units. All these decisions would be found in the policy of the primary and secondary education unit, a policy that would no longer be implemented at the central level, but at the local level. However, what the student learns, the curriculum, the type of subjects, they would remain in the competence of the

Ministry of Education and Research, and the financial and administrative components would be transferred to the material competence of the local public administration authorities. Decentralization would move from a tripartite to a bipolar leadership: half - the primary and secondary education unit, half - the local public administration authorities.

If until the date of Romania's integration into the European Union, the progress of the process of decentralization of primary and secondary education was not only insignificant but also declarative, without producing practical effects, after this date, we actually see the real beginning of the process.

Thereby, the steps in the field of decentralization of primary and secondary education targeted the system and the way of financing by the local public administration authorities, being established rules and principles, together with their new attributions, each new government considering administrative and financial decentralization as the expression of a major commitment, but part of a larger chapter, namely "continuing the reform in public administration, with an emphasis on increasing the autonomy of local authorities by triggering the real process of decentralization, while respecting the principle of subsidiarity." [1]

The first important step that exceeded the series of declarative stages in the process of decentralization of primary and secondary education is represented by the Government Emergency Ordinance no. 30/2000 for the amendment and completion of art. 166 of the Education Law no. 84/1995 [2], through which the lands and buildings in which the primary and secondary education units carry out their activity - kindergartens, general schools (primary and secondary), high schools, school groups, theological seminaries, vocational schools and post-secondary schools, passed into the public domain of communes, cities, municipalities and sectors of the Bucharest municipality, in whose territorial area they carried out their activity.

With a delay of more than one year, the Government Decision no. 538/2001 on the approval of the Methodological Norms for financing the state primary and secondary education [3], normative act by which it is established that “Starting with 2001, the expenses regarding the financing of the public primary and secondary education institutions are ensured from the local budgets of the administrative-territorial units. they

carry out their activity, except for the expenses incurred from the state budget" [4]. However, this represents a complementary funding from the administrative-territorial units and the establishment of the human resources policy and the number of staff necessary for the proper conduct of the educational process remains the exclusive competence of the Ministry of Education and Research, school inspectorates and primary and secondary education institutions, under the conditions provided by the Education Law no. 84/1995, republished, with subsequent amendments and completions.

As an intermediate stage, in 2004, by Government Decision no. 1942, eight pilot counties were designated to apply the provisions of Law no. 354/2004 amending and supplementing the Education Law no. 84/1995 and Law no. 349/2004 amending and supplementing the Teaching Staff Statute, regarding the decentralization of the school financing and administration system.

The following year, through a Memorandum, the Government approves the Strategy for decentralization of primary and secondary education, with the aim of creating an organized education system, administered and financed according to European rigors in terms of ensuring the quality of the educational process, free, equal and providing full access to all children and young people to the educational act, the adequacy of the educational offer to the interests and needs of direct and indirect beneficiaries, by ensuring a clear, equitable and well-defined distribution of decision-making power between bodies and institutions representing local and regional communities, on the one hand and those from national level - the Ministry of Education and Research, the Ministry of Internal Affairs, the Ministry of Public Finance, on the other hand.

The next stage of this process is represented by the adoption of the Framework Law on decentralization no. 195/2006 [5], a law establishing the general rules of the decentralization process, as well as aspects concerning the stages necessary for its realization, which demonstrates the importance that the legislator must give to the decentralization process, as well as its concern to ensure standards of decentralization. quality of the administration's work and the necessary financial resources. Therefore, "The transfer of competencies is based on impact analyzes and based on specific

methodologies and monitoring indicators, developed by ministries and other specialized bodies of the central public administration, in collaboration with the Ministry of Internal Affairs and associative structures of the authorities. local public administration" [6]. It is provided that a real, authentic, efficient and effective decentralization means that most of the services planned to be transferred to the local public administration will be the responsibility of the local public administration authorities with the transfer of specific resources, but only after developing and approving standard specific costs, as well as after the modification of the relevant legal provisions. This law requires the substantiation of the transfer of competencies within the decentralization process on impact analyzes but also its realization based on a specific methodology, which should include pilot phases in order to test and evaluate the impact of the proposed solutions.

Many years after adopting this law, respectively at the end of 2013, the Government motivates the urgency of adopting a normative act by the need to have "a firm guarantee that in 2014 local authorities will have the necessary financial resources to exercise in good conditions of the powers taken over following decentralization", as well as the fact that from 1 January 2014 a new financial year of the European Union began, which represents a new period of allocation of European funds in the period 2014-2020 times, or "in these conditions it is essential that the transfer of competence and related resources from central to local government takes place before the start of the new programming period so that decentralized structures are operational and ready for the development of projects to absorb European funds, based on the new competences" [7].

In this regard, the Ministry of Regional Development and Public Administration has prepared the Strategic Document on measures needed to accelerate the regionalization-decentralization process in Romania 2013-2016, which, in 114 Annexes presents: the context, the mission, the principles of the regionalization-decentralization process (local autonomy, decentralization of competences, subsidiarity and proportionality, transparency, legality, regional development, equity, ensuring the full resources needed to exercise transferred competencies, accountability, ensuring a stable, predictable, transparent decentralization process based on objective criteria and rules, participatory democracy, efficient spending of public financial resources), problem

definition, general and specific objectives, legal and impact implications, transparency and consultation, results and indicators, monitoring and evaluation.

The Government has assumed responsibility for the Law on the establishment of measures to decentralize some powers exercised by some ministries and specialized bodies of the central public administration, as well as some measures to reform the public administration, a law that will be challenged in the Constitutional Court and declared as unconstitutional as a whole, a file in which the Strategic Document mentioned above will also be considered as not having “the legal significance of a study / impact”.

With the obvious intention of accelerating a process that has been dragging on for over 20 years and to achieve a correlation of a segment of incident legislation in the areas subject to the decentralization process, amid an urgency and speed of the Government's accountability procedure, due to the need adoption of the state budget for 2014 but also the beginning of a new budget year in the European Union, the law will be repealed by the arguments of the Constitutional Court, criticizing "the vague and imprecise nature of the consequences of current regulations on these agreements" inaccurate”, “the said text of law does not respect either the rules on express repeal or those on implicit repeal, inducing, through an improper legal expression, the idea of a comparative test that the interpreter of the law - whatever it may be - must take, among several special laws in the same matter, to identify applicable law and the areas in which it applies. This is a source of deep instability and lack of predictability of the regulation, being the premise of creating divergent interpretations", "it is an improper regulation, which exceeds the framework established by Law no. 24/2000, republished, with the subsequent modifications and completions”, “The Court finds an obvious violation of the requirements of art. 1 para. (5) of the Constitution”, “a subject of law cannot be required to comply with a law that is not clear, precise and predictable” [8].

Also regarding the regulation of the curriculum, the provisions are not coherent, currently the national curriculum is composed of two components: curriculum-core, which corresponds to the common trunk of curricula and curriculum at the decision of the school (called local development curriculum for vocational education and technically), but the relationship between the two is too often modified by changes in

curricula. The weight of the curriculum in the school's decision has been substantially reduced, being established, in many cases, according to the "needs" of maintaining/vacating teaching positions and not in accordance with the options of students/parents, economic agents or development policy of the area, there being no clear logic of distribution according to the level of schooling.

The school curricula is elaborated by the National Commissions set up and approved at the level of the Ministry of Education and Research, their endorsement being made by the National Council for Curriculum, while the approval is given through the order of the respective minister.

On the other hand, while the law stipulates that the school is an institution of the local community and that the latter, through its representative and authoritative bodies, exercises the quality of owner and administrator of the patrimony, the director of the educational unit, respectively the credits authorizing officer is appointed by the County School Inspectorate or the Ministry of Education and Research. Another factor that diminishes the participation in the decision of social actors outside the school is the composition of the board, whose president is the school principal and most members are teachers whose main concern established by law is the fulfillment of professional duties of training and education, not management, administration and financing of the educational unit.

3. Conclusions and proposals of lex ferenda

Given that the decisions on the decentralization of primary and secondary education were not coherent and consistent during the 3 decades and the transfer of the decision from the central public administration to the local public administration took place at different rates in various areas of the system - curriculum, resources, the administration of educational institutions, personnel policies, in a legislative framework in which contradictory provisions persist that generate dysfunctions in the system, the measures adopted and implemented by the public administration, both central and local, during 2020, oscillated between numerous and contradictory solutions, the negative effects of these approaches will occur in the coming years.

Decentralization cannot be achieved without strengthening legislation on public accountability and without protecting educational institutions from political interference. Such measures are aimed at strengthening the commitment of local communities to the activities that take place in the school, ensuring the stability of teachers and school management teams and increasing the degree of transparency.

Guaranteeing both the autonomy of primary and secondary education units and the professional autonomy of teachers can be achieved by:

- institutionalization of school autonomy, assuming public responsibility for school performance;
- professional autonomy of teachers in the personalized transposition of school curricula;
- encouraging the formation of school consortia and professional associations;
- establishing the legal framework for the school's partnership with local authorities and interested economic agents;
- participation of schools and teachers in programs and projects that benefit the teaching process;
- establishing partnerships for the exchange of good practices with schools inside the country and abroad;
- participation in professional training programs for personal development and increasing performance in the teaching career;
- encouraging private initiative in primary and secondary education.

From the perspective of sustainable development and globalization of education, in order to create the necessary premises for quality assurance in education and efficient use of resources, decentralization must be a dynamic approach that involves the involvement and accountability of all authorities involved, on the one hand. as well as strategic thinking and control, on the other hand. As a proposal, a decentralization model that would give primary and secondary education units the role of main decision maker, but also ensure the participation and consultation of all interested social actors, would be a solution to many problems, both legislative and especially practical.

In this sense, the elimination of existing contradictions by creating a legislative framework to provide school management, board of directors, decision-making capacity

/ autonomy in relation to employment, dismissal, motivation and evaluation of teachers, under the strict criteria of quality assurance according to the methodologies developed by the Ministry of Education and Research, would follow the example put into practice by universitary education, where this solution has proven its effectiveness.

In this sense, the following should be done:

- highlighting, at local and national level, examples of good practice in education, which have brought measurable and scalable benefits to the education system and / or contributed to improving the quality of teaching-learning-assessment activities, improving school results, reducing the risk of repetition, preventing/reducing situations of absenteeism and dropping out of school, increasing the chances of continuing studies in higher education, creating an inclusive educational space in school, in which each student feels encouraged, motivated, supported and safe;
- disseminating examples of good practice identified at system level and in the public space, presenting and promoting these examples;
- pursuing, in particular, the identification of innovative practices of teachers who teach in educational institutions located in disadvantaged communities, with a high number of students at risk.

Far from being able to cover the complexity of problems in primary and secondary education, we also mention the proposal to focus the central authorities on developing and monitoring the implementation of educational policies in parallel with relieving them of current administration tasks, increasing accountability of the local community and education. to be achieved together with the consolidation of their autonomy and capacity in the management of financial and human resources.

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DIPLOMATIC FUNCTION OF THE CONSULAR INSTITUTION

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Abstract:
Changes in international relations in the age of globalization, the intense movement of capital by opening markets in the new global context, cultural values and especially the free movement of people require prompt and efficient consular services, on all meridians, at all points. Consular relations were initially enshrined in international custom, and long afterwards were codified in an international treaty, with the aim of creating a common regulatory framework. Recent developments generated by the victory of liberal ideas in the international system have led to the emergence of new values of the content of the consular institution. The present study highlights only one of the relevant aspects that resulted from these transformations, the diplomatic function of the consular institution.
Keywords: *consular institution, political governance, foreign policy, diplomacy, state role*

Consular activity as an expression of state sovereignty

The consular institution shall be established, as provided for in the relevant Vienna Convention, with the consent of the States to establish diplomatic relations, which includes consent to the establishment of consular relations, unless otherwise provided in that agreement.

The text of the Convention also stipulates that the ipso facto separation of diplomatic relations does not imply the separation of consular relations. [1] This regulation provides the state with the option to establish consular relations without the need for an agreement to establish diplomatic relations.

The legal basis for the representative function of the consular institution in relations between countries emerges from the above. Maintaining a certain degree of communication through non-diplomatic means may be useful even in special circumstances, when it is not possible to establish diplomatic relations and, consequently, not to set up resident diplomatic missions.

In order to maintain an open channel for dialogue between states, in these special situations, even if it cannot be said to be an international practice, honorary consular offices and sections, representative offices and apparent missions may be

used, which, in contrast to the offices and consular sections, are considered ”disguised missions”. [2]

Interference of the consular institution with the foreign policy objectives of a state

During the formation and crystallization of the consular institution, the assistance and commercial functions have largely overlapped. Therefore, it is understandable how the businessmen, who benefited from government services, had a special interest in maintaining friendly relations with the countries they visited or lived init.

The same cannot be said of tourists who travel frequently nowadays on short or itinerant trips. As citizens travel more and more across borders, they become more and more willing and able to make their complaints heard, including through the media and politicians, thus increasing the challenges consular activity must deal with. The recent reshaping of consular services and the blurring of the relationship between consular assistance and diplomacy has been largely the consequence of these developments.

In states with political systems based on democratic principles and transparency, especially those with developed economies, governments are directly under the pressure of public opinion and politicians, who call for improved consular and trade assistance.

At the same time, it has become a practice of states to open new consular offices for a target audience, especially in large countries, where the existence of a single diplomatic mission in the capital is not enough. In this regard, mention may be made of the Mexican consular offices in the USA, targeted at the support of the large number of American citizens of Mexican origin, the Indian ones in Canada, open to satisfy the Shiite population forming a major voting bloc in Canada or the representation offices in Western China, which many countries have opened to support trade in that region.

For a correct understanding of how the function of consular assistance business has evolved, it is imperative that the analysis takes into account the increase in government interventionism in the economy, which results from both the development of newly emerging countries and the changing mentality of industrialized countries. For example, the increase in the influence of China and other emerging countries, where there is no clear demarcation between the public and private area. In China, the 2008 Lehman shock provided a solid argument for restoring government intervention. [3]

A brief examination of these issues shows that consular activities are not easy to recalibrate, nor do they imply that long-term national interest that always precedes the interests of citizens. The mutually constitutive processes and interests involved in the new challenges the consular activity and diplomacy are facing must be clearly delineated so as not to misunderstand the consequences.

Consular affairs and diplomacy

The inherent link between consular affairs and diplomacy stems from the very fact that the office of consul appeared before that of the resident ambassador and may, in a sense, be considered even before it. However, in the doctrine and literature there are different approaches to the relationship between the institution of the consul and diplomacy. In some papers on the emergence of diplomacy nothing is mentioned about consuls, whereas in others consuls are presented as forerunners of diplomacy and yet the third approach sees the diplomat and consul as people who have evolved in parallel. [4]

Nowadays, we can see a blurring of the line between consular affairs and diplomacy. This reality was synthetically expressed by an American diplomat, who observed that “in the 21st century, the overseas presence of the US State Department has gone far beyond the traditional diplomatic / consular dichotomy, in a much more complex environment where functions overlap”. [5]

The opinion on the overlap between consular affairs and diplomacy is directly related to the interpretation of what the consular institution means. The assistance function of consular affairs, which is in the spotlight of the consular departments of foreign ministries, is only a small part of what the daily work of a consul means.

Viewed in their broadest sense, consular affairs have the ability to change the traditional view over diplomacy, making it more visible to public opinion in the state of residence, especially in those countries that are more accessible and open to potential partnerships in service delivery. Although consular affairs certainly do not always involve a high degree of diplomacy or politics, the substantial developments of the late 1990s require a retraining of the assumptions about the traditional relationship between consular affairs and diplomacy.

Consular assistance increasingly involves a degree of consular diplomacy as the number of highly publicized consular cases increases and internationally coordinated efforts to bring consular services to a higher level are intensified. [6]

Two types of consular diplomacy can be distinguished. The first that concerns practical arrangements for internal consular assistance between states and that can be considered a form of preventive negotiation, and the second, which consists in the provision of high-impact assistance services, which are constantly in the watchful eye of the press and politicians.

Under the circumstances of globalization, more and more countries have adapted to the new conditions. In order to improve international cooperation and expand the scope and level of protection that the consular institution can provide, states have reconsidered the importance of bilateral consular agreements, as multilateral agreements prove inappropriate for the current circumstances and are not signed by all countries. Thus, in order to meet the current challenges, an increasing number of bilateral negotiations have been initiated, most of which have been signed. [7]

A contrary trend, generated by increasingly insistent calls for the establishment of a new multilateral treaty, is represented by the coordinated efforts between like-minded countries to bring consular services to a higher level. In this respect, the cooperation within the European Union (EU) can be mentioned. Regular consular meetings between EU missions are another indicator of the importance that foreign ministries place on consular work.

Another diplomatic tool offered by the consular activity is the so-called visa diplomacy, which will mean the use of issuing or refusing a visa, for a person or group of people, as a practice used in bilateral relations to influence the policies of another state. This practice specific to the consular field has a strong political character, not only consular, with effects in terms of general bilateral relations through its implementation, even going so far as to impose a regime of sanctions on a state. [8]

Visitor flow control has become a key diplomatic tool to facilitate cooperation and recognition of diplomatic signals between countries. The refusal to grant a visa indicates either a protest of the state issuing the visa to the state whose citizens are deprived of this facility, or even a non-recognition of a government or state entity. [9]

At the same time, visa diplomacy can control the access of individuals to the territory of a State whom there are reasonable grounds for suspecting terrorist acts or of individuals declared non-grata in that State, as well as of individuals with infectious diseases and who are travelling all over the world.

It can be seen that visa diplomacy is indeed a first line of defence for a state, of indirect prevention, which contributes to its national security, by avoiding allowing access to individuals or groups of people who can seriously harm the security and public order of the nation. [10]

On the other hand, at the individual level, visa diplomacy has effects on high-level policy, as can be seen from the practice of states such as the US, Japan or even international organizations such as the EU on the visa conditionalities they set for citizens of Taiwan. The political interests that those states and international organizations have in their relations with China, which sees Taiwan as a renegade province lie behind these conditionalities.

The economic/commercial function of consular affairs was constitutive ted commercial and economic diplomacy, even if, as could be seen from the previous remarks, this function is increasingly performed by actors outside the consular institution. In this sense, the increasing share that the economic/commercial function, as well as the public diplomacy has in the daily activity of an honorary consul is noticed. Many outposts in different regions of the host country are perceived as cost-effective and necessary to complement the work of large embassies in foreign capitals.

As mentioned, consular officials are increasingly carrying out specific actions in the field of politics and public diplomacy. The representation function assigned to consular affairs, codified in Article 17 of the Vienna Convention on Consular Relations, allows, in special circumstances and with the consent of the host State, that consulates to be empowered to conduct diplomatic activity in the absence of diplomatic relations and/or embassies. [11] An example in this respect is the maintenance of a consular post throughout the Vietnam War, which ”performed a significant political function, which would normally be assigned to a resident embassy” [12]

Consular and political governance

At first glance, the political dimension of consular affairs can be overlooked. However, a thorough examination of the essence of consular activity, which is an area of governmental activity, can lead to the conclusion that it also contributes directly to the achievement of foreign policy objectives. It follows that consular affairs are not only an area of diplomacy, but can also be a tool.

This is the difference between the low political significance of most consular activities and that of great importance in foreign policy, sometimes called visa diplomacy or economic diplomacy.

The diversity of consular functions shows that consular affairs involve a variety of external and internal objectives. These can best be evaluated by a separate analysis of each function, viewed individually.

In terms of the economic/trade dimension, the motivations for providing assistance range from improving the country's economic prosperity to increasing the nation's political stability. [13]Until recently, the support for the private sector, other than through activities in trade and investment promotion offices, was outside the competencies assigned to consular activity by many countries in the 1990s. Recently, industrial policy, as it is also labelled in the literature, or industry-specific policy, is on the rise.

A significant part of this change, which takes place outside the consular institution, involves a rearrangement and deepening of the links between the public and private sectors. [14]

The modernization of consular assistance that began in the 1990s was motivated by both defensive and offensive reasons. The defensive aspect results from the mode of action of the foreign ministries in relation to the public, in the desire to respond as well and as quickly as possible to the growing requests of the citizens. The concrete management of responses to citizens' expectations, as well as the level of accountability they entail, leads foreign ministries to avoid criticism from citizens, who have become increasingly influential in recent times, through politicians and high rank government officials.

At the same time, the offensive aspect derives from the recognition of the potential marketing value of consular affairs. It is already well known that a proper treatment of this subject can bring many and unexpected benefits to foreign ministries, which can improve their image among the public by communicating with citizens about consular protection, in general, and individual consular assistance, in particular.

In general, the defensive approach is preferred by foreign ministries, with their exposure to the media increasing, as consular issues enter the spotlight of high-circulation dailies, television and the Internet. Therefore, the consular institution relates directly to the internal dimension of public diplomacy. The US State Department even has a specialized office for communication with the local public. [15]

On the other hand, the practice of states using the opportunities offered by the consular institution has generated the emergence of a new dimension of modern diplomacy, which has been labelled in the literature as network diplomacy. Consular affairs, seen as a high-level policy, are still largely a matter of network diplomacy, involving actors, other than government officials, but they can only be a tool, but not a subject or an entrepreneur.

The trend towards network diplomacy in consular affairs is part of a broader development of the nature of international relations in the age of globalization, in which the limits of state action evolve horizontally, including the private sector and non-governmental organizations, and vertically at regional (internal and external) and global level.

To improve consular services, foreign ministries turn to tour operators, insurance companies and non-governmental organizations. An example is the contribution of new actors in consular work in terms of psychological support they can provide to citizens in prisons abroad or their families at home. Foreign ministries are also increasingly turning to the practice of outsourcing consular services, by transferring visa issuance to the private sector, a practice that is coordinated at the European Union level between certain Member States.

Developments in consular affairs are thus part of a trend towards increasing diplomacy in the relations with the general public and network diplomacy, as evidenced

by the proactive efforts of foreign ministries and the European Commission to involve as much public opinion as possible, and this is just one aspect in this regard. [16]

Transformations in the traditional role of the state

The element of novelty in the constant characteristic of permanent change and adaptation of the activity of the consular institution comes from the change of the role of the state and from the subsequent blurring of the distinction between consular affairs and diplomacy. These developments are part of the ”normalization” of diplomatic practice in general, essentially changing the nature of consular affairs. In this respect, some of the notable changes that have taken place in the actual work of consular agents can be mentioned, which:

- no longer takes place only between the elites and it is no longer conducted exclusively by them, but involves an increasing number of actors, creating a new dimension of modern diplomacy, which can be labelled as network diplomacy;
- involves more and more service tasks that acquire a diplomatic dimension, which highlights another new dimension of diplomacy, which can be called consular diplomacy;
- it is much more oriented towards the domestic and foreign public, an aspect that defines one of the characteristic features of public diplomacy.

In order to recalibrate consular activity and adapt it to increasing interference with the attributes of diplomacy, as a tool to promote a state's foreign policy, there is a need to deepen international cooperation to address differences in consular standards and increase the effectiveness of relations between them. This is a typical example in which ”the content and practice of diplomacy is outlined by the changing nature of sovereign political actors”.

Opinions on consular governance and how far government assistance should go in specific cases must be expressed in the context of the relationship between government, citizens and the balance of perceived, valued and treated national interests. In other words, the context in which an issue of consular and economic/trade assistance has an impact on the balance of national interests needs to be identified.

Individual perceptions are influenced by various factors, which determine the level of prioritization of issues of interest to the governmental authority and which, consequently, are placed on or removed from the political agenda. [17]

Even if the setting of the political agenda is seen primarily in elitist terms, it cannot be said that it does not reflect those issues that key decision-makers want to focus on at some point, influenced by actors outside the government, including parliamentarians and the media. Diplomats of all ranks must be prepared to involve the public opinion and the media in resolving consular cases, taking the risk that they will attract the attention of the media and politicians..

While most consular activities involve standardized procedures, which interfere with domestic and international policy, they have the potential to make consular acts a diplomatic concern.

All this reinforces the argument that foreign ministries will not be able to meet today's consular challenges without a new strategy that reflects the evolving balance of national interests, which obviously must not lack the individual interests of citizens.

Conclusion

In the age of globalization, governments are overwhelmed by simultaneous events and developments in the consular institution, which have in common the somewhat paradoxical effect of politicizing workloads, and governments risk being lost in detail and miss the point.

As consular challenges increase, foreign ministries need a future consular and diplomatic strategy to balance the growing tension between ensuring major national interests and protecting the more limited interests of citizens, whether they travel, live or do business abroad.

While consular activities involve a growing network of actors, the state of government is expanding, leading to a blurring of the distinction between consular affairs and diplomacy. Consular activities do not always involve a high rank diplomacy or international politics degree.

However, the consular institution as a whole also has specific responsibilities for diplomacy, continuing to encompass economic and trade diplomacy, consular diplomacy, visa diplomacy and even political and public diplomacy.

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THE SUBVERSIVE EFFECT OF UTILITARIANISM ON THE RIGHT TO LIFE IN EU COUNTRIES

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Abstract:
The public debate in the EU set off by the recent covid crisis, as to who should have priority access to life support ventilation machines and on which criteria the triage should take place, showed a marked tendency towards a utilitarian approach and a departure from the traditional reverence in which the right to life was held so far. This shift in values with emphasis on economic, pragmatic considerations, is not new: it has been evolving gradually, especially in field of medicine and bioethics, as shown by the growing number of EU states which have adopted end-of-life legislation, legalising euthanasia, decriminalising assisted suicide or easing up the conditions for organ transplant and donation.
While the EU legal framework and the European Convention of Human Rights do protect unequivocally the right to life, the sanitary policies recently adopted by some EU member states during the covid pandemic have shown the difficulties in balancing the economic considerations with the need to protect the public health, and, ultimately, the right to life.
This article purports to highlight, using references to specific national legislations, the conflict between the existing EU legal framework and these latest utilitarian tendencies in public policies and regulations, and the need to assess their moral foundations, as well as their long-term consequences.
Keywords: *utilitarianism, right to life, EU legislation. ECHR Convention, euthanasia, covid crisis*

Introduction

The recent covid pandemic has exposed the divisions that run deep into our modern society: between the rich and the poor, the young and the old, the believers in conspiracy theories and the non-believers, the ones who wear sanitary masks and the ones that feel threatened by it, to name but a few of the recurring themes nowadays. It also showed how unprepared we were for a major health crisis and highlighted the need for a careful and well-thought legislation dealing with the State of Emergency, which does not impose disproportionate limitations on the rights and liberties we have been enjoying so far.

The divisions mentioned above have been placed under spotlight at the very beginning of the crisis, when severe shortages of ventilation equipment in intensive care hospital units in the most-affected EU countries have led many doctors to voice their concerns about the access to these ventilation machines, in case of competing claims

from patients in need of emergency treatment. It has been publicly admitted that doctors might be forced to choose between patients based on their assessment of their chances of survival, in view of their age, health record and co-morbidities, the belief of some in the medical profession being in favour of prioritising the young over the older patients. [1] Many a voice has been heard supporting this view and many an algorithm has been put forward, some professional bodies even elaborating triage procedures, if the authorities were to endorse this stance officially, despite what would have been an obvious breach of their respective national constitutional rules and EU legal framework in force. The main arguments employed to this end are all founded on utilitarian considerations, which have proved to exert an almost irresistible appeal in these trying times.

As the allure of utilitarianism is not likely to fade away in the near future, we deem necessary for methodological purposes to briefly highlight in Section 1 the main tenets of this school of thought and the objections that are level against it, ever since its development in England in the 18th century, with specific references to its consequences on the legal system. This particular view will be balanced against the presentation, in Section 2 of this paper, of the general legal framework in the EU regarding the right to life, with emphasis on the European Convention of Human Rights (hereinafter referred to as the ECHR) and the Charter of Fundamental Rights of the European Union (mentioned below as the CFR).

Section 3 will deal with the subversive effects of utilitarianism on the extent and content of the de facto protection of the right to life, as shown by the recent legislation adopted by some EU states regulating the end-of-life procedures. This shift in values with emphasis on economic, pragmatic considerations, is not new: it has been evolving gradually, especially in the field of medicine and bioethics, as shown by the growing number of EU countries which have legalised euthanasia, decriminalised assisted suicide or have eased up the conditions for organ transplant and donation.

The final Section will put forward some brief conclusions as to the necessity, in our view, to combat these utilitarian tendencies, which threaten the much needed social solidarity, causing fractures that will prove difficult to heal. Relegating equity and justice

on second place, after the economics, using the pretext of the covid crisis or any future crisis, opens up a Pandora box with unforeseeable consequences.

1. The allure of utilitarianism and its discontents

Though the origins of utilitarianism could be traced back to Antiquity, to Epicure and hedonism [2], its main tenets as we are familiar with today have been put forward by the well-known English philosopher Jeremy Bentham (1748-1832) and later developed by John Stuart Mill (1806–1873).

Jeremy Bentham was not only an accomplished philosopher who founded utilitarianism, but also a very socially active jurist, author of a number of proposals for legal reform in the 18th century England, all originating in its view on the role of the law as enhancing the public happiness.

Bentham rejected the natural law and the natural rights doctrine, calling them “nonsense upon stilts”. [3] A keystone of its thought is the assumption that human beings are selfish by nature, defined by the quest for pleasure and avoidance of pain. Bentham holds that human actions are motivated mainly by self-interest, tempered by the principle of “sympathy” towards others, which ensures the social coexistence. Consequently, a human action could be classified as just or unjust, right or wrong, if it contributes to the overall human happiness – this is the famous principle of utility, expressed by Bentham as “the greatest happiness for the greatest number”. [4]

The measurement of happiness in practice implies a classification of the pleasures and pains, according to certain criteria, and the possibility of adding, subtracting and multiplying these pleasures and pains, as part of what Bentham terms a felicific calculus. This complex calculus is based on the principle of equality “Everybody to count for one, nobody for more than one”. He places this arithmetic of pleasures and pains at the basis of the moral and political life, with some very interesting (to say the least) practical results in the type of the policy reforms he proposes: for example, the rounding up of the beggars from the streets of London by authorities and concerned citizens and their subsequent placement in workhouses, where the beggars should work to pay for their maintenance. How is the public happiness affected by these beggars?

Well, amongst other things, they are a sore sight and their unpleasant presence reduces the happiness of the general public. [5]

The principle of utility has, in Bentham's view, great potential and benefits for authorities and policy makers. The laws to be enacted could be judged by the total amount of happiness or unhappiness they create, and thus their efficiency could be easily determined. However, the flawed consequences of the principle of utility unhampered by any moral (higher) considerations are countless and are exposed by analysing some extreme cases, where morals and ethics are bound to come in, as, for example, in throwing Christians to the lions to amuse the crowds in Ancient Rome or, in the 19th century, the case of the cabin boy cannibalised by its fellow crew members in order to survive while lost at sea. [6]

Aware of its shortcomings, John Stuart Mill (1806–1873), the celebrated figure of classical liberalism, developed further the principle of utility proposed by Bentham, in an attempt to address the criticism levelled at it. Discriminating between higher and lower pleasures, Mill envisions a hierarchy of pleasures that should benefit from the protection offered by the law, foremost of which should be the individual freedom and security of life, in its broadest sense. [7] He also focuses on the relation between the interest of majority and the interests of individuals, and the relation between utility and justice. [8]
In his seminal work "Justice", the well-known contemporary political philosopher and professor at Harvard University, Michael Sandel, highlights the difference between the views on utilitarianism held by Bentham and Mills, respectively. Bentham refuses to pass moral judgements of higher or lower pleasures, which count as one and can be compared and measured on a single scale, while Mills acknowledges that 'some kind of pleasures are more desirable and more valuable than others" [9], and these should be given precedence in legislation. As Sandel points out, some like dogfights and some like to go to the art museums, so if dogfights increase the public happiness, why not encourage it, by passing appropriate legislation? Mill attempts to address this point and save utilitarianism from being "a crude calculation of pleasure and pain by invoking a moral ideal of human dignity and personality independent of utility itself". [10]

A major aspect of the criticism levelled at this doctrine refers to the fact that its followers use the concept of happiness, and even more questionable, the concept of

public happiness, difficult to measure due to its aggregate nature of many competing pleasures, vague and susceptible to political and personal interpretations. Another important objection concerns the way in which the principle of utility – viewed as the greatest happiness for the greatest number – could lead to the tyranny of the majority, to the oppression of minorities in a society, to sacrificing a few for the benefits of many.

The question – what is public happiness? - to which utilitarians answer with the principle of utility has always concerned those interested in the act of government and the relationship between the citizen and the state.

In our view, the utilitarianism popular with some scholars today, especially in the filed of bioethics, looks like a clumsy attempt to mask the way in which human life is valued in monetary terms, especially in relation to the healthcare system or the social security system (retirement age, state pensions etc.). Some applications of this principles can be encountered in the field of life insurance, in the governmental assessment of the harm to human life caused by pollution or even, as with the case of a tobacco company, in its outrageous attempts to demonstrate the benefits of lung cancer on the public finances. [11] The formula ‘the greatest happiness for the greatest numbers” reduces indeed utilitarianism to the crude calculation Sandel was taking about. This line of thought has unwanted consequences when applied to social domains where traditionally, the economic considerations of profit and loss were marginal, such as medical care and patients’ lives, as recently highlighted by the ongoing covid pandemic.

This economic, ‘arithmetical’ side of utilitarianism has a strong ideological component, which is reflected by the emphasis on individual freedom and the minimal involvement of the state in regulating the lives of its citizens.

Are there any safeguards to prevent the advances of utilitarianism from impacting further a legislation which ultimately affects the very essence of the right to life of a person? The next Section will briefly outline the main EU legal framework concerning the right to life, in order to facilitate the analysis in Section 3, of its relation with the changes in regulations concerning the end-of-life procedures adopted by some countries.

2. The general EU legal framework covering the right to life

The EU legal framework on the right to life is imbued by the ideas of the natural law, theory which has known a revival at the beginning of the 20th century, after the end of WWII and its atrocities. The Nuremberg war trials of the senior Nazi officials have highlighted the perils of defining the law merely by reference to the provisions of positive law. Afterwards, important legislation has been enacted at international and domestic level to recognise and protect human rights, such as the Universal Declaration of Human Rights (1948, hereinafter referred to as UDHR), the ECHR (1954) and, more recently, the CFR (proclaimed in 2000 and effectively in force since 2009). What are the foundations of the human rights? As Article 1 of the UDHR proclaims " All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." [12] Natural law is to be considered "a benchmark against which to measure positive law'. [13]

The protection of the right to life in EU member states is structured on three levels: the international level, consisting of the main Human Rights Declarations, the ECHR and various other treaties, the EU level, consisting of the CFR and other primary legislations, and the national level, reflected first and foremost in the constitutions of the member-states.

For instance, at international level, the right to life is stipulated by Article 3 of the UDHR, after the principle of non-discrimination and equality before the law. "Article 3. Everyone has the right to life, liberty and security of person." [14]

At EU level, human rights protection has developed slowly, mainly through court decisions in individual cases. The Maastricht Treaty, instituting the European Union, in force since 1993, is considered a milestone in the process of creating a comprehensive legal framework for the protection of the human rights in the EU. It was followed by the Treaty of Amsterdam, Treaty of Nice (in force since 2003), the CFR and the Lisbon Treaty of 2007, to name the most important primary EU legislation. [15]

The ECHR and its subsequent body of case law have been paramount in firmly establishing and promoting the fundamental rights in Europe. The ECHR provisions on the right to life, for example, have been invoked in a wide variety of cases, ranging from

abortion to the end-of-life decisions, to force the authorities to properly investigate murders or to take all the necessary measures to protect the lives of their citizens. [16]

“ARTICLE 2 Right to life

1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”

The CFR takes a step further in the protection of the right to life, stipulating – in accordance with the ECHR provisions – that death penalty is prohibited.

“Article 2 Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.” [17]

In relation to the ECHR provisions, the CFR sets forth new rules, to cover the changes in technology and medicine that will definitely impact the right to life in the future. Thus, Articles 3 (Right to the integrity of the person) of the CFR stipulates:

“1. Everyone has the right to respect for his or her physical and mental integrity.

2. In the fields of medicine and biology, the following must be respected in particular:

(a) the free and informed consent of the person concerned, according to the procedures laid down by law;

(b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;

(c) the prohibition on making the human body and its parts as such a source of financial gain;

(d) the prohibition of the reproductive cloning of human beings.” [18]

Both the European Court of Human Rights (EctHR) and the Court of Justice of the European Union (CJEU) interpret the provisions of ECHR and those of CFR as part

of the general legal framework for the protection of fundamental rights, when delivering their rulings. What are the margins of appreciation on the right to life the ECtHR operates with? Many scholars point out the gradual development of the “right to assisted suicide” by the EctHR in succesive rulings in cases brought before it, such as Pretty v. the United Kingdom (n° 2346/02, 29th April 2002), Haas v. Switzerland (n° 31322/07, 20th January 2011) and Koch v. Germany (no 497/09, 19th July 2012). The court set forth an interpretation of the right to life with reference to Article 8 of the ECHR, (Right to respect for private and family life) and individual freedom, effectively sanctioning this ‘right’ and the obligation of the state to abstain from taking steps to prevent individuals to have a dignified end, if they chose to do so with full knowledge of its consequences. Thus, “the court modifies the ground of dignity: it is no more inherent to human nature, but linked to each individual's perception of dignity”. [19]

Apart from issues relating to the role of the ECtHR, this instance illustrates the shift in values in today’s society, where relativity and the freedom of choice trump up the right to life. The binding precedents of the ECtHR have had a major impact on the domestic legislation of many EU member states, dealing with sensitive moral and ethical issues, as outlined in Section 3.

3. “Trending now” – recent legislative changes in euthanasia and other end-of-life procedures in some EU countries

Is there a pattern to be discerned in the interaction between the generous EU regulations of the right to life and the gradual lifting of legal restrictions on issues such as assisted suicide, euthanasia or organ transplants at national level? There undoubtedly is, and the cause behind it is the dramatic shift in the values of society as a whole, which took place in the last two decades, fuelled in part, in our opinion, by a culture of rights that emphasizes individual liberty, construed in its most dogmatic and utilitarian way – if one does not harm the others, the state should not interfere either with legislation or with other measures in the private life of its citizens.

In other words, these fine principles often disguise, at policy level, hard core utilitarian considerations, opinion which we will attempt to demonstrate below. As mentioned in the previous section, in its rulings on assisted suicide and euthanasia the

ECtHR has employed the arguments of personal dignity and individual freedom to outweigh the legislative restrictions on any end-of-life procedures.

This is a very treacherous path to take, as proved by the growing number of cases in which the life of a patient has been terminated without its consent, in the EU countries that legalised and subsequently ‘’liberalised’ end-of-life procedures, Belgium being one such glaring example.

Since the legalisation of assisted suicide in 2002 and despite its being a predominantly Roman–Catholic country, Belgium has gradually expanded its legislation for physician-assisted suicide not only to those terminally ill, but also to patients suffering from severe mental illnesses, such as depression. Since 2014, even 12 years old terminally ill children can request euthanasia or can be euthanized if the doctors consider their case hopeless and their parents request it. [20] The practical consequences of this permissive Belgian legislation have led to an exponential increase in the number of assisted suicide and euthanasia cases, some highly controversial ones, such as Mortimer vs. Belgium (ECtHR case no. 78017/17), concerning the euthanasia of a chronically depressed woman which took place without any written instructions from the patient and without any prior notice to her children as to her intentions. The statistics in Belgium are staggering: from 235 euthanasia cases in 2003 to 2537 in 2018, representing 2% of the total annual deaths. Some studies have revealed that “40% of Belgians are for the end of care for people over-85” (Le Soir.be, 19.03.2019). [21]

In 2020, in the midst of the covid pandemic, the Netherlands extended the end-of-life procedures to children between 1 and 12 years of age, provided they are endowed with judgement and prove to understand the irreversible nature of the procedure. [22]

Earlier this year, the Constitutional Court of Germany has reversed the amendments of the Criminal Code dating from 2015, forbidding assisted suicide (legal until 2015), thus restoring its legal status, when performed with medical supervison and help.[23] Because of the particular historic associations stemming from the past, euthanasia is still a very sensitive topic in Germany and is not yet legalised.

These brief examples of very substantial changes in the national legislation of some EU member states regarding the right to life, which now has a new corollary - the right to die in these countries, and the obligation imposed on the state to regulate as strictly as possible this domain, to prevent abuse, illustrate the perils of applying lofty principles to promote legislation, without weighing the long-term social costs of the proposed legal changes.

Whether the full consequences of this line of argument are perceived, this remains to be seen. One particular worry is that, when confronted with a health crisis on a massive scale, humanitarian considerations, such as ending unnecessary sufferings, ensuring a dignified end of life, the right of a person to freely choose what they do with their life, can easily disguise utilitarian considerations of efficiency. In the case of covid pandemic, that would mean the allocation of financial and medical resources to the patients with the highest chances of survival. The matter of the triage of the covid patients as well as that of the criteria according to which they are granted access to ventilation systems is governed by the national law in the EU, meaning that, in the future, some countries might regulate triage criteria invoking the very humanitarian considerations above, using the same mechanisms which allowed the legalisation of euthanasia and assisted suicide. If countless human rights organisations have revealed that in many cases, elderly, sick patients felt pressured to exit life 'voluntarily', it cannot be excluded in the future the creation of a "voluntary triage" system, by which the infected patients of a certain age or with co-morbidities should "voluntarily" surrender their right to ventilation systems, to patients having better chances of survival.

All done, of course, for the public good – the greatest happiness to the greatest number and the most efficient allocation of resources.

4. Conclusions

As the economic crisis looms closer in Europe, the governments will be facing increased difficulties in devising effective economic strategies, given the budgetary constraints and competing claims on the public resources. While the aftermath of the pandemic has so far been efficiently managed at the EU level by the competent bodies

in crisis management [23], the future remains uncertain, even with the discovery of an anti-covid vaccine.

The debates on the retirement age, the reforms of state pensions and the steady loss of jobs due to the high levels of automation and digitalisation will challenge in the near future the resilience and strengths of the EU citizens and will put to test the principle of European solidarity, not only between member-states, but also between different categories of citizens belonging to the same country. Accepting that some categories of citizens (the elderly, the gravely ill, the destitute) could be left behind or treated as 'disposable', in the name of the common good and for the more efficient allocation of resources, should not be allowed to enter into legislation or the public discourse.

The relativization of such a fundamental right as the right to life, for the recognition of which many a life has been lost in the past, opens up a Pandora box of further relativizations and divisions within our society and is bound to transform the law into a mere instrument for mathematical calculations, turning obsolete all considerations of social fairness and justice.

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LABOR MARKET, PROFESSIONAL TRAINING OF THE EMPLOYER AND DISABLED PEOPLE

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Abstract:
The presented material addresses in an etiology of the notion of the labor market, the main functions as well as the principles that govern its activity as well as the connection between the labor market and the state. They will also be presented concisely.
The labor market, like any other market, is a social institution with limits and imperfections, its functioning being dependent on other social institutions, restrictions of the economic environment, mentalities, or behaviors of economic agents. Within this market, seen as a system of social structures and processes, economic services of a technical, organizational, informational nature or, in another sense, are evaluated, then sold, and rented; the services offered by individuals are evaluated and then rented.
The main aspects regarding the professional training of the employee and the disabled will also be presented in a concise manner.
Keywords: *labor market, principles of functioning of the labor market, characteristics of the labor market, vocational training, people with disabilities.*

1. Labor market

1.1 Definition

In accordance with several definitions given by specialized literature, the labor market is the place where supply and demand meet. According to economic theory, this is not an actual place but a self-adjusting mechanism of the interchange. [1, 111]

Some authors believe that the labor market is an economic space where transactions are made between capital holders as buyers (representing demand) and workforce holders as sellers (representing supply). The supply and demand of the workforce are adjusted by means of the price of the workforce, the actual salary, and the unhindered competition between economic agents.

Humans being more than merchandise, the labor market has a special place between economic theory and practice; it is the most regulated market. As a derivative market, the other markets influence it and, at the same time, has an effect on all socio-economic fields. [2, 15]

There are several types of markets: the market of goods and services, the market of capital, the market of national resources, and the labor market. They act simultaneously, effectively ensuring the functioning of the social and economic mechanism and the regulation of its process and frequency. [3, 19]

The labor market, like any other market, is a social institution with limits and imperfections, its functioning depending on other social institutions, on the restrictions of the economic environment, on the mentalities and behaviors of economic agents.

According to several authors, the labor market is a system of social structures and processes that first evaluate, mediate, then sell, and purchase economic services of a technical, organizational and informational nature and, in another sense, the services offered by individuals as work or labor force are evaluated and rented. [4, 3]

1.2 The functions of the labor market

The labor market has important functions, one of them being the productive function, which ensures the meeting of the workforce with the production means that are owned by economic agents.

Another function of the labor market is the distributive one. It takes part in social production through market mechanisms, establishes and distributes the income of every economic agent involved not only in the remuneration of the labor force but also in the other production factors.

The social function is also a function of the labor market. It ensures jobs, improves the quality and security of the work environment, and ensures the social protection of the unemployed and the disadvantaged workforce categories.

The last function of the labor market is the educational and training one, which takes care of the reconversion and requalification and continual training of the workforce. This ensures its mobility, flexibility, and efficiency, resounding heavily both from an economic and social point of view.

1.3 Functioning principles

The labor market is based on the auctioning principle where workforce bidders compete for an existent workplace and employers try to attract and keep the bidder’s offers.

According to the definitions mentioned above, it can be seen that the notion of the labor market is simplified and purely scientific, the correct one being the labor force market. Since what it offers for capitalization is not labor, human activity, or its result but the workforce (as a human resource) that performs the labor. [5, 217]

The labor market is comprised of two elements – labor supply and demand. Their confrontation forms the labor market.

The demand for workforce represents the need for paid labor that exists at a certain time in order for the activities of employers to be optimally carried out.

The employer's demand is taken into account based on his duties and the duties attributed by his object of activity.

Labor supply is represented by the labor that members of a society can perform as employees. The labor supply does not include housewives, pupils under 16 years of age, students, military people, people who perform non-wage able activities, or people who refuse to be employed.

In what concerns the labor supply for the employer, it takes into account the work schedule, the amount of overtime, social and labor conditions, employees' needs, and interests as well as the general economic situation at a certain time.

The confrontation between supply and demand within the employer also establishes the amount and dynamics of the nominal salary.

The main tendencies of the labor market are compared to the average salary resulted both from collective and individual negotiation.

1.4 Specific elements and characteristics

As opposed to the other markets that deal with certain categories of material goods and values, the labor market is centered on humans as possessors of physical and intellectual aptitudes, which are components of their labor potential. The individual is mainly a social being not just a production factor who, apart from his existential needs, has a certain value and personality, is conscious of their role in society and family, and is passionate about their job or profession.

Furthermore, according to the Declaration of Philadelphia, enforced by the General Conference of the International Labor Organization of the 10th of May 1944, labor is not merchandise. [6]

The fact that any market functions because of the individual, so because of the use of the labor force, must be taken into account.

The use of the workforce is based on the closing of labor agreements, including state service based on the nomination, confirmation, and election act, on participating in associations. [7, 17]

Among the elements that are specific to the labor market, the specialized literature mentions the following:

- it is an organized and regulated market;
- it is the most sensible;
- the confrontation between supply and demand on the labor market takes place under the interference of state powers (legislative, executive, and judicial);
- it is a contractual market where negotiation and agreement are fundamental instruments for the regulation of the supply and demand of the workforce;
- it has a certain predisposition to conflict, something that determines a fragile balance. [8, 208]

The labor market is characterized by a predisposition to conflict. It cannot exist outside judicial norms that organize and establish the supply and demand of workplaces.

For the well functioning of the labor, the market state's intervention is needed in order to stimulate employment and to enforce the keeping of the special judicial laws and of the employees' rights.

The state interferes in multiple ways to correctly influence the labor market, namely by providing qualification and professional development courses, by mediating labor through individual acts of employment, by contributing to the payment process of the employee by the employer as well as by punishing illegal employment.

The concepts with which the labor market operates in order to define, establish, and evaluate are: [9, art. 5]

Employer - judicial person or individual who offers employment in accordance with the law;

Workplace – the pace where the remunerated activity is performed and where the judicial and labor relations materialize;

Person searching for employment – a person who is taking steps in order to find employment by his own means or by registering at the employment agency or any other accredited employment supplier;

Unemployed person – a person who simultaneously meets the following criteria:

- is looking for employment since the age of 16 until meeting pensioning conditions;
- has an adequate mental and physical state and capacity for employment;
- is not employed, has no income, or has an income obtained through authorized activities that are lower than the value of the social reference indicator of insurance for unemployment and the stimulation of employment in force;
- is available for employment immediately if employment is to be found;

Registered unemployed person – a person who meets the aforementioned conditions and is registered at the Employment Agency on the managerial territory on which he resides or to any other provider of employment that functions according to the law in order to be employed;

Long term unemployed person – a person who is unemployed for more than 12 months in the case of people of at least 25 years of age and for 6 months for people between the ages of 16 to 25 years;

The young person with a risk of social marginalization – people with ages between 16 and 26 years that meets the condition of section IV, is registered at the Employment Agency on the managerial territory on which they reside and falls under one of the following categories:

- are or are coming from the child protection system;
- are disabled;
- do not have a family or their family cannot support them;
- have children to support;
- have had one or more imprisonments;
- Are the victims of human trafficking.

NEET youth – people of ages between 16 and 25 years, who are unemployed, do not go to school, and do not participate in professional training activities;

Employed population – includes all people that are performing paid socio – economic activities;

Active population – both employed unemployed people;

The unemployment rate is the report between the number of unemployed people who are registered at the National Employment Agency and the active population;

Measures for stimulating employment are those measures that support people in search of employment and that especially encourages the unemployed to gain employment.

The social indicator reference of insurances for unemployment and the stimulation of employment (also named social reference indicator) – the unit expressed in lei to which are reported the monetary performances paid from the unemployment insurance budget that is granted in order to both ensure the protection of people under unemployment insurance system and to encourage the unemployed to obtain employment as well as employers to hire people looking for a workplace.

The labor market cannot exist outside certain judicial reports that give it the authority to organize the supply and demand of employment. Its functioning requires the state's interference especially in what concerns the stimulation of employment and the keeping of both the judicial norms of the field and employees' rights. [10, 153]

1.5 The relations between the labor market and state

The labor market designates the confrontation between the supply and demand of labor during a certain period and within a certain geographical space, which usually concludes with employment through an individual labor agreement.

The operations for regulating the supply and demand of labor mainly refers to the estimation and evidence of offer or labor demand, orientation, recruitment, and engaging the labor factor within the system of public institutions which operate on different labor markets, the organization of labor and the use of the labor factor, the duration of labor and arrangement of working hours, professional orientation, training and reconversion, diversification of means and ways of employment and labor protections, the quality of labor (labor conditions and hygiene), salary methods and systems, social protection of the unemployed, collective negotiation, etc.

The labor market holds important functions in the development and functioning process of the national economy in the socio–economic, economic, and educational fields. These are:

- Efficiently assigning labor resources to sections, branches, professions, and territories in accordance with the volume of labor demand. In this case, there are a series of mechanisms at work, both from within the labor market (salary, the difference of wages) and from outside (fiscal policies);
- the effects of training and the division of income;
- the meeting and comparison between the labor factor with the means of production;
- the labor market forms and distributes labor income according to criteria established by normative acts or collective labor agreements;
- the social function takes into account the orientation and formation of the labor climate and the insurance of adequate social protection which targets the abolition of poverty and social polarization;
- The educational function supplies information for professional orientation, requalification, and employment.

According to constitutional provisions, the economy of Romania is a market economy based on unhindered initiative and competition; the state must ensure the liberty of commerce, protection of loyal competition, creation of a favorable environment for capitalizing all production factors, and the application of regional development policies. [11, art. 135]

In accordance with the provisions, the state must ensure a favorable environment for economic development and the existence of freedom of commerce for its citizens.
Furthermore, the fundamental law also establishes the state's obligation to take economic development and social protection measures to ensure decent living conditions for its citizens. [11, art. 47]

The fundamental law also provides that labor cannot be hindered. The choice of profession, craft, or occupation as well as of the workplace is unhinged. [11, art. 41]
The freedom of labor consists of the liberty to work on one hand and the liberty not to work on the other.

The liberty to work implies the right to choose the activity and the workplace; it forbids any kind of discrimination and ensures equality of chance both for employment and for promotion within the workplace.

The liberty to work takes into consideration the right to refuse work, the right to terminate a work relation, the employee having the possibility to terminate an individual labor agreement, with some exceptions.

An important role within the market economy is held by the international judicial norms, which state that every person has the right to work, to freely choose their work, to equitable and satisfactory working conditions as well as protection against unemployment. [12, art. 23]

This declaration emphasizes that a person can freely choose future work according to their expectations, without being restrained.

Likewise, one of the conventions of the International Labor Organization [13] refers to the active policy of employment by approaching aspects regarding the stimulation of economic growth, the improvement of living conditions, the satisfaction of the needs of the labor force, and the solution of the unemployment and underemployment of the labor force. The declarations made during this convention are aiming to elaborate on some active policies for the promotion of free complete and productive employment freely chosen by the work force.

In what concerns the relationship between the state, labor market, and labor relations, we emphasize the important role of the state in keeping unemployment under control and reducing its rate.

The state interferes with labor relations through judicial norms, establishing the general environment for collective negotiation, the stimulation of economic development, and the employment of graduates.

The state's role, through its specialized organs, is to allocate employment and to issue employment permits, to control the keeping of labor legislation, employers' obligations, and employees' rights.

The states interfere in the labor legislation field through general and specific measures regarding those concerned. The state's legal intervention aims for the stimulation of economic development, which gives the state new reasons to get involved in economic activity. [14, 265]

The state can create workplaces by itself by issuing a position within the public field or by encouraging local communities to do so.

Due to the fact that the state's role within the labor market and labor relations is not defined well enough by the doctrine, the state wavers between leaving the labor market alone and enforcing an intervention method limited to certain categories of people or to certain types of lucrative activities.

The first tendency implies that the supply of labor force meets the demand by various means. Thus, those who want a workplace can benefit from it without the state's intervention.

The second tendency implies that the state's intervention is carried out through some well-established general laws; it also takes the responsibility for an eventual imbalance of the labor market.

Thus, it can be said that the labor market is not left unattended; the state has an active role in sustaining the labor force and in the promotion of some workplaces through economic, educational social insurances, etc. policies.

Nowadays the labor market has issues with agricultural employment, the high level of long-term and youth unemployment, the insufficiency of funds and fiscal stimulation measures addressed to employers and employees, and in the field of continuous professional training.

During the past years, some governments try to limit their involvement within labor relations, they being more active during third party consolations.

Within developed countries where the level of social dialogue is higher than that of the enterprise, governments and collective negotiation are on the highest level and continue to have an essential role within the labor market. These countries have preserved the structures of taking relatively centralized decisions where consultation and negotiation frequently interfere. [15,113]

2. Professional training of disabled people

The economic balance of the labor force market approaches the matter from several angles.

A first angle that must be taken into account refers to the structural balance, which deals with the means of distribution of the workforce to sections, branches, activities, professions, and qualifications. This distribution takes place in accordance with the level of technical production and the productivity of labor.

Another angle that must be noted is the functional structure that deals with employment and the growth of labor productivity established by production.

The employer plays an important part in the balance of the labor market. Thus, according to specialized literature, the merchandise market, capital market, and labor market are related. If its producer and the capital by its holder personalize merchandise, the labor force identifies with its possessor and cannot be separated. [16, 256]

The employee, as a workforce holder, cannot be separated from it, cannot stock or substitute it, the offer thusly varying according to the whole population of a profession or field of activity.

The employee is the individual who is bound to perform continuous labor throughout time for and under the authority of an employer, judicial person, or individual, in exchange for wages while keeping the legal dispositions of applicable collective or individual labor agreement and the international regulations.

The full capacity of signing an individual labor agreement is gained at 16 years of age. [17, art. 13, align. 1]

A person can sign an individual labor agreement as an employee since the age of 15, if their parents or legal representatives agree, for activities that are fit for their physical development, skills, and knowledge, if their health, development, and professional training are not endangered. [17, art. 13, align. 2]

For certain jobs, the full capacity to sign an individual labor agreement is granted, by exception, at the age of 18 (administrator, international driver transporting merchandise or people) or at the age of 20 (in the forest field).

Likewise, in order to get better employment, workers often resort to certain courses for professional training.

Professional training is a two stages process: the first one is carried out during school, within the national educational system, and the second one takes place during professional activity.

The second stage, regulated by the labor legislation, is especially important since the technological and scientific processes have greatly evolved fact that determines the need for perfecting, requalifying, and adjusting employees to the new labor conditions.

Professional training can be organized during various periods, according to age and profession.

In what concerns professional training, this can be carried out within the national educational system (initial professional training) or outside it (continuous professional training).

Professional training is a process of continuous learning, of gaining new knowledge, it forms a set of skills that are useful in order to easily adapting to the changing factors of economy and society. [18, 114]

The labor market, through its functions, is strongly involved in this process, especially in the continuous professional training part. This is formed by the main mechanism of labor force supply, of adjusting supply and demand, of influencing the imbalance between the qualification offer of the educational and professional training system and the demand of the productive system, the individual's desires regarding the initial and subsequent professional training. [19, 234]

The population categories that benefit from these qualification classes are the unemployed, the employed people who do not have a qualification, and people who are threatened to be dismissed. The population categories who benefit from qualification classes are established by normative acts.

Professional training can be carried out in many ways, such as:

- by having the employees participate in classes that are organized by the employer within their own headquarters or by the providers of professional training or stages of practice and qualification of national and international institutions; [20, art.10. align.3]
- through stages of professional adjustment to the requirements of the job or workplace, an apprenticeship at the workplace, individual training according to the regulations of the Labor Code;
- through classes, specialized practice stages as well as any other means usually organized by the center's for professional training that function under the territorial employment agencies; [9, art. 5]
- People of ages between 16 to 25 who experience difficulties and risk professional exclusion can benefit from employment from an employer who is approved by the territorial employment agency based on a solidarity agreement; [21, art. 5]

- Likewise, they can also benefit from those legal provisions that aim to support the training of the youth as future managers and administrators by organizing free initiation competitions for management and business administration fields. [22, art. 17, align.4]

The main objectives of professionally training employees are:

- adjusting the employee to the job or workplace conditions;
- acquiring a professional qualification;
- updating knowledge and skills that are specific to a certain workplace and perfecting professional training for the main profession;
- professional reconversion determined by a socio–economic reorganization;
- acquiring advanced knowledge, modern methods, and processes that are necessary for professional activity;
- preventing unemployment;
- Labor promotion and developing a professional career. [17, art. 192]

A national program has been enforced concerning the professional training of disabled people in order to get them employed.

This program aims to increase employment opportunities, the number of disabled people employed through a labor agreement drafted for an unlimited time and the number of people professionally trained for the requirements of the labor market, to develop an informational and consultancy network for disabled people and for economic operators and last but not least to reduce unemployment among disabled people who are not institutionalized.

Disabled people who wish to be employed have access to professional orientation and evaluation free of charge regardless of age or type of disability.

In this regard, any disabled person who is educated and of appropriate age can benefit from professional orientation. Unemployed people, people without professional experience or who, although employed, require professional conversion can benefit from professional integration. [23, art. 73, align.1]

Disabled people who are looking for employment or are employed benefit from: classes of professional training and of reasonable adjustment to the workplace, counseling before and during employment as well as in the trial period by a counselor

that specializes in labor mediation; they also benefit from an exemption of taxes on their salary.

Disabled people who are looking for employment have the right to a paid trial period before employment (of at least 45 working days) a paid notice (of at least 30 working days) granted when the individual labor agreement is terminated by the employer for reasons that do not concern the employee, as well as to the possibility of working less than 8 hours a day in accordance with law if they have a recommendation from the evaluation committee.

Disabled people can be employed according to their professional training and working capacity, certified by the disability certificate issued by the evaluation committee of the county or of Bucharest.

Disabled people who seek employment have the right to enjoy any chance to chose and practice their profession, craft or occupation, to gain employment and professional promotion. [24, 117]

For keeping the aforementioned rights, the public authorities must take the following measures:

- to promote the fact that the employed disabled person is a value to society and to their own community;
- to promote an open, inclusive and accessible work environment for disabled people;
- to make and permanently update a database in order to emphasize the work supply among disabled people;
- to collaborate with the media in order to raise awareness of the potential, abilities, and contributions of disabled people to the labor market;
- to organize, in collaboration with judicial, private, or public figures, projects, and programs for the increase of employment;
- to found and support service bundles comprised of authorized protected units and homes;
- to promote mediation services for disabled people on the labor market;
- to initiate and develop ways of stimulating employers regarding the employment of disabled people;
- to aid by organizing an outlet for the work product of the disabled person;

- to diversify and support social services, namely counseling for the disabled person and their family, informing employers, assisted employment and others;
- To initiate specific programs in order to stimulate the increased participation in the labor market of the groups that risk social exclusion. [23, art.75, alin.2]

According to the level of professional training, regarding employment, people find themselves in one of the following situations: unqualified workers, qualified workers, technicians, master or specialist with higher education. [16, 271]

Based on the mentioned normative acts, the state, through its specialized organs, ensures the necessary institutional organization for professionally training the interested people and supervises this process.

According to professional training programs that ensure initiation, qualification, requalification, perfection, and specialization of people searching for employment, they are carried out by the professional training centers that are subordinated to the employment agencies and are aiming to increase the quality of labor force and to ensure the professional and territorial mobility.

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BRIEF CONSIDERATIONS ABOUT JUSTICE AND TRUTH DURING THE EMERGENCY PERIOD. THOUGHTS AT THE TIME OF RESTRICTION

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Abstract:
The supremacy of the constitution is a quality of the fundamental law that essentially expresses its supreme legal force in the legal system. An important consequence of the supremacy of the fundamental law is the conformity of the whole law with the constitutional norms. The notion of legal supremacy of the law is defined as "that characteristic of it which finds expression in the fact that the norms it establishes must not correspond to any norms other than the constitutional ones, and the other legal acts issued by state bodies are subordinated to it. in terms of their legal effectiveness. Compared to the constitutional requirements, the state of emergency established in order to manage the effects of the Covid 19 pandemic was marked in Romania by the excess of repressive measures. Who does not know how to protect and stimulate, repress.
Keywords: *Romania, Constitution, state of emergency, justice, truth, fundamental rights and freedoms*

1. Argument - warning or about the limits of power in a democratic society

In its evolution, human society has undergone major changes in political, social, cultural, economic and legal terms overcoming the insurmountable contradiction that exists between democratic regimes and those considered to be dictatorial, or more simply, between dictatorship and democracy. Dictatorship means the centralization and concentration of power, the denial of pluralism in all its forms, the absolute or discretionary power of rulers, the coercion and excessive limitation of individual freedoms, the rigid separation of rulers from rulers, the non-existence or formal existence of constitutional guarantees of human rights, non-existence or character. fictitious, formal of some principles essential for the state organization of the society such as, for example, the principle of the supremacy of the law and of the constitution. In short, dictatorship represents the annulment, abolition or at best minimization of individuality, the singular, diversity and the affirmation of unity as an abstract and compelling generality.

Unlike dictatorship, democracy is associated with the idea of the rule of law, focused on the principle that has become real and applicable to the rule of law and the Constitution. The centralization and concentration of power is replaced, as a way of organizing the powers of the state, by the principle of their separation and balance. Pluralism, in all its forms, is institutionalized and guaranteed. Individual freedoms are also enshrined and guaranteed, their exercise being governed by the rule that the limit of any individual freedom is the need to respect the similar freedoms of others. The legitimacy of state power implies the distinction between the being or essence of power, and on the other hand, its exercise. In a democratic regime it is not necessary to prove the legitimacy of power as such, because the axiom that "the holder of power is the people or the nation" does not require demonstration, being a premise for the entire political and legal construction of the state-organized society. Any democratic regime must find the means by which the exercise of power can be legitimized and legitimate. Such legitimacy is achieved when there are no irreconcilable contradictions between the essence and the forms of exercise. The legitimacy of the exercise of power in the case of democratic political regimes means the reflection of the essence of power in its phenomenality, respectively in the way of organization and exercise. Therefore, in the case of democracy there is always a conceptual but also a real distinction between the legitimacy of the essence of power that does not require demonstration - it results as such from the mere proclamation of the principle that power holds the people - and on the other hand, the phenomenal legitimacy of the organization. the exercise of power which is not a "given", but a construction made in the concrete forms of institutional organization and exercise of state authority. The legitimacy of the organization and exercise of power is external to the phenomenality of power, in the sense that phenomenality is not the source of its legitimacy, but it is built in a relationship whose content is the correspondence between the essence of power and forms of manifestation. Power, in its essence, can be considered "a thing in itself" in the Kantian sense, because full knowledge of the essence will never be possible. The reality of state power considered in the relationship between essence and phenomenon reveals another aspect: the phenomenality of power will never be able to fully correspond to the essence of power. The object of knowledge for the social sciences is formed by the

phenomenon of power and not its essence. Therefore, the legitimacy of the phenomenal manifestations of power represents an ideal to which the concrete forms of organization and exercise of power approach, without ever reaching it. The legitimacy of the phenomenality of power consists, among other things, in the realization of the principle of representation. This principle highlights very well the distinction between the science or essence of power and the phenomenon of power, on the other hand. The holder of power can only exercise it directly in exceptional situations. The essence is not the manifestation of power. The exercise of power reflects the science of power without comprehending it. Thus, state institutions exercise power without holding it; therefore, they need the recognition of the legitimacy of acts of power, a fact conferred mainly by the application of the principle of representation.

Its power and phenomenality are undoubtedly a central place of democracy. If the phenomenal legitimacy of power is an ideal that concrete forms of institutional achievement through the principle of representation can approach, then it follows that democracy, in its essence, is also an ideal in relation to which social and political reality is built and manifested, without for the democratic ideal to coincide with social and political reality. Professor Ion Deleanu's statement is relevant in this sense: “Democracy is a form of moral perfection. It measures both the organization and the functioning of power in order to humanize it, as well as the way of life of the citizens in order to shape it ”. It is necessary to distinguish between the ideal democracy which is a purely speculative construction based on the possible coincidence between the essence and phenomenality of power, but also on an ethical imperative that would mean the unity of will between individual and society, and real democracy, on the other hand through the contradictory dichotomy between the essence and the phenomenality of power between the individual and society. Real democracy has concrete, multiple forms of manifestation - such as the form of "parliamentary or representative democracy - it is not an immutable right, but it is in a continuous evolutionary process which, in view of historical progress has as its purpose - never possible to be achieved, the ideal democracy. The science of law has as object of study the real democracy or more precisely its forms of manifestation of its realization. Paradoxically, however, the

legitimacy of any form of real democracy is conferred by the values and principles of ideal democracy, the latter being the object of study mainly of metaphysics.

Unlike dictatorship, democracy presupposes the rehabilitation of the individual, of the particular, which is no longer absorbed and dissolved in the general social abstract or of concentrated power. In a democracy, the individual has ontological value and manifests itself in existential coexistence with the social general. In other words, the individual has the meaning and power of the general, the latter being legitimate precisely by the fact that he recognizes the individual's existential and ontological dimension. Power, even in its concrete manifestations, is the expression of the general as such, reflected for example in the notion of "public interest." In a democratic society the legitimacy of the act of power does not consist in the reflection of its own generality (of the public interest), but in the respect of the individuality, of the diversity in all the specific forms of the existential pluralism. In constitutional terms, this aspect evokes the relationship between the "majority and the opposition". The essence of democracy is the forms and content of the concrete relationship between society and the individual. The report expresses a unilateral contradiction because society can contradict the individual, which is typical of dictatorship, but the individual does not contradict society, a situation specific to democracy. Moreover, the dialectical relationship between the individual and society specific to democracy is an affirmative one, not containing a negation - as Hegel argued. It is proper for democracy for society to affirm the individual, not to deny it: therefore, to consecrate and guarantee individuality and diversity. There is obviously a contradiction between dictatorship and democracy, but a unilateral one: dictatorship is in contradiction and excludes democracy, but democracy does not exclude forms of dictatorship. The space and object of this study do not allow us a broader analysis of this interesting issue, but we mention that the doctrine refers to forms of dictatorship that can characterize any democratic regime: the dictatorship of parliament, the dictatorship of the masses or the dictatorship of majorities. In all these situations of democratic reality, the affirmative contradictions highlighted above become negative. Consequently, discretion is exercised in a discretionary manner, which clearly contradicts the values of ideal democracy and inevitably leads to the discussion of legality and legitimacy.

2. Legality and legitimacy in the light of constitutional constraints

Legality as a feature that must characterize the legal acts of public authorities, has as a central element the concept of law. Andre Hauriou defined the law as a general written rule established by the public authorities after deliberation and involving the direct or indirect acceptance of the rulers. Ion Deleanu defines it as "the act that includes general and mandatory rules sanctioned by the coercive force of the state when its application is not made out of conviction and which is susceptible to application whenever the conditions provided in its hypothesis arise." In a broad sense, the notion of law includes all legal acts that contain rules of law. The law in its narrow sense is the legal act of the parliament elaborated in accordance with the constitution according to a pre-established procedure and which regulates the most general and important social rules. The constitution has a special place in the administered legislative system, defined as a fundamental law located at the top of the hierarchy of the legislative system, which includes legal norms with superior legal force, which regulate fundamental and essential social relations, especially those regarding the establishment and exercise of state power. . The state of legality in the activity of public authorities is based on the concept of rule of law. The supremacy of the constitution is a quality of the fundamental law that essentially expresses its supreme legal force in the legal system. An important consequence of the supremacy of the fundamental law is the conformity of the whole law with the constitutional norms. The notion of legal supremacy of the law is defined as “that characteristic of it which finds expression in the fact that the norms it establishes must not correspond to any norms other than the constitutional ones, and the other legal acts issued by state bodies are subordinated to it. in terms of their legal effectiveness. "Compared to the constitutional requirements, the state of emergency established in order to manage the effects of the Covid 19 pandemic was marked in Romania by the excess of repressive measures. Who does not know how to protect and stimulate, repress. The level of fines imposed by ambiguous regulations and the volume of amnesia applied was mind-boggling, exceeding the power of understanding and the ability to pay those sanctioned. Beyond these aspects, the issue of the constitutionality of those measures also arises. Weren't they hit by nullity because of constitutional flaws? We try to find the answer by analyzing the legal instruments for their

concretization in social practice. Let's take them one at a time: first about establishing a state of emergency.

3. About the establishment of the state of emergency in Romania

3.1.Specifying issues

The state of emergency is a fact before it becomes a legal regime. Therefore, we are dealing with a state of affairs that can be transformed into a state of law, at the initiative of the President of the Republic. He notes this by a presidential decree, thus allowing the executive to turn it into a legal regime by establishing exceptional measures of a binding nature, for the administration of the situation. In other words, the President's decree does not give rise to a state of emergency, but only establishes it, as a matter of fact, and gives the Government the possibility to administer it on the basis of normative acts adopted by it as a matter of urgency. The decree by which the President ascertained the state of emergency and thus initiated the consecutive procedures provided by law, affects the balance of powers. That is why the constituent legislator elected the President to ascertain it, because the President is not part of any power, being a mediator between them. The election of the President was also justified by the urgency of solving the problems posed by particularly serious threats to untimely values such as public health, national security, etc. A one-person institution can manifest faster than a collective one.

The regime of the state of emergency is not provided by the Constitution, but by a special law. The Constitution provides only the regime of ascertaining the situation that attracts the application of that special law. It is only that law that changes the normal balance between the powers of the state. Noting, by his decree, the existence of factual reasons for the implementation of the law on the state of emergency, the President creates the premises for the initiation of the subsidiary mechanism of exceptional governance, previously defined by the Parliament. In addition to the fact that the presidential decree is only an act of finding, not of disposition, it is issued under the resolutive condition of approval by the Parliament. Its only full and unconditional effect is to force Parliament to meet within a maximum of five days to decide whether to approve the transition to a state of emergency identified by the President or not.

Parliament cannot ignore the decree, but has the right to reject it. Why did it settle like that? Because the Parliament is, among the state powers, the most affected by the change, be it temporary, to the relationship between prerogatives (the one who acquires increased prerogatives being the executive), but especially because he is the supreme representative of the Romanian people. The president is not the supreme representative of the people, the latter being the holder of national sovereignty. The president is neither the "head of state", but the "symbol" who personifies the state. It is logical, therefore, that the perception of the President, who has come to the conclusion that a state of affairs has been created that makes it appropriate to govern in an emergency system, should be subject to censorship by the people (the one who bears the consequences of such governance).

3.2. Legislation and governance in an emergency system

The specialized doctrine discussed whether or not the President's decree on the state of emergency can be amended by Parliament. The constitution says that parliament has the ability to approve or reject it. From here, some concluded that it would be impossible for the legislature to amend it. Such a conclusion ignores two long-established principles of law: ubi lex non distinguit nec nos distinguere potemus şi qui potest majus potest minus. According to the first, if the law (in this case the Constitution) does not distinguish between partial and full approval / rejection, in the application of the law no one is allowed to make such distinctions. However, the constitutional text does not forbid the Parliament to approve the presidential decree subject to its censorship, with modifications. According to the second principle, the one who can more or less completely reject the decree in question, can even less, respectively to reject it only in part. These being clarified, it should be noted that the "only legislative authority" in Romania is the Parliament. Under certain conditions, the power to legislate may be delegated to the Government, but it does so ad referendum, ie under the control of the Parliament, respectively under the condition of subsequent parliamentary approval. Nowhere does the Constitution give the President the right to legislate. It would also be illogical, as he is a mediator and not a power. Any attempt to do so is unconstitutional and is therefore struck by absolute nullity. What happens, however, if the presidential decree on the state of emergency also contains legislative provisions? If through this

tool dedicated to ascertaining a situation, is an attempt to establish binding rules of conduct? If the President legislates? Obviously, such an abuse cannot change the Constitution, especially in the matter of fundamental human rights and freedoms.

3.3. Restriction of fundamental human rights and freedoms

A special problem arises when the management of the state of emergency requires the restriction of the exercise of fundamental rights. The Romanian Constitution includes in this respect a special norm of protection. Thus, it provides that "the exercise of certain rights or freedoms may be restricted only by law." In the face of the explicit form of such a text, it remains to be discussed whether the law can be adopted in a first phase by the delegated legislator - the Government. The Constitution speaks of “law”, and not of “ordinance” (emergency), the latter being the name under which the normative acts with the force of law are adopted by the executive. Admitting the restriction of the exercise of fundamental rights by ordinance would be not only an inadmissible addition to the Constitution, but also a violation of the constitutional logic that requires that, when it comes to limiting such rights, the interpretation of reasons and procedural rules be as more restrictive. This is one of the reasons why the Constitution stipulates that during the state of emergency, the Parliament be in session and, at the same time, prohibits its dissolution. Being in office, the parliamentarians can adopt in the emergency regime, compatible with the general state of the nation, all the legal restrictions that are imposed. Therefore, the request of some that such restrictions be established at least by the GEO, is an unacceptable compromise, both in terms of the procedure established by the Constitution and in terms of the substance, circumscribed by the paramount importance of the values to be defended. And yet, what do we do if the presidential decree also "legislates" the restriction of some fundamental rights, as happened with the decrees issued by the President? We cannot give a formalist answer to these questions, as the debate takes place against the background of a state of affairs marked by great dangers and which demands urgent, radical solutions. What would be the answer?

One possible answer would be for the presidential decree containing provisions exceeding the President's powers to be rejected, and for him to issue another decree in accordance with his constitutional prerogatives. Another would indicate the exclusive

approval of that part of the decree that remains within the presidential powers, the rest being either eliminated or taken over by the Parliament in a separate normative act, with the force of law. A third solution would be the full approval of the decree in the form in which it was submitted by the President. The first formula affects one of the fundamental principles of urgency, namely the shortening of the time between the notification of the problem and the establishment of measures for its management, as well as from the definition of these measures to their implementation. The time taken to agree the presidential decree with the Constitution could be fatal from the perspective of the targets to be achieved. From such a perspective, the second solution is likely to reconcile constitutionality with opportunity. In doing so, another principle of law is applied according to which "interpretandus est potius ut valeat quam ut pereat". Which means that the law, but also any other manifestations of will that seeks to create rights and obligations, must be interpreted in such a way as to produce effects, and not to remain without any consequences. By approving from the presidential text only what the President had the power to propose or establish, his manifestation of will does not remain sterile, but can be capitalized according to objective needs, eliminating those components that exceeded his powers. And this without at least the latter being completely lost, as it would be the subject of a law adopted by the legitimate legislative authority.

The Romanian Parliament has chosen, in the case of the Covid 19 pandemic, the third formula. Which triggered other disputes. Some have said that the entire presidential decree would be null and void, as the legal basis (which should have been a valid decree) is missing, the government's state of emergency regime would be illegal in its entirety. It's like a lot; and all that is excessive is ridiculous. Others stated that the approval given by Parliament would have been likely to require only the establishment of a state of emergency from a legal point of view (ie to allow the Government to apply the law on the state of emergency), but did not validate the limitations of fundamental rights contained in that decree, as well as other provisions thereof having a legislative character. In such conditions, the mentioned limitations do not exist, and the sanctions for their violation are absolutely null. You cannot sanction (contravention or criminal) deeds that are not defined by law as contraventions or offenses (nullum crimen sine

lege, nulla poena sine lege - there is no deed punishable by contravention or criminal if it is not defined by law and no penalties can be applied which are not established by law, for committing such illegal acts). This was also observed by the People's Advocate when he asked the RCC to establish the unconstitutionality of the military ordinances by which contraventions were established consisting in violating certain restrictions that no law clearly defined, as well as the GEO by which sanctions were applied of these so-called contraventions. To those who replied that, however, the Parliament approved the presidential decree without being hindered by any of its provisions and that the legislature took over the provisions that were within its competence, and not the President of the Republic, it was replied that the instrument by which the approval was adopted was a "decision" and not a "law". In other words, if part of the decree had been approved by decision and another had been adopted by law, it would have been something else. However, we appreciate that such an approach is excessively formalistic. In fact, both the decisions and the laws of the Parliament have the same binding force, the difference between them being given by their object, and not by the consequences they produce.

Then, in qualifying the nature of a legal act, it is not the title that is given to it that matters, but the content that it has. And if we are dealing with a heterogeneous content, there is nothing to stop us from concluding that in a single package, which was labeled with a single label, two distinct legislative products were packaged. Otherwise, we cannot believe that Parliament could have given the green light to the establishment of a state of emergency in conditions that violated both the Constitution and the fundamental rights of citizens. It is not like that? That this is the case is proved by the decision approving the decree extending the state of emergency. Based on the experience of the first time in which it was observed and probably inspired by the criticisms and exceptions of unconstitutionality formulated by the People's Advocate, the legislature did not take over the texts aimed at limiting fundamental rights, included in the presidential decree, in imprecise form author, but asked the government to define and make all these limitations mandatory by law. Until such legislation is adopted, all restrictions on rights are null and void and therefore do not produce any binding effect.

Therefore, the presidential decree extending the state of emergency was divided by the Parliament into two parts. One concerns the right of the government to continue to act with the special powers conferred by the law of the state of emergency and this, the only one that falls within the competence of the President to refer to Parliament, has been approved. Another included the provision to extend legislative measures, and in particular those restricting the fundamental rights of citizens, included in the first presidential decree (the one that triggered the state of emergency), and it was not approved as not within the competence of the President , the issuer of the decree. Summarizing all these considerations, where do we end up? We conclude that all acts by which fines have so far been imposed for violating the limits on the fundamental rights of citizens, on the grounds of urgency, have been null and void, as those limitations, as adopted by Parliament in the decision approving the presidential decree of 16 March 2020, as well as by subsequent military ordinances, did not clearly establish the content of the prohibited acts, the commission of which attracted the contravention sanction. According to an even more radical interpretation, these acts are null and void also because the prohibitions were not established by law, but only approved by a decision of the Parliament, thus itself in constitutional defect. From the end of the first period for which the state of emergency regime was established, however, things are even clearer. After the first thirty days of the state of emergency expired, the military ordinances that imposed the restrictions in question also expired. They could not be extended by law, as the presidential decree on the extension of the state of emergency was adopted by Parliament subject to all limitations on civil rights, under the conditions of that state, being made by law. Which didn't happen. Therefore, the ordinances which could initially be adopted only for a specified period of 30 days, as long as the state of emergency had been declared, expired at the end of that period (as would have happened and if the state of emergency had not been extended), without others having been adopted by law. Basically, it could also be a law that would receive them and adopt them as such, giving them the power of a parliamentary normative act. Which was not done. This means that not only unconstitutional ordinances but now expired unconstitutional ordinances apply. A constitutional chaos that is painfully reflected in abuses whose effects the citizens bear. This is what our contempt for the

Constitution and for Parliament leads us to. And, leaving our brief legal exegesis, let us turn to a paradigm that, in the economics of our study, represents a possible opinion to consider. More clearly, some thoughts on justice and legal imagination in times of pandemic.

4. About justice and truth in times of pandemic

In times of trouble we do not know what to do. Some lament and think of the end of the world and the predictions of Nostradamus. Others bravely speak and rite that we are not afraid of anything, but deep down only we know what it is. Most of us are silent, we look around and we can't believe it. I know that there is no one with a miraculous solution to make us optimistic these days. We think about what's worse, we look at those who are hit harder than us, we sink into gloomy thoughts. Obviously, we also have some remedies, some only palliative. Then we think that this is not the first planetary catastrophe that humanity is going through. There have been sudden colds or warming of the climate, there have been deadly plagues, from the Black Plague which killed, in the middle of the fourteenth century, between 30-60% of the population of Europe to the Spanish Influenza at the end of the First World War, which killed more people than the war itself. And, each time, life won. But we still think, these days, about others and we encourage ourselves with our word, often savior, that in all evil there is also a good. Since when have we not breathed cleaner air, especially in big cities? For now, we can walk - because God has given us feet to walk with them and not just put them on the accelerator pedal of the car or to force them to the elevators - through safer places, on paths long forgotten and bypassed . We always hurried past the buildings and did not see an original architectural detail, we did not have time to appreciate a street corner, a statue or a bust of a man once famous and today forgotten. Since when have we not had time to watch a goose that rises after the winter? Maybe in the long evenings, we, like Blaga, will be able to hear "how the moonbeams knock on the windows". Maybe we haven't listened to our parents and grandparents in a long time, with their pains, with their old stories, with their obsessions with old and sick people. It may seem to us that their fixed ideas, their annoyances, their advice and even their memories, the nostalgic thoughts of their past life, are suddenly full of charm and heart. Since when have we not played seriously with our grandchildren or children, without

haste, in peace, with an open soul? Now we have time to put ourselves in their shoes and understand that "their joy and love is the game", that they also need childhood and that it is so simple, necessary to be a child sometimes.

Some of us are surprised that Romanians come home from afar and we think that they should stay where they are. Yes, comfortable and safe for us and, perhaps, even for them, it would be so, only that human nature is not always guided by the rules of reason. In addition to the mind, we also have a heart, and the heart draws us to our home, next to ours, those wool that can understand our "joy and bitterness", longing and pain. Now it is clear that globalization cannot separate us from the "birthplace", that we express our worries better in Romanian, even if we also speak English, French or German. Tired of the hectic life, tired of the daily running, kicked out of the passing jobs, sometimes humiliated for the hard-earned money, scared of the danger of extinction among foreigners, Romanians take the country. Some realize only now that once, when the temptation of substantial gain could blind them, they blasphemed the country, instead of upsetting only the bastards, the reluctant institutions, the unfortunate circumstances. How many times have I heard people say that they no longer need Romania, that they are tired of Romania or that they will not return to Romania! The soul does not bend, however, according to cold reason, after momentary pride, nor after copious material income.

Many are now listening to the national anthem with other ears, and to some Ciprian Porumbescu's "Ballad" gives them different thrills. The house at home, no matter how humble, is now more valuable than all the money in the world. The word "to cling to the Gentiles" now seems to have a different meaning. And this is happening in the middle of the isolation at home to which we are urged. We isolate ourselves, of course, but we isolate ourselves in unity, and this unity also consists of the great family that is our nation. We often consider ourselves more stupid than others, more uncivilized, more uneducated. We rush into stores, we stock up too much, we bend our elbows and scream, we lie that we are not infected and that we have not been in risk areas, we behave irresponsibly. But how do others - faced with this extreme situation - do? Are they much better, more humane, more supportive? Not always and not all! I saw huge queues in London or Los Angeles, I saw pushes, insolences and pretensions

in Paris or Madrid. People are people everywhere, for better or worse. But peoples are not good or bad, moral or immoral, selfish or generous, but only people are like that. This is not the time to complain, but we have to adapt as best we can to the circumstances and move forward. Let us consider that, in the midst of this immense evil, we have gained in communication, dialogue and humanity. I see Romanians every day who go to feed other Romanians, who share food and masks, who carry vitamins to strengthen the body's immunity, who take care of the pets left alone. They must be valued and encouraged. I also see careless, selfish, reckless or cynical Romanians, irresponsible or evil. They must be withered and punished.

Current and exceptional laws, the rules of living and living together are not discussed, but applied. Now is not the time to be original, to show off our pride and initiative, to try to "manage". It is true that "the Romanian was born a poet", but now, in public life, law and order must reign, not "poetry". On the other hand, Romanians are not German or Swiss and do not have a whole history of freely consented citizenship and democracy. I would like to see politicians who explain this state of emergency for everyone to understand, not to speak only in sentences, from the height of their podium of leaders, not to hide their trembling words, to show us that they live our drama and that they share our hope. Sweet but firm speech can move mountains. Let's be gentle, kind to doctors and teachers. The former heal our bodies weakened by disease, and the latter heal our souls, carry on education, cultivate trust in man and humanity. We would also like to feel the politicians as ours, with our fears and beliefs, with our simple words. But, in addition, beyond all these naiveties of mine, they have another duty: to take good measures, to have the appearance of leaders, to be aware of their role as elites, so that they can instill confidence and hope in us. If they can't or don't know how to do this, then it's serious, because these people need good guidance, the right guides. Otherwise, "we gladly take them all," because we know we are transient and vulnerable. If we don't always do it, it means that we have great deficiencies in education, that we didn't go to school properly, that we stayed at an inferior stage.

This unexpected crisis has taught us what to value in life, how to separate values from nothing, what great wealth is the wealth of the soul. We run moment after moment for money, we seek to live in great material comfort, we often hide our true feelings, and

now we realize what wealth we have in ourselves and how we could pour that wealth upon our fellow men. Maybe, after this hard test, we will otherwise arrange our individual and social life, we will wake up to be better and fairer, we will pour our overflowing soul towards the world and the country, that is, towards our corner of the world, which we do not we love him because he is perfect (he is not!), but because he is (still) ours. But we also know that the desire for truth is the engine of the life of each of us, and the cornerstone on which our personality is built, from which springs the desire for justice, is the only perfect synthesis between being and having. However, the fulfillment of this wish would not be possible without a space of freedom. But at the end of the last century, excited by the implosion of the communist system, Francis Fukuyama hurried to proclaim the end of history and the rule of freedom in a globalized world; a late disciple of Hegel, this American philosopher associated the end of history with the last man, so that the desire for truth and justice could have been fulfilled from that moment in a space of freedom extended to the dimensions of the entire planet. Perhaps this philosopher did not understand that the fulfillment of the desire for truth of one man would need the gradual expansion of the space of freedom, to a global dimension; this extension would be only the necessary condition for all people, regardless of their affiliation (ethnic, racial, national, religious or cultural) to have access to the space of freedom in which it is possible to achieve the desired goal. It is easy to identify in this evolution the utopian project of the universal republic, present, explicit or implicit, first in the ideology that prepared the French Revolution, then, on a larger scale, in the ideology that prepared the Bolshevik revolution, and finally in the globalizing ideology of political correctness. But it is not the desire for justice and truth that is to blame for this evolution, but the rational fervor from which the utopian project of a universal space of freedom, undifferentiated, capable of dissolving the boundaries of diverse and often adverse community identities. It is reasonable to believe that in order to fulfill the desire for truth we need a space of freedom, but it is equally reasonable to link the realization of this desire to the virtues of our fellow men, as well as a decent state of prosperity, understood not as a goal but as a premise on which natural efforts to search for and identify the bed of personality can be based. Now, in a world that can

hardly keep its temper, it is difficult to have such a thing, as we will develop in the concluding assertions that will follow.

5. Conclusions

It is no coincidence that today I share these thoughts about the desire for freedom and truth, about the protection of fundamental rights and freedoms. The pandemic has turned this paradigm into a real crisis. Internationally, we have encountered a borderline situation, occasioned by the acute conflict between globalists and nationalists. The latter have slipped into national exclusivism and sometimes even xenophobia and chauvinism, and globalists have become contaminated and sometimes dominated by neo-Marxism, anarchism, "progressivism", agnosticism, cynicism, anti-Christianity, etc. The values of Western European civilization - spread over several continents - are, for the first time in centuries, questioned, challenged, abused and even destroyed in effigy, that is, by their symbols. We, the Romanians, could not stay out of these great challenges. We look, in full health alert, at a world that no longer resembles ours, with the settled human society. It is an insecure, unstable world, without trust in values, in honor, fairness, in the cult of work, in the virtues of education. . We have come to believe that we will be able to live forever from now on outside of direct, natural and natural socialization, like robots, which is very serious. Why are all these things happening? It's very hard to say! We had come to believe that the good is eternal and that we must no longer strive to perpetuate this good. We were deceived by illusions, we put appearances before essences, forms before substance, facilities before effort, pleasure before work. Or, for at least two millennia it has been known that "nature gives nothing to man without much perseverance". The solution: to return to humanity, that is, to the human essence, to those simple issues that make us human. And because the year 2020 was one of elections, I voted with justice, with the true glory of civilization, with self-respect, with the appreciation of values, against statue-breakers, those who ban books and writers, those who burn goods and rob shops, who believe that one can live in society without order and discipline; I would vote with those who still know what Greek-Latin classicism and Judeo-Christianity are, with those who defend the faith in God and do not set fire to cathedrals, with those who know that without a book you have

no part, with those who build houses, who I plant trees, which make families and have children, in order to take the world further because in the face of deception and betrayal of foreigners, "only trust in ourselves and in our Romanian people can save us". If we have the strength to trust ourselves, if we respect and love our country and the people we belong to, we will certainly find the most suitable allies. If we continue to flog ourselves, if we blame ourselves, if we always take the world in our heads, then we will destroy ourselves and we will not need any allies.

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CYBER-CRIMINOLOGY – A NEW FIELD OF SCIENTIFIC RESEARCH AND CRIMINOLOGICAL INVESTIGATION

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Abstract:
Virtual reality and the computer systems used in communications represent a challenge for traditional research in criminology, introducing new forms of deviant behaviour, crime and social control. Thus, a new notion and a new field of scientific research has emerged, called Cyber Criminology, which is defined as the study of the causality of crimes committed in cyberspace, a virtual space and their impact on physical space.The article aims to highlight the role of this new discipline Cyber-Criminology in criminological investigation and scientific research, which has the potential to become an independent discipline in academia and academia due to the dynamic expansion of its interdisciplinary content in teaching and research.
Keywords: *cyberspace, cybercrime, criminology, cyber-criminology, investigation.*

1. Introduction

The information society operates in a space called cyberspace which "represents a global domain in the information environment consisting of the interdependent network of information infrastructures, including the Internet, electronic communications networks, computer systems, processors and embedded controllers" [1].

A criminal activity also appeared in cyberspace.

The main advantages of the Internet, as well as its vulnerabilities have created a favorable framework for criminal activities, leading to the emergence of a new form of crime, cybercrime. Cybercrime has become a global problem that affects all countries in the world. Cybercrime is a broad and generic term that refers to crimes committed using computers and the Internet.

Criminology, which is a science with its own individuality, intended to study the causes, state and dynamics of the criminal phenomenon, the criminal, in order to improve the act of justice, the policy of social defence against crime and its prevention, can also be seen as a dimension of cyberspace crime. Criminology is the social science

that addresses the systems of criminal law, criminal procedural law and criminal enforcement law, as well as the relationship between criminal victim and state, being considered a descriptive science by creating specific theories based on the results of social life applied science by adopting measures and means to reduce crime, in close connection with other sciences: sociology, psychology, forensics, criminal law, criminal procedural law [2]. At the same time, Criminology is a scientific approach to study the social phenomenon of crime, in order to prevent and combat it [3].

Criminology as a theoretical-explanatory science, with implications of a practical, applied and in-depth examination, like the social sciences, aims at the system of research measures in the field, crime prevention and control, treatment of criminals, based on methods and techniques modern investigation [4].

Criminology is the social science that addresses the systems of criminal law, criminal procedural law and criminal enforcement law, as well as the relationship between criminal-victim-state, being a descriptive science by creating specific theories based on the results of social life, but also a science by adopting measures and means to reduce crime, in close connection with other sciences, such as criminal law, forensics, judicial psychology, legal sociology [5].

Since 1990, theoretical and practical research has observed how cyberspace has become a new field of criminal activity. Cyberspace has changed the nature and field of crime and victimization. Therefore, a new notion and discipline has emerged, called Cyber Criminology, defined by Indian criminologist Jaishankar Karupannan in the year 2007, “the study of the causality of crimes committed in cyberspace, a virtual space and their impact on physical space” [6].

Following the emergence of this new concept, Cyber Criminology, the following aspects have been highlighted in the literature: [7] firstly, the field of action of cybercrime should not be confused with the field of criminal investigation, but still it should have interferences with the field of forensic investigation of cybercrime; Secondly, the new university discipline Cyber Criminology must be an independent one in order to study the phenomenon of cybercrime from the point of view of the social sciences.

We consider that the discipline of Cyber Criminology has become in some legal systems, such as India and the United States of America, a discipline of university study and independent research, due to the dynamic expansion of its interdisciplinary content in the teaching and research process.

As this new discipline has become an independent one, we believe that it will have to face challenges related to the problems of teaching, research and professionalization of the recent discipline.

2. Aspects of the causality of crimes committed in cyberspace

Criminologists seek to collect important data about crime and interpret it scientifically. By developing empirically verified statements or hypotheses and including them in theories of the causality of crimes, criminologists hope to identify the causes that determine the commission of crimes.

One of the important objectives in criminological research is the elaboration of valid and precise theories regarding the causality of crimes. A theory can be defined as an abstract statement that explains why certain things happen or do not happen. A valid theory must have the ability to predict future events or observations of the phenomenon studied and be validated or tested by experiment or other form of empirical observation.
To study cybercrime, we appreciate an empirical approach to it, which includes estimating the magnitude of cybercrime, analyzing theories about the causality of cybercrime crime and victimization, and developing models to explore the impact. criminal justice policies for preventing and combating cyberspace crime. A comprehensive study of this phenomenon requires a multidisciplinary approach: knowledge of computer and telecommunications networks; an understanding of computer systems and how they can be attacked; knowledge of cyberspace crime legislation; an analytical approach to investigate the impact of cyberspace crime on society and to assess the effectiveness of cyberspace crime prevention measures.

Although the criminological analysis of cyberspace crime is much more present lately in the studies of the specialized literature, nevertheless, the criminological literature has not researched in detail the quantitative or analytical problems related to cybercrime.

3. Space Transition Theory

Ever since Criminology observed the emergence of cyberspace as a new place for criminal activity, there has been a need to develop a new theory to explain the causes of crimes in cyberspace. Thus emerged a theory specific to cybercrime, the Space Transition Theory, which explains criminal behavior in cyberspace.

To analyze criminal behaviour in cyberspace, Indian criminologist Karupannan Jaishankar developed the Theory of Space Transition that explains the causality of crimes committed in cyberspace. This theory refers to the movement of people from one space to another space (from physical space to cyberspace). The theory supports the idea that people behave differently when moving from one space to another.

The basic principles of this theory are as follows: [8]

- Persons with repressed criminal behavior in physical space tend to commit the crime in cyberspace, who would not otherwise commit it in physical space because of their status and position;
- The flexibility and anonymity of identity and the lack of deterrents in cyberspace give criminals the opportunity to commit crimes in cyberspace;
- The criminal behavior of criminals in cyberspace is imported into physical space, which can also be exported from physical space into cyberspace;
- The actions of cybercriminals and the dynamic spatial - temporal nature of cyberspace offer the chance for cybercriminals not to be discovered by the judiciary;
- Criminals from different nation states can associate in cyberspace in order to commit a crime in physical space. The association of criminals in the physical space is suitable for committing crimes in cyberspace;
- People in a closed society are more likely to commit a crime in cyberspace than people in an open society [9];
- The conflict between the norms and values of physical space with the norms and values of cyberspace determines the commission of crimes in cyberspace.

We appreciate that it is necessary to conduct studies in the future to test this theory to see if it explains the criminal activity in cyberspace.

4. Theory of Technology Enabled Crime, Policing, and Security

Theory of Technology Enabled Crime, Policing, and Security explains to society why cybercrime has developed with the help of innovations in information and communication technology [10]. Moreover, the Theory of Technology Enabled Crime, Policing, and Security complements the existing theories on the causality of cybercrime and on the development of information and communication technology.

The innovative use of information and communication technology has led to the emergence of new types of crime. Initially, these new types of crimes due to their complexity were not understood by law enforcement agencies, as they could not explain how criminals used these technologies to commit certain illegal acts [11].

Once the new crimes were understood by law enforcement, lawmakers were able to change the legislative framework by criminalizing these new types of illegal behaviours [12].

5. Conclusions

We believe that the new subject Cyber Criminology should be introduced into the curriculum as a compulsory subject in law schools, given the importance of the science of criminology and the expansion of the phenomenon of cybercrime worldwide. As this new discipline has become an independent one, we believe that it will have to face challenges related to the problems of teaching, research and professionalization of the recent discipline.

At the same time, we believe that criminological studies should be continued worldwide, in order to explain the causality of crimes in cyberspace.

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CYBERCRIMINALS AND THE VICTIMS OF CYBERCRIME

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Abstract:
Technological development and the large scale use of computer systems have led to unquestionable benefits, but to an equal extent exposed society to a series of risks related to the ill-intended use of these systems. In practical life the dependence degree of public institutions, legal and physical persons on the use of digital networks is translated into a similar degree of vulnerability, and exposure to the illegal use of these technical means. The computer has been a first rate crime-enabling factor providing wrongdoers with a new object (the information contained in digital systems) and a new tool.
Keywords: *cybercriminal, cybercrime victim, technology*

Introduction

"Cybercrime" is not just a change of name in regard to approaching former crimes in a new form, but a fundamental transformation in our manner of approaching digital crime.

This new type of crimes are committed by people as well, they are still deliberate and usually aim at obtaining financial benefits. In other words, they have a purpose, and in case it is reached, and break the law - they are criminally liable.

Computer experts are people with higher training and a structurally logical way of thinking. Still, what may make them use their knowledge for illegal purposes? Money? „Fame"? Frustration with a boss who is much better paid but less competent? Arrogance? These are but a few questions that cannot receive a definite answer. Probably the answer is somewhere in between all these possibilities.

Digital crimes are not committed only by people with superior training in informatics, but also by teenagers and persons with minimal digital knowledge, able to take advantage of the gullibility/ ignorance of their victims.

It is well known that hackers are usually apprehended only when they attack. Armed with patience and resourcefulness which are not in short supply in their case,

they may stay „hidden" in our digital systems, planting their bugs, worms and bombs for a future disaster [1].

Some hackers become computer addicted, and turn their own programs into prisons for their own body. When they sleep, if at all, they cry in their sleep for the program stolen or unfulfilled, get out of bed with their hands clenched and jump directly to the computer, where they find the incorporable exaltation of the cyberspace, and take their drug red eyed and restless [2].

It should be mentioned that, in addition to the cyberspace addiction created, hackers position their power by anonymity. To them it is a dream that they recovered the power and got „inside", where they can see everything without being seen. This strange dream to penetrate the computer logic by defeating the system victimises the system itself [3].

These people merely consider themselves addicted to hacking, and parting with their computer may be perceived as a tragedy [4].

To most law-enforcing individuals, hackers are just regular felons using unusual means to reach their goals [5].

But who are these perpetrators of cybercrime? What lies beneath the names mentioned in mass-media?

Digital criminals

3.1.1 Cybercriminals acting in cyberspace

The criminals called phearks are those individuals who use their phones to access cable communication networks, in order to illegally penetrate computer systems, to the purpose of exploring, getting information or merely out of curiosity.

Hackers are individuals who by means of computers illegally log in their system through password cracking, to the purpose of exploring or stealing information.

Hackers may be of various types. Many are just curious and want to learn how a certain program or system works. They generally do no harm, and may even be useful in finding weak areas of the programs (bugs). In any case, the activity of these individuals, if it gets out of hand, may cause a lot of harm to companies or even national security (as in the case of the attacks against the Pentagon site).

Professional hackers use their knowledge to cause harm. The actions of these individuals result in consequences ranging from mere inconveniences to considerable destruction. The latter category also includes attacks of the „denial-of- service" type (blocking the activity of famous sites like E-bay or Yahoo).

Crackers are the criminal category who manage to penetrate the informatic systems of an organism, institution or company, by breaching the digital security systems. The access is remote, through a mere PC equipped with a modem.

Information traffickers commit crimes that bring them huge financial benefits. They are involved in electronic espionage and sell the secrets of the firms who information networks they breach to competing firms.

Hucksiers are a category of spammers with a lower rate of message profit (e.g. at least a month) out of a high number of spam messages sent to an address. They may send spam for the delivery or download of a fraudulent product in itself.

Fraudsters are a category of spammers with a higher profit rate of a message (e.g. even in 12 hours since sending it) out of a low number of spam messages sent to an address. They are usually involved in frauds of the phishing or "Nigerian letter" type.

3.2 New and old modus operandi of digital criminals

a) Denial-of-Service attacks (DoS): flooding an IP address (identification number of a computer or another type of device) with data, resulting in blocking the computers or the internet connexion - most attacks of this type are launched against important websites, with the intention to prevent the access of their regular customers [6].

This type of attack is "an incident whereby a user or organization cannot use a resource that they normally have access to, … by blocking a certain network service or temporary loss of connectivity", and may result in affecting the programs or files in the targeted system [7].

b) bofi type attacks (a bofi being a `type of worm that exploits the various vulnerabilities`) generally target specific points, like spamming or phishing [7].

c) Phishing type attacks affect the digital systems of physical and legal persons alike, consisting in `fishing` information on the user and other information stored in the computer.

d) Trojan: a malicious program masked as something harmless, usually an email attachment or an internet download - it opens up the computer, allowing access to a hacker. Unlike viruses, these programs cannot replicate themselves. The trojan is a program that “disguises itself as something else when being executed”. The trojan “must be sent by someone or carried by another program an dit is usually received as a joke or a software” [7].

In point of effects, a trojan may destroy digital data or even block the access of the rightful user to the digital system.

a) The Dialler is a “program using the computer or a modem for the dial-up connection to a location, usually at high costs”. The user may know or not when installing such a program, but more often then not it is executed without his permission [7].

b) Cookies consist short text information, transmitted by a web server together with a net page and stored on the hard-disk. Cookies contain information allowing the web supplier to count the access to his pages, and may at the same time adapt his offer to the users’ desires [8].

These programs are not normally able to spy the data in the computer where they are installed nor start programs. However, there is the possibility that any „intruder” may read such a cookie, thus gathering personal data of the person using that particular computer.

a) Exploit is “a program or technology exploiting the vulnerability in a software, and may be used to breach the protection or attack in a manner or another a system in the network” [7].

b) Viruses are code sections able to replicate, sneaking through the programs inside a computer and triggering various effects, from erasing important files to destroying the whole system. These programs may multiply on their own, attacking other computers by means of the infected computer.

At the same time with the digital data transfer, the danger of infecting computers with viruses increases dramatically. The risk is higher if these computers make up a network. This is why certain viruses have managed to spread globally causing damage amounting to hundreds of millions dollars.

Any type of digital data stored in a computer may be affected by viruses, starting with simple programs, applications or documents, to boot or partition sectors.

There are encrypted viruses (that use “encryption to hide from virus scanners… modifying their own code”, to be as hard to detect as possible), polymorphic viruses (`that change the byte matrix when replicating and thus avoid detection by simple scanning techniques”), metamorphic viruses (“that change their own code but preserve the same functionalities from an infection to another”), retroviruses (“attacking one or more antivirus programs to avoid detection”) and even macro-viruses (“a program or code segment written in the internal language of an application; certain macros replicate, others infect documents”) [7].

a) Worms are self-distributing programs (even under different names) by copying from a computer to another, by e-mail or inside the network.

The Mailer is “a worm sending one or more emails with its code as an execution attachment” [7].

The Mass mailer is “an Internet worm that is transmitted to one or several emails with its code as execution attachment; it is usually done by accessing the local email list and sending mails to all the addresses found” [7].

b) Spyware consists of “programs able to scan systems or monitor activity and retransmit the information collected to other computers or locations” [7]. The collected information may consist of passwords, bank account numbers, any type of personal documents or information stored in the computer. Some of these programs may be used to find information about the programs installed on the computer and their activity.

c) Java: platform-independent programming language, created by Sun. Relatively harmless, certain programming errors allow hackers to get unauthorized access to a digital system.

d) A Bug is “a programming error in an application that may have undesired side effects, such as various security issues occurring in some browsers” [7].

e) Adware „facilitates the distribution of advertising content to the user either by means of their own windows, or by using the interface of a different program... they may collect information from the user’s computer, including information relative to browser

use or other activities taking place on the computer, and relay this information to an internet location" [7].

f) IP-Spoofing: data exchange between two computers via the internet is always performed by means of an IP number, a series of figures consisting of 4 blocks of 8 bits each (this number corresponds to the digital address of the computer); there is a series of tricks hackers use to manipulate records, so that a fake web-server may be launched, which looks exactly like the original computer of a bank, for instance (but instead collects the passwords and then makes the connection with the real computer of the bank, thus making it possible to steal huge amounts of money).

g) Buffer overflow is a "a corruption of data resulting from copying a larger data block than the available buffer (without checking the size of the block)" [7].

h) Pharming consists in using a malware code to illegally access and steal personal information, the code being sent in an email or even through an unsecured webpage.

i) "Supervorms" do not require their activation by the user, and making and distributing them involves many resources and much time, their purpose being more to destroy than to obtain profits.

j) "Rootkits" work stealthily, unlike superworms, being in fact intelligent programs working in a part of the operating system that is inaccessible to antiviruses, and allow the remote control of the digital system and even data manipulation.

k) Bluesnarfing - attack against a mobile phone equipped with an operating system by exploiting the poorly configured profiles of the serial ports (Serial Port - ports used for serial communications, the transfer happening bit by bit) [9]. These ports are in fact concepts for headphones or other extensions connectable through Bluetooth.

These are just some of the methods used by the digital felons to reach their goals. Any internet-connected system is vulnerable to these attacks, even if they originate hundreds of thousands of miles away.

In regard to the felonies committed by these devices, the enumeration may only be exemplifying: from simple disturbances of the digital systems, to stealing and destroying data, from espionage to sabotage, from copyright infringements to very serious offences.

Victims of cybercrime

According to a study performed by the AVG security company, 43% of the British citizens feel more vulnerable to cybercriminals than thieves, muggers or robbers. It may be accounted for by the fact that one out of three people questioned has already been the victim of an online attack. Most often the victims complained about unauthorized bank transfers and credit card fraud.

In order to fight this type of crime, 90% of the respondents in that study specified that they installed antivirus software in their computers, although most of them are aware that it may not be enough.

The physical persons who become victims of cybercrime are generally people who, out of ignorance or superficiality, made available to the digital felons their personal data (among which bank account numbers or even PINs), which were subsequently used against them or for cyberfrauds.

Another category of victims that are particularly targeted by digital attacks are gullible persons who easily fall for offers that are “too good to be true” or pyramid schemes.

It is surprising how easily data are divulged over the internet, which in other circumstances would not be supplied. For instance, if a person is approach on the street and asked about his/her bank account number, the reaction would certainly be at least one of suspicion. But if such a request is made via the internet, integrated in an email that looks more or less official, the situation is completely different.

There are also studies showing that some individuals would unhesitatingly divulge personal passwords like the one for their email.

Internet fraud causes victims (physical persons, banks, online shops, etc.) losses of millions of millions of euros. For example, only on Christmas and New Year’s Eve 2002 online shops had losses of 100 millions euros [10].

In the internet world, there are not only victims of digital fraud. A new phenomenon causes concern in legal communities, i.e. harm caused to private life and online dignity. More specifically, online slander and online harassment, that more and more public or less public persons become victims of.

The most serious informatic attacks occur on legal persons. Out of these, the favourite target of these attacks is banks and great financial institutions.

They are targeted by attacks against the security systems resulting in the unauthorized access of felons into the digital systems and networks, as well as by attacks under the form of unauthorized transfers which steal the personal data of the customers of these institutions.

Multinational companies are also a target for cybercriminals who are well aware that a valuable confidential piece of information or blocking the site of a competitor may be `repaid` by another competitor.

Not only legal and physical persons are victims of cybercrime, but states themselves. It is about the practices that have been included within the phenomenon of digital terrorism.

Affecting the telecommunication networks or stock exchanges, paralysing public utility services as the effects of digital attacks are no longer science-fiction scenarios, but real problems that NATO has started to take measures against.

Out of the victims of cybercrime, a certain category deserves a separate analysis, i.e. the sites belonging to famous companies or institutions that are the preferred target of cybercriminals, namely hackers, who wish to `prove themselves`. These sites either are worth millions of dollars, or are centres of national security systems, or are important names on the international level. The damage sustained by them, when quantifiable, are impressive, and the echo of security vulnerabilities is resented worldwide.

An American hacker (Adrian Lamo) managed to compromise the internal security network of New York Times in the early 2002 and add his name to teh confidential database of collaborating experts (among whom there was also the former American president Jimmy Carter). In addition, Lamo illegally accessed information on officials of that company. Adrian Lamo also affected the networks of giants like Yahoo or Microsoft. Captured by the authorities, the notorious hacker pleaded guilty for the attacks against Microsoft, Lexis-Nexis and The New York Times. Lamo was sentenced to 6 months of house arrest at his parents' abode and two years of parole, as well as the payment of damages amounting to 65,000 dollars.

Upon investigation it was found that the hacker was also guilty of compromising the security measures of Yahoo, AOL Time Warner, Bank of America, Citigroup, McDonald's and Sun Microsystems. The parole period was accompanied by the compulsory requirement to use monitoring programs for all the activities taking place on the young man's PC.

When he was finally released, the former hacker declared that he wanted to set up his own company of security consulting.

The case of Victor Faur, 22, from Arad, is probably the most widely advertised in Romania in connection to the illegal access of digital systems, and at the same time of disturbing the operation of strategic networks in the US. He was indicted by a federal tribunal in Los Angeles for breaking the codes of over 150 computers at NASA and the Energy Department, as well as the American Marines, risking a sentence of up to 54 years in prison.

After an investigation of over a year, the prosecution found out that he had illegally accessed 114 NASA computers, causing damages of 1,366 million dollars, plus the costs incurred with the personnel who had to solve the intrusions and retrieve the affected data, as well as losses of 55,000 dollars caused to the Department of Energy, and 38,000 dollars caused to the American Marines.

The attacked computers contained data on spatial programs, new types of technologies, communications with space vehicles during missions and collecting data from the probes sent to the solar system. As a result of these attacks, the American scientists had to repair the damaged electronic systems, and to manually communicate with the space shuttles.

Conclusions

The previous data illustrate how young rebels manage, equipped only with their PC in their own home, to disturb the activity and cause damage of millions of dollars to institutions and international agencies.

Unfortunately, the ever increasing number of such attacks originating In Romania and the ever increasing number of victims of the Romanian hackers place Romania in the top of the countries with a high risk of cybercrime.

The victims of cybercrime rarely report such crimes. The motives are complex, from lack of noticing small unauthorized expenses to lack of confidence in the chances of identification and prosecution of the wrongdoers.

Some states created organizations that post information sources for the victims of cybercrime and addresses where they may report any suspicious activity.

Preventing and fighting the plague of digital crime can only happen starting from educational measures for the users of digital systems and internet services regarding the various online perils.

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