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## The Delegation in Public Law. Critical Considerations

Professor VERGINIA VEDINAȘ<sup>1</sup>, PhD

Faculty of Law from the University of Bucharest (Romania)  
verginia.vedinas@rcc.ro

### Abstract

The article aims to analyze the legal status of the delegation in public law, as a way of exercising the duties by certain persons exercising public offices in the state, together with the exercise of these powers by even the holder. The purpose of the delegation is to release an official by certain official duties, to determine to share them with other owners, who may be deputies or employees. In practice, the delegation has turned into a way which seeks to escape liability, distorting its meaning and significance. Serious is that the legislature encourages such an approach. The purpose of the article is to draw attention on this negative phenomenon, in order to reduce its spread and consequences.

**Keywords:** delegation, responsibilities, competence, accountability, signature, document, public servant, public officials.

I. **Concepts.** The delegation of certain work duties to other persons than the respective public office holders is increasingly becoming a common practice. As a rule, **the right of signature** is delegated.

There are figures in our public life, particularly at central level, who have held key positions but who **have never signed any document that was issued, adopted or signed by the public authority they have managed or they are still managing** and that involves them by virtue of their status.

Underlying such a professional behavior is the precaution of not being involved in any kind of legal accountability attracted by the content of that act, by the proceedings in which it emerged, or by the way it is enforced. Obviously, criminal liability is primarily envisaged. The prospect of being involved in various legal situations determines them to delegate the right of signature to other persons from the respective public authority.

We find it necessary to address this issue because it reveals, in our opinion, **a distorted way of understanding the meaning of a public office.** The name “*public office*” represents an abstraction, a linguistic creation.

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<sup>1</sup>President of the Institute of Administrative Sciences “Paul Negulescu”; associate member of the Academy of Science Men.

It is actually reflected through its content, which evokes a set of tasks, activities that the holder must carry out, their specificity being that they are exercised in a regime of public power.

These tasks make up what the doctrine calls, in a form that we do not entirely agree, “*personal competence*”.

We disagree since, in our view, **the competence belongs solely to the public authority or institution**. Those holding various management or execution positions within the respective authority, exercise the powers that are associated to the position they occupy. But we accept that we can admit “*personal competence*” as a linguistic compromise that helps us explain what we seek. The tasks that make up this “*personal competence*” can be basically carried out either by the position holder, or by the person who is authorized by him to do so.

## II. Legal Regulation. Procedures

The manner in which the duties in question are transferred takes the form of a document which usually is the legal document through which the holder reflects their activity and which is stated in the regulation governing the respective public authority or institution.

*Exempli gratia*, the law on the organization and functioning of the government and the ministries[1] provides that the ministers and other heads of the specialized authorities of central administration, in exercising their attributions, issue *orders*<sup>2</sup>, whilst the legal acts of the prime minister are entitled *decisions*<sup>3</sup>.

The delegation of tasks is to be carried out, for ministers, by *order*, and for the head of the Government, by *decisions*.

Thus, the one being delegated one or more duties will effectively perform only those related to their position, whose exercise one kept for oneself, to which there can be added tasks that have been transferred by one’s hierarchical superiors or by other

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<sup>2</sup> According to Art. 46 paragraph (2) of Law no. 90/2001, “*In performing its duties, the minister issues orders and instructions, under the law.*”

<sup>3</sup> According to Art. 19 of Law no. 90/2001, (1) “*In carrying out its duties, the prime minister issues decisions, under the law.* (2) *The decisions of the prime minister are published in the Official Gazette of Romania, Part I. Not publishing them entails the nonexistence of those decisions.*”

entitled subjects having such a right. For example, a minister may be authorized by a *vice prime minister* or by the *prime minister*<sup>4</sup> to perform tasks that are assigned to them.

As for the official to whom they have delegated certain tasks, they, in their turn, will first perform the tasks specific to their job, then other *attributions* or *delegations* as they also called by the law, which **are delegated to them**.

It is assumed that **the rule** should primarily represent **the tasks specific to their position**, otherwise it becomes distorted the content of the internal structures specific to the public authority or institution concerned, and the activity as a whole is affected.

If we were to **define the delegation of responsibilities** in public law, this would mean, in our view, **the legal operation by which the public office holder transfers to a person who occupies a managerial or executive position in the public authority or institution they are part of, the right to exercise, on their behalf, duties which, according to the law and the legal acts governing the activity of that public authority or institution, returning to the one who transferred them**<sup>5</sup>.

In terms of **tasks that can be subject to delegation** there are two categories:

a) **Attributions that may be delegated, established by law or other legal act**. We further understand that, in this situation, the legislator, in the broad sense of the word, is the one to set the tasks that can be delegated.

b) **Attributions established by the one who will delegate**, that are left at the disposal of the respective person to decide which will be transferred to another person in their subordination.

Take the case of **the mayor**. Law no. 215/2001 regarding the organization and functioning of local public administration [2] provides that the Mayor may delegate some of its duties to the **public administrator, deputy mayor, secretary, or other person**

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<sup>4</sup> Regarding the position of vice Prime Minister as a member of the Government, as we have consistently argued in our papers, it represents a legal institution that we place **outside the constitutional frame**. (Verginia Vedinaş, *Administrative Law*, Universul Juridic, Bucharest, 2014, 8<sup>th</sup> ed., pp.372-373). We share and carry on the conception of our late professor Antonie Iorgovan, according to which the current Constitution, by art. 102 para. (3) creates *a government without a hierarchy*, in which its members have an equal legal status, except for the Prime Minister who leads the Government and coordinates its activity. But the Constitution binds him, by art. 107, to exercise the role of coordinator for the activity of the other members by following the duties held by each. For developments see Antonie Iorgovan–*Treaty of Administrative Law*, All Back, Bucharest, 2005, Ed. V, Vo. I, pp. 365-369.

<sup>5</sup> Etymologically, the word **delegation** comes from Latin and from the French “*deleguer*”. It means, according to DEX 2009, “to transmit to somebody the right to act as a representative of a person or an institution. To delegate someone, on a limited period of time, to execute, supervise or organize a work.”

**from its own specialized body** who has competences in the field. This rule was introduced by a relatively recent change[3] that targeted Law no. 215/2001 aiming at Article 65<sup>6</sup>. From the wording of Article 65, as revised in 2014, it results that there has expanded the scope of the subjects to whom the mayor may exercise the right to delegate the tasks. Accordingly, the same law was amended for Article 104 paragraph (7)<sup>7</sup> of Law no. 215/2001, governing the right of the county council president to delegate powers towards the vice presidents, the heads of functional departments, the specialized personnel and the managers of the public institutions and services of county interest. Analyzing the two laws, one wonders, rhetorically, of course, **what duties will the mayors and presidents of county councils exercise, if they can delegate them towards so many staff categories in their coordination or their subordination?**

Regarding **the public administrator**, the law expressly stipulates<sup>8</sup> that the Mayor may delegate towards it the duties referring to the quality of **main credit operator**.

Regarding other public office holders from the local public administration<sup>9</sup>, the law generally provides which duties may be delegated to any of them, the mayor deciding concretely on the specific tasks that they will delegate to each of those entitled to the delegation.

There may be situations where the legal act regulates, by principle, the right to delegate certain duties related to the respective function or office, having complete freedom to determine what tasks will be delegated to other officials or other staff members of that public institution or authority.

It may be the members of that official's office, the functional structure for those employed for a determined period of time, one coinciding with the official's mandate, based on the personal trust between the official and the members of its cabinet [4].

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<sup>6</sup> Article 65 of Law no. 215/2001 provides that "*The mayor may delegate duties that are conferred by law and other normative acts to the deputy mayor, the secretary of the administrative-territorial unit, the heads of the functional compartments or the personnel from the specialized body, as well as the managers of the public institutions and services of local interest, according to their competences in the respective fields.*"

<sup>7</sup> Article 104 para. (7) of Law no. 215/2001 provides that "*The chairman of the county council may delegate, by disposition, the duties stipulated in paragraph (6) to the deputies, the heads of the functional compartments or the personnel from the specialized body, as well as to the managers of the public institutions and services of county interest.*"

<sup>8</sup> In art 112 para. (4) of Law no. 215/2001 providing that "*The mayor may delegate to the public administrator, under the law, the quality of main credit*".

<sup>9</sup> The deputy mayor has the status of a **local elected**, representing thus a local dignitary, while the secretary of the administrative territorial unit is a **management public official**.

Thus the following question arises: what would happen if the frame legal act did not provide the possibility, not even in principle, for an official or a clerk to delegate duties? And, in such a situation, the law did not provide to **whom** it may do so.

We appreciate that even in the absence of recognition by principle of such a possibility, one can use delegation. And we state this because **the exercise, by delegation, of the duties afferent to a function or public office in the state represents one of the ways in which a function or public office may be carried out.** It is **basically a way** of exercising a function, occurring in the silence of the legislature.

When they intend to ban the right to delegate, they do so expressly and usually the interdiction does not operate in a general way, but for certain express duties.

We thus understand that the **persons**, with the quality of being **deputies** and **replacements for an official or a dignitary**, are entitled to exert, on its behalf, the attributions conferred on the holder. *Problems* arise when **there are two or more deputies**, as for example in a city where there are two deputy mayors, or at county level where there are two vice presidents of the County Council. In such a situation, the mayor or, where appropriate, the county council president will nominate who of the two deputies or vice presidents will replace him or her during the time absent. In cases of force majeure, which prevented the holder to make such a designation, such as an accident, this will be done by a unipersonal or collegial body that has powers of decision in the respective public authority or institution. This may be the case, for example, of the **Local and County Council**, that may appoint **the deputy mayor or the vice president to replace the mayor or, respectively, the president of the county council**, of the prime minister or another head of the central administration, that may decide who will replace a minister or a secretary of state.

Another aspect that must be stated is that **the prerogative to delegate is a right, not an obligation**, meaning that **the public office holder can not be forced to delegate**. They can do it or not, and if they do not, they can not be sanctioned. We consider the impossibility of legal sanction, since in terms of ethics, politics, of social or political accountability, they may incur certain consequences. This is because **not delegating means assuming, by that holder, the personal capacity of carrying out**

**all its tasks afferent to the position held.** And when it proves that there was no such ability, judgement will be noticeably more severe.

Secondly, **not delegating may reveal the inability of that holder to work in collectivity, to share the performance of duties related to its function with other people who, by law, have the vocation to do so.** This can also reveal **bad faith in exercising an official public function, with fault-finding aspects, of ignorance and contempt of the role belonging to other categories of officials or dignitaries legally designated,** by appointment or election, in a certain public office, up to the lack of content. In this way, certain consequences can occur, including those with economic-financial aspects, affecting not only the proper functioning of a public entity.

Thus raises the question of how to justify, from an economic and financial perspective, the fact that **a certain person has occupied a certain position, yet lacked “the work object”.** Given that they were obviously remunerated for that position, who is then responsible for the amounts paid by way of salary, with no coverage in a specific activity? Because someone has to answer, do they not? In my experience gained at the Court of Auditors, I have met the incredible situation (I hope I find agreement on this) when an institution was established with a certain purpose, and **it mandated, i.e. it delegated its entire activity to another public entity with a related purpose,** otherwise collaborating with it in its mission, since its creation, having to perform certain duties regarding the organization of work, adoption of procedures, etc. Their argument was that this took place in other countries as well, that it was about the same documents that were prepared for each particular case and it would be pointless to work twice in a different manner. However, when two separate verifications are performed, by two distinct entities, it is only natural that the quality of the result for that activity to increase, for the risks of approving documents, of carrying out procedures that do not match reality to be reduced. And if we consider that the purpose is to provide some money to certain categories of beneficiaries of public money, I do declare, things become even more serious and grave.

All these assumptions imply and require an attitude of responsibility as to the manner in which an activity is exerted and the public money is being spent.

In our opinion, an official or dignitary does not act in a certain way because they want to. Particularly, they can not refuse to delegate some duties because the one who should be delegated is their political opponent, or it is repugnant, or has a personal enmity or rivalry, or simply do not want to do so. They do not possess a discretionary capacity and do not act as they please, without any hindrance. They do not act for personal interest, to satisfy duties, vanity or personal affairs. Their mission is to undergo public needs and take steps to resolve them.

Therefore, the right to benefit from delegating certain tasks equally binds the holder of a position or office to act with minimum responsibility, in complete good faith. Moreover, good faith is a principle of constitutional status by virtue of which any right and freedom must be exercised in **good faith**<sup>10</sup>, without affecting the rights and freedoms of others<sup>11</sup>.

To sum up, we consider that **the right to delegate** certain attributions **must be exercised so that it does not turn into abuse of law that empties the content of the public function or office in relations with its holder, nor it be suppressed from the professional conduct of such holder that arrogates, in a discretionary manner, the status of the sole person that can exercise, and exercises them effectively**. But it can not become, under any circumstances, the preserver of an attitude that eliminates the risk of any accountability, as in the hypothesis initiating the present discussion.

#### References:

- [1] Law no. 90/2001, published in the Official Gazette of Romania Issue 164 of April 2<sup>nd</sup> 2001
- [2] Republished in the Official Gazette of Romania Issue 123 of February 20<sup>th</sup> 2007
- [3] Law no. 20 of March 13<sup>th</sup> 2014, published in the Official Gazette Issue 191 of March 18<sup>th</sup> 2014.
- [4] GO no. 32/1968 published in the Official Gazette Issue 42 of January 30<sup>th</sup> 1998.

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<sup>10</sup> In Latin, *bona fides*. It represents a traditional principle of private law, which becomes, according to the constitutional text, a principle of the public law, as well, with the value of a fundamental duty, regulated in Chapter III of Title III of the Constitution.

<sup>11</sup> This principle is inscribed in Article 57 of the Constitution according to which “Romanian citizens, foreign citizens and stateless citizens have to exercise their constitutional rights and freedoms in good faith, without violating the rights and freedoms of others.”

## National Regulations on Local Public Administration\*

**Lecturer MIHAI CRISTIAN APOSTOLACHE, PhD**  
*Petroleum-Gas University of Ploiești (Romania)*  
*Postdoctoral Researcher*  
*Titu Maiorescu University of Bucharest*  
*mihaiapostolache5@yahoo.com*

### Abstract

The local public administration, like any other field of activity, knows a certain regulation determined by the specificity of this field and by its importance within the global social system. The norms governing local public administration are included in the fundamental act, as well as other legal acts inferior to the Constitution, that are meant to develop the rules as principles from the Constitution. Given its importance and complexity, local public administration has a vast regulation centered upon the Law of local public administration, a normative act that is compatible with the European regulations on the matter.

Keywords: local public administration, principles, regulation, national, constitution, law.

### Preamble

The public administration in territorial-administrative units is regulated by various legal acts forming the legislation asset in this field, i.e. constitutional and statutory regulations. National regulations have been influenced over time by different legal or political instruments from the Council of Europe and from European Union bodies. The reception into national law of certain principles and rules established by European regulations has ensured the realization of a qualitative leap in the field of legislation on local public administration. Thus, a series of European standards were taken from the area of organization and functioning of local public administration, procurement, civil service and civil servants, the participation of citizens in public decision, increase in the transparency and integrity of local public life, in the control over local public administration authorities.

It should be noted that, the Constitution of Romania, since its adoption after the establishment of the democratic regime, has comprised regulations as principles in agreement with the European rules guiding the local public administration [1]. Despite

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the contradictory discussions within the Constituent Assembly [2] related to the provisions to regulate the field of local public administration, a legislative solution has been found that withstood time<sup>12</sup> and is compatible with the standards of a democratic state.

### **Overview of the National Regulations on Local Public Administration**

The local public administration is regulated at the constitutional level mainly in Articles 120-123 which establish basic principles (Art. 120), communal and municipal authorities (Art. 121), county council (Art. 122) and the prefect (Art. 123).

In addition to these constitutional provisions, the fundamental law governs the local public administration in other parts of its content. Thus, Article 2 paragraph 1 establishes the principle of eligibility and of the consultation of citizens in a referendum; Article 3 paragraph 3 refers to the organization of the territory and states that the territory is administratively organized into communes, towns and counties, and, under the law, some cities may be declared municipalities; Article 16, entitled "Equal rights", states the principle of equality of citizens before the law and public authorities; Article 31 refers to a person's right to access public information and the obligation of public authorities to accurately inform citizens about public affairs and matters of personal interest; Articles 36, 37 and 40 regard the right to vote, the right to be elected and the right of association; Article 51 takes into account the right of petition; Article 52 concerns the right of a person aggrieved by a public authority to appeal the administrative court, in connection with Articles 21 and 126; Article 58 envisages the people's lawyer; Article 73 refers to the types of laws that may be adopted by the Parliament; Article 136 considers the property in conjunction with Article 44 entitled Ownership; Articles 137, 138, 139, 140 regulate the financial system, the national public budget, taxes and other contributions, also containing provisions relating to the Court of Auditors; Title V contains provisions on the Constitutional Court.

These constitutional provisions are taken and developed in different legal acts governing the organization and functioning of local public administration.

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<sup>12</sup> Only slight changes have been brought in 2003 to the constitutional revision

Among these there are: Law no. 215/2001 local public administration, republished; Law no. 554/2004 on the administrative legal department; Law no. 52/2003 on transparency in public administration, republished; Law no. 273/2006 on local public finance; Law no. 24/2000 regarding the legislative technique; Law. 188/1999 on the status of civil servants, republished; Law No. 7/2004 on the code of conduct for civil servants; Law no. 47/1992 on the organization and functioning of the Constitutional Court, as subsequently amended; Law no. 213/1998 on publicly owned property, substantially amended by the current Civil Code and republished; GO no. 2/2001 on contraventions approved with amendments by Law no. 180/2002; Law no. 3/2000 on the organization and conduct of the referendum; Law no. 393/2004 on the status of the locally elected officials; Law no. 195/2006 – legal frame on decentralization; Law no. 199/1997 for the ratification of the European Charter of Local Autonomy; Law no. 67/2004 for the election of local public administration authorities, republished; Law no. 340/2004 regarding the prefect and the prefect institution; Law no. 161/2003 on some measures to ensure transparency in the exercise of public dignities, public functions and in the business environment, the prevention and punishment of corruption; Law no. 2/1968 on the administrative organization of the territory, republished; Law no. 351/2001 on the approval of the National Landscaping Plan; Law no. 178/2010 of the public-private partnership; Law no. 315/2004 on regional development in Romania; GEO no. 27/2003 on the tacit approval procedure; GO no. 27/2002 on regulating the settlement of complaints; GEO no. 34/2006 regarding the award of public procurement contracts, of public works concession contracts and services concession contracts, approved with amendments and completions by Law no. 337/2006, Emergency Ordinance no. 35/2002 for the approval of the Framework Regulation for the organization and functioning of local councils, etc.

As observed, the regulations related to local public administration are complex and varied, determined by the place and role of this subsystem within the global social system and by the diversity and complexity of the components of local life. The fundamental act has institutionalized local communities together with the national community. These local communities are grouped into territorial-administrative units (commune, town, city, county), with their dual character of local territorial communities

and regional districts for the management of certain services of the state [3]. Assuming that the development and strengthening of local democracy ensures the stability of the democratic regime within a State, the responsible public authorities, with regulating duties, have built a legislative framework to allow the emergence of institutions and local public authorities, have regulated the relations between them and other organizational structures at county and central level, have provided, at local administrative level, material and financial resources, and also human resources for the effective exercise of their work and for provision of public services to citizens. However, given that local authorities operate within the administrative-territorial units of the unitary state, there have also been imposed a number of rules that have established a control of the state over the activity of autonomous local authorities, which is exercised solely under the conditions and limitations imposed by law. As highlighted in the literature [4], *“strengthening local powers must not jeopardize national unity, its intangible nature...”*. It is certain that this framework is not a perfect one, but it has ensured, despite some of its flaws - revealed by the administrative practice, the emergence and development of local public administration, whose guiding light is the principle of local autonomy. With the development of the legislative framework, this principle has seen a multiplication and diversification of its meanings [5]. Certainly, a genuine local democracy, according to citizens' legitimate rights and freedoms, would not be possible without the existence of two basic principles, the principle of local autonomy and the principle of decentralization [6], the latter allowing the territorial decentralization of public power without affecting the unitary character of the state. [7]

### **The Law of Local Public Administration – a framework law on the matter**

One of the most important national legal instruments of local public administration is the Law of local public administration. Also called in the literature “the legislative driving force” [8], the Law of local public administration represents the infraconstitutional regulation underlying institutional and material aspects of the local public administration, ruling also the administrative relations between the national and local communities [9].

Before treating the normative content of this regulation, we believe it is necessary to take a historical journey and see, in short, the development of this legislation.

After the revolution of December 1989, which allowed fundamental changes in the Romanian society and the legal system implicitly, several legal acts were adopted to govern public administration in the territorial-administrative units. The first legal act is the Decree-Law no. 8/1990 regarding the organization and functioning of local bodies in the state administration. After the local elections in 1990, in the absence of an adequate constitutional framework [10], there was adopted Law no. 5/1990 on the management of the counties, cities, towns and communes which was soon replaced by Law No.69/1991 on local public administration. The adoption of the 1991 Constitution and the evolution of social relations, but also some problems in the implementation of some provisions of Law no. 69/1991, have determined its amendment by Law no. 24/1996 and it was republished. The republished Law experienced an amendment and a substantial completion by GEO no. 22/1997, a legal act declared unconstitutional in 1998 by the Constitutional Court Decision no. 83/1998, a situation that prompted a return to the previous form, republished in 1996.

In 2001, the Romanian Parliament adopted Law no. 215/2001 of local public administration, which replaced Law no. 69/1991, republished. Since its adoption until now, Law no. 215/2001 has suffered, in its turn, a number of amendments and additions, the most numerous being brought by Law no. 286/2006, which imposed its republication in 2007. The current law of local public administration experienced a final legislative amendment by the Government Emergency Ordinance no. 18/2014 [11].

Law no. 215/2001 regulates the general regime of local autonomy and the organization and functioning of public administration authorities in territorial-administrative units. According to Article 73 paragraph 3 letter o) of the Constitution, the organic law governs the organization of local public administration, of the territory, and the general regime of local autonomy. Therefore, the local public administration law is an organic one providing extension and development on the infraconstitutional plan for the constitutional provisions regarding local public administration.

Within the law we meet the general arrangements for the regime of local autonomy and the legal status of local public administration authorities, special provisions which establish the organization and functioning of local public administration, and other topics. The general provisions on the local autonomy regime define a series of

legal institutions with which the legal act operates, establish the principles upon which local authorities are organized and operate, with a particular emphasis on the principle of local autonomy, understood as *“the effective right and capacity of the authorities of local public administration to address and manage, on behalf and in the interest of the local communities they represent, public affairs, according to the law”*, governing the nature of the relations established between local authorities in communes, towns and municipalities and public administration authorities at county level. Also, these provisions stipulate the right to manage and dispose of financial resources and public or private property assets of communes, towns, municipalities and counties of the local public administration authorities, as exercised in accordance with the principle of local autonomy. Finally, issues connected to the representation of territorial-administrative units are regulated, their right of association and cooperation is stated, the legal status of territorial-administrative units is regulated together with their territorial delimitation procedure, as well as forms in which the activity of control over local authorities is carried out.

The general provisions on local authorities are contained in section 2 of Chapter I. These provisions nominate local authorities (mayor, local council, chairman of county council, county council), define the notion of the locally elected, governing also the term of office for local authorities, and the right of authorities to establish and toll local taxes and dues, to develop and approve local budgets for communes, towns, municipalities and counties, according to the law.

In order to materialize the principles and general rules, the Law of local public administration contains detailed provisions regarding the organization and functioning of the local council, mayor, county council and county council chairman, regarding their tasks, as well as the manner in which the mandate of government ceases, permanently or temporarily, for the authorities of public administration or the mandate of their members (in the case of collegial bodies). Even though Article 1 of the law states that it governs only the general regime of local autonomy and the organization and functioning of local public administration, the legal act also focuses on other matters that exceed the organization and functioning of local public administration authorities, fact noticed in the literature as well [12]. These matters refer to the citizens' initiative on public goods and

works, as well as public institutions and services of local interest. If we related to the title of the law, we would appreciate that these rules are natural, given the fact that local public administration is not limited to its authorities or the general regime of local autonomy, but includes other organizational structures, also having material, human, financial, resources whose management, administration, capitalization involve a set of rules to determine concrete ways for its manifestation within the system and in relation with the external environment for the local public administration.

But if we reflect on the subject of the regulatory law, we observe that it is justified, envisioning only the general regime of local autonomy and the organization and functioning of local public administration.

Any way it is considered, Law no. 215/2001 represents the central legal act of local public administration from which other special normative acts derive, whose regulatory object is formed by different components of local public administration. The Law of local public administration best reflects the European standards contained in the European Charter of Local Autonomy and other European regulations, in some cases exceeding these standards.

## Conclusions

The review of the provisions governing local public administration certifies that this subsystem belonging to the administrative one has a constitutional and legal consecration. By the way it addresses the issue of local public administration at legislative level, Romania falls into the category of countries that place an emphasis on the development of local autonomy, ensuring an increase in the role and importance of local administrative level, considered by public European decision-makers a pillar of the European construction. In agreement with the provisions [13] of the local public administration Law and the doctrinal approaches [14], local autonomy concerns two aspects: the first aspect aims at *the organization and functioning of local public administration*, when local autonomy is manifested by endorsing municipality or city status, by approval of the functioning rules of the local council, by the establishment of institutions and economic agents and the organization of local public services; the second aspect takes into account *the management of the resources for the commune*,

*town or county*, where local autonomy is manifested through the development and approval of the local budget, the right to establish local taxes and dues, the administration of public and private domain of local interest. Whatever form it manifests, local autonomy is purely administrative and financial, and specific to the decentralized public administration [15].

We can state, therefore, that the local public administration has in the legal order in Romania an extremely rich legal framework which, generally, gave results in its implementation, but which has also revealed a series of legislative ambiguities.

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## Montesquieu “On the Spirit of Laws”

**Associate Professor GABRIELA VASILESCU, PhD**

*Faculty of Letters and Sciences,  
Petroleum-Gas University of Ploiești (Romania)  
gabrielavasilescu52@yahoo.com*

“The law is not a mere act of power;  
things in their own nature indifferent are not within its province.”

### **Abstract**

Charles-Louis Montesquieu’s outlook on justice is based on the idea of separation of powers, a fundamental idea that founded modern constitutionalism. The work that we focus on in this article, *De l’esprit des lois*, highlights the importance of knowing the essence of laws and how their action manifests in different forms of government, as the law constitutes a social, historical and cultural phenomenon. The law corrects and the punishment represents the price paid for maintaining freedom.

Keywords: law, freedom, justice, forms of government, punishment.

### **Why Charles-Louis de Secondat, Baron de la Brède et de Montesquieu?**

The answer is found in his concern for deciphering the meaning of the laws and the treatment of justice as a social, cultural phenomenon, influenced by a number of “climatic” factors acting on human behavior, bringing together the material and emotional state of people. Montesquieu was the one to formulate the theory of separation of powers, a fundamental idea that brings to a close the abuse of power, despotic regimes. He is also the one who states that the idea of law, a concept essential to justice, is subject to reason and influenced by the spiritual particularities of the people for whom it is applied. However, given the universality of the laws, there are exceptional cases in which the laws also match another people. This idea has anticipated the union of states and constitutional bases that regulate them. The abuse of power can be fought only with the help an organization able to stop such a phenomenon, and this regulation means a legislated guarantee to end all forms of law violations. The division of powers represents the guarantee for the rule of law and the freedom of all citizens. Any violation of law attracts penalty, which is the right price paid for the severity of the deed. The thinker has in mind the principle of fair proportion between punishment and the seriousness of the offense to society; the one who “harms” society the most should receive a punishment for their act.

Charles de Secondat Montesquieu (1689-1755) is considered “the father of constitutionalism” due to the emphasis placed on the principle of division of powers on which modern and current constitutions have been based. The work presenting an ample analysis of the theory of the separation of powers in a state is *De l’esprit des lois* (1748), a thorough analysis of the science of law distinguishing the following levels of analysis: on justice, on judges, on the separation of powers and on punishments. We shall analyze them by going through the structure of the work, arguing with the ideas of the liberal spirit manifested by Montesquieu.

One must not forget that the interest for a constitutional foundation, on which the governing science can be built, belongs to the Antiquity, Aristotle considering the Politics of the organization of a state “a community of some kind, and every community is established with a view to some good; for mankind always act in order to obtain that which they think good.” [1]. Such a political edifice, constituted in the form of a cantonal republic with free and equal citizens (proportional equality) was based on the “Constitution” which is “the life of the State itself”[2]. And the “Constitution is solid only where the middle class outnumbers the two extreme classes, or at least each of them.” [3] The division of the powers in a state is treated through the levelled organization of powers: “The government is the constitution itself”. In democracies “the people is the sovereign.” [4] All “Constitutions that seek the common good are pure, as they are in conformity with the absolute law; on the contrary, those who consider only the benefit of their government are faulty and only mere corrupt forms of the good Constitutions, for they are despotic (i.e. they treat the government as slaves), whereas, the citadel is an association of free men.” [5]

These Aristotelian premises help us gain a better grasp of “the spirit of the laws” researched by Montesquieu.

People are governed by different laws belonging to distinct branches of justice but the supreme law on which all legal principles depend on is “LE SALUT DU PEUPLE”, the salute of the people which assumes the concept of justice. This represents the starting point of people’s trust in the legal act and in the power of the law to punish and correct deviations committed in the detriment of society. But when the political law tries to destroy the structure of the political body that constituted it, it can only confirm the

existing order. In any legal action the magistrate punishes or corrects: “Il y a des criminels que le magistrat punit, il y en a d'autres qu'il corrige.” [6]

### **Law and Liberty**

The first part of the work *On the Spirit of the Laws* brings clarification to the concept of law in relation to the concept of freedom. This relationship is natural because one can not analyze the law beyond or against freedom; the law represents the frame to implement freedom.

“Les lois, dans la signification la plus étendue, sont les rapports nécessaires qui dérivent de la nature des choses; et, dans ce sens, tous les êtres ont leurs lois, la divinité a ses lois, le monde matériel a ses lois, les intelligences supérieures à l'homme ont leurs lois, les bêtes ont leurs lois, l'homme a ses lois.” [7]

As a result, each domain of our existence has its own necessary rapports stemming from the structure of things, regulating their way of being. Divinity has its own laws, the material world has its own necessary rapports, and a human being's rapports, those of the spiritual intelligence, are different than those of animals. Understanding such an organization demonstrates that laws are not arbitrary products and they cannot be the result of a decider situated outside the historic and cultural environment.

Unlike other beings, the human being has an affective life subject to various passions, which differentiates their behaviour and reactions in various situations. But the whole human unpredictability can be regulated within the social context through the respect for the law. All the social tasks are inscribed in political and civil laws. “Fait pour vivre dans la société, il y pouvait oublier les autres; les législateurs l'ont rendu à ses devoirs par les lois politiques et civiles.” [8] To a similar extent, there are the natural rights, inscribed in the existential condition of our being, before the social organization. In a natural state, there is no issue of duties, but only of rights, which are not authorized by any human authority to legitimate them. These are the positive rights: the right to survival, the right to self-defense, the right to freedom, the right to property. Regarding property, John Locke (*Second Treatise of Government*) situated the natural right above the political one: “Every man has a *property* in his own *person*. This nobody has any right to but himself. The *labour* of his body, and the *work* of his hands, we may say, are

properly his. Whatsoever then he removes out of the state that nature has provided, and left it in, he has mixed his labour with, and joined to it something that is his own, and thereby makes it his *property*.” [9] Also among Montesquieu’s predecessors, Thomas Hobbes believed that the only true law is the civil law applied by the sovereign, while the natural law has no moral principles, being based on human nature. Regarding human nature, human beings are equal by nature both in terms of physical and intellectual strength. Equality leads to a general rivalry, *bellum omnium contra omnia*. Everyone seeks their own good and sees a possible rival in their fellow being. Thus arises a state of rivalry, man is wolf to man, *homo homini lupus*. From this standpoint, people transfer all natural laws to the sovereign, conferring him/her absolute power.

“The natural law, that the authors commonly name *jus naturale*, represents the freedom that each person has to employ their own power, according to their will, to preserve their own nature, meaning their own life; hence, to do all that they consider, according to their own judgment and reason, that represents the most suitable means for this.” [10]

Hobbes’ position on the “state of war” in which the human being permanently resides is reminded by Montesquieu:

“Hobbes demande *pourquoi, si les hommes ne sont pas naturellement en état de guerre, ils vont toujours armés, et pourquoi ils ont des clefs pour fermer leurs maisons*. Mais on ne sent pas que l’on attribue aux hommes avant l’établissement des sociétés, ce qui ne peut leur arriver qu’après cet établissement, qui leur fait trouver des motifs pour s’attaquer et pour se défendre.”

Such a state of war extends to the nation and will be reflected in the content of the laws:

“Chaque société particulière vient à sentir sa force; ce qui produit un état de guerre de nation à nation. Les particuliers, dans chaque société, commencent à sentir leur force; ils cherchent à tourner en leur faveur les principaux avantages de cette société; ce qui fait entre eux un état de guerre.

Ces deux sortes d’état de guerre font établir les lois parmi les hommes. Considérés comme habitants d’une si grande planète, qu’il est nécessaire qu’il y ait

différents peuples, ils ont des lois dans le rapport que ces peuples ont entre eux; et c'est le DROIT.” [11]

### **What the Law Represents**

“La loi, en général, est la raison humaine, en tant qu'elle gouverne tous les peuples de la terre; et les lois politiques et civiles de chaque nation ne doivent être que les cas particuliers où s'applique cette raison humaine.(...)

Il faut qu'elles se rapportent à la nature et au principe du gouvernement qui est établi, ou qu'on veut établir; soit qu'elles le forment, comme font les lois politiques; soit qu'elles le maintiennent, comme font les lois civiles.” [12]

This acceptance of the law supports the idea of its rational grounding for all peoples and that civil and political laws are particular cases of nations, distinguishing the nature and principles governing them. Consequently “trois espèces de gouvernements: le RÉPUBLICAIN, le MONARCHIQUE et le DESPOTIQUE.(...) Je suppose trois définitions, ou plutôt trois faits: l'un que *le gouvernement républicain est celui où le peuple en corps, ou seulement une partie du peuple, a la souveraine puissance; le monarchique, celui où un seul gouverne, mais par des lois fixes et établies; au lieu que, dans le despotique, un seul, sans loi et sans règle, entraîne tout par sa volonté et par ses caprices.*” [13]

Moral strength, honour activates the parts of the political body and each of them acts towards the common good, pursuing particular interests. It is a false honour, but one that is useful to the public space, better accepted than a truth that would address a small number of individuals.

### **The Status of Education**

The laws of education are the most important in social life, as they prepare each and every individual member of a large family for what society represents. “Les lois de l'éducation sont les premières que nous recevons. Et, comme elles nous préparent à être citoyens, chaque famille particulière doit être gouvernée sur le plan de la grande famille qui les comprend toutes.” [14]

Any democratic government needs the power of education which means “love of law and homeland”. “Cet amour est singulièrement affecté aux démocraties. Dans elles seules, le gouvernement est confié à chaque citoyen. Or, le gouvernement est comme toutes les choses du monde; pour le conserver, il faut l'aimer.” [15]

The love of country is expressed by the conduct of every citizen, if the people is made up of honest persons. “Quand le peuple a une fois de bonnes maximes, il s'y tient plus longtemps que ce qu'on appelle les honnêtes gens. Il est rare que la corruption commence par lui. Souvent il a tiré de la médiocrité de ses lumières un attachement plus fort pour ce qui est établi.” [16]

As for the formation of the legislature, Montesquieu reaches the following general sentence: “dans un sénat fait pour être la règle, et, pour ainsi dire, le dépôt des moeurs, les sénateurs doivent être élus pour la vie; dans un sénat fait pour préparer les affaires, les sénateurs peuvent changer.” [17]

### **The Role of Punishment**

Remembering Niccolo Machiavelli, Montesquieu considers that the role of the laws resembles a sense of orientation; one cannot see if one does not have eyes. “Les lois sont les yeux du prince; il voit par elles ce qu'il ne pourrait pas voir sans elles.” [18] The Prince “must make himself feared, in order to avoid the hatred of his subjects, if he does not win their love” [19] and corruption appears where there is an excess of force, power, money; “*peu sont corrompus par peu.*” Fixing corruption happens more through prevention than through punishment.

The severity of punishments is specific to despotic regimes and does not bring any change in the harm caused by the deeds. “La sévérité des peines convient mieux au gouvernement despotique, dont le principe est la terreur, qu'à la monarchie et à la république, qui ont pour ressort l'honneur et la vertu.

Dans les États modérés, l'amour de la patrie, la honte et la crainte du blâme, sont des motifs réprimants, qui peuvent arrêter bien des crimes. La plus grande peine d'une mauvaise action sera d'en être convaincu. Les lois civiles y corrigeront donc plus aisément, et n'auront pas besoin de tant de force.” [20]

To prevent crime, “un législateur sage aurait cherché à ramener les esprits par un juste tempérament des peines et des récompenses; par des maximes de philosophie, de morale et de religion, assorties à ces caractères; par la juste application des règles de l'honneur; par le supplice de la honte; par la jouissance d'un bonheur constant et d'une douce tranquillité(...).” [21]

Corruption occurs in the case of democratic principles as well, not only due to the spirit of equality, but especially in the case in which equality is manifested as extreme and each person seeks to order another one. It refers to the destruction of the systems of values and of the valuing criteria through which the social hierarchy is organized. The glorious is not worthy, the awarding action being randomly assigned. “La corruption augmentera pan-ni les corrupteurs, et elle augmentera parmi ceux qui sont déjà corrompus. Le peuple se distribuera tous les deniers publics; et, comme il aura joint à sa paresse la gestion des affaires, il voudra joindre à sa pauvreté les amusements du luxe. Mais, avec sa paresse et son luxe, il n'y aura que le trésor public qui puisse être un objet pour lui.” [22]

And, anticipating Rousseau, Montesquieu concludes that man is good from nature, born in a state of equality with the other fellow beings, an equality that will be kept or lost by the social organization. “Dans l'état de nature, les hommes naissent bien dans l'égalité; mais ils n'y sauraient rester. La société la leur fait perdre, et ils ne redeviennent égaux que par les lois.

Telle est la différence entre la démocratie réglée et celle qui ne l'est pas, que, dans la première, on n'est égal que comme citoyen, et que, dans l'autre, on est encore égal comme magistrat, comme sénateur, comme juge, comme père, comme mari, comme maître.” [23]

We end the analysis of the first part of Montesquieu's treaty, *De l'esprit des lois*, with the acceptation of freedom, as it is treated in chapter “**Ce que c'est que la liberté**”, the second part of the treaty:

“La liberté est le droit de faire tout ce que les lois permettent; et si un citoyen pouvait faire ce qu'elles défendent, il n'aurait plus de liberté, parce que les autres auraient tout de même ce pouvoir.” [24]

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# THE CONTRADICTIONS OF THE JUSTICE. THE METAPHYSICAL PRINCIPLES OF LAW

Lecturer **MARIUS ANDREESCU, PhD<sup>13</sup>**  
*University of Pitești (Romania)*  
*andreescu\_marius@yahoo.com*

## Abstract

This essay represents an attempt to highlight, from a philosophical perspective, the most significant contradictions that can affect the justice throughout a period of social crisis. The object of our analysis consists of the contradictions between: the law and justice; the justice and society and the act to fulfill the justice and what we have just called “the fall in exteriority” of justice. Within this context we refer to some aspects that characterize the person and personality of the judge. This essay is a pleading to refer to the principles, in the work for the law’s creation and applying. Starting with the difference between “given” and ‘constructed” we propose the distinction between the “metaphysical principles” outside the law, which by their contents have philosophical significances, and the “constructed principles” elaborated inside the law. We emphasize the obligation of the law maker, but also of the expert to refer to the principles in the work of legislation, interpretation and applying of the law. Arguments are brought for the updating, in certain limits, the justice – naturalistic concepts in the law.

Keywords: Normative order / law and justice / the contradictions of the justice/ the fall in exteriority/ metaphysical principles and constructed principles

## I. INTRODUCTION

Justice should be a harmonious system in order to be in its truth and reality. “The truth is real only as a system” [1] said Hegel and by confirming this statement, justice is in its truth only if it satisfies this condition. The system means coherent order, functionality, suitability to the real and its purpose, but mainly unity in its diversion, a concrete universal in which each part to express the whole and this one to legitimize through the created order, the component parts. The system, including the justice one manifests itself dialectically, transforms itself, become a historical being, without losing the harmony and coherence. The thinker of Jena pointed out that “Truth is the whole. The whole is only the essence that fully accomplishes itself through its development” [2]. Like any other system, justice has its components or subsystems: ideal, value, normative, jurisprudential subsystem (the act of justice), institutional and perhaps the

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<sup>13</sup> Judge, Court of Appeal Pitești

most important component, man as a producer, but also as a beneficiary of the act of justice. The truth of the judiciary system involves the making in its wholeness but also by each component of own existential purpose, which is at the same time its being, namely the *righteousness* as a values ideal but transposed into reality's concrete.

To the extent that the functions, we may say, the mission of justice, fulfill and express at the same time the functional harmony of a system, which at any time attempts the adequacy to its purpose as a value, the fulfilling of justice, justice finds itself in its truth, otherwise said, it gives its own legitimacy without waiting for it to be given, in forms sometimes inadequate, from outside.

The contradictions and in general any malfunction in the coherence of the system or inadequacy to the purpose are maladies, deficiencies of the justice, that departs it from its role and truth. When the maladies of the justice become chronic but with manifestations which lead towards aggravation, one may speak about a crisis of the system of justice. Our justice is obviously in such a chronic crisis with tendencies towards aggravation. The main cause is the ailing contradictions of the system. In contrast to the beneficial contradictions that give the becoming, the unhealthy ones tend to depart more and more the justice from its reality and truth.

## II CONTRADICTIONS OF JUSTICE

In the followings we try to emphasize the sickly contradictions of the justice system specific to the crisis in which this is located:

1. The fundamental contradiction of the justice, expression of the profound crisis in which this is between law and justice, and on the other side the constructive order of the norms and jurisprudence. The *law*, the justice do not represent the purposes and truth of justice, substituting these values, the law, norms and jurisprudence, that will find legitimacy in itself, in the abstract forms, the ephemeral realities, interests and precarious purposes but not in the ideal and reality of justice. Of course even when a judicial system is harmonious functional and does not have this malady, there isn't always a formal overlapping between law and justice. In the healthy justice system, between the justice and law there is a unilateral contradiction in the meaning that the law may contradict the justice, but this one does not contradict the law. The crisis of the

judiciary system expresses sometimes in aggravated forms the inadequacy in absolute terms between the justice and law.

The above mentioned contradiction unleashed the “will of power” of the governors to impose their own order and legitimacy to justice by norming and legislating in the meaningless and illusory attempt to create an “order of the norms” that will replace the being and truth of justice: *the righteousness*. Reality shows that this false order proves itself inconsistent, contradictory and mostly inadequate to the realities it is destined for. The mere accumulation of rules, laws even codified, does not lead to the settlement into their being and purpose of the man, the “social” and justice if the norms do not express as a phenomenon the essence: the superior order of the values of justice, equity, truth, proportionality, tolerance. Jurisprudence is manifested the same in the exclusive concern to correspond to itself or to the norms, to be sufficient in itself and not be related to the higher order of the values named above. The act of justice accomplished by the magistrate obstinately seeks for exclusive legitimation only by the rules of law and not through the value order that should be its own.

This ailing contradiction is confirmed, but not made aware by the judicial technique and formalism. A judgement is not pronounced in the name of the justice but in the “name of the law”. That is in the name of an order constructed by a temporary political will for the fulfilling of some temporary interests steeped into their particularity and often contrary to the common good and not, as it should naturally be done, in the name of the order *given* and not *constructed* of the values outside the justice but which represent its truth and purpose.

The doctrine asserts that the judge pronouncing a decision “is saying the law”. It would be good to be so. In fact, most of times, the magistrate by the judgment pronounced “is saying the law” – when he is not doing it – trying to include his sentence in the order of law, which is not necessarily the order of justice, the judge if having the conscience of achieving an act of justice, respecting his moral and professional statute, does not contradict the law, yet there are situations when he should and could do so in the name of a superior order formed out of the values subsumed to the justice concept . For such an act, that is not only an act of justice but also an act of righteousness, courage is needed. The magistrate must assume the risk to exceed the constructed

imperfect order of the law in order to legitimate the act of justice achieved in the superior values reality of the metaphysical principles of law. Such an exiting from the normality of the inadequate forms of the concrete reality is risky for the judge, because the order constructed of the law can impose its coercive force. The contemporary justice is dominated by the order of normativity, of forms that are not abstracted from reality but ignores it.

The sickly rupture between the law and justice (the law as expression of the will of the legislator, of the temporary power, the only one seeking such a separation) should be reflected in the legal education plan. For a correct suitability to the crisis of justice emphasized by this contradiction, but also in order to reflect the order of law and not of righteousness, taught to the students, the faculties in speciality shouldn't be called "Law" Faculties but "Faculties of Laws", as it once was.

2. The contradiction between the justice and "world", throughout "world" we understand both the human in his individuality as the society as a whole. It seems it is increasingly present in the actuality of justice and placed in a place of honour the dictum „*Fiat justiția et pereat mundus.*” It is not a simple dictum but a tragic reality, a disease of the justice consisting in the inauthentic legitimizing of the separation of justice from the world and man. Justice cannot live, triumph, *be* if the world dies. Between justice and the world there is a unilateral contradiction: justice can contradict the world, but the world cannot contradict the justice, because the world is the medium, the element that justifies the manifestations of justice. The righteousness through justice involves the man, both as a performer of the act of justice and as a beneficiary.

In its contemporary manifestations, the justice in crisis is increasingly making the dictum „*Fiat justiția et pereat mundus*”, trying to become a closed system, existing for itself and in some cases, even worse, directed against human, the only beneficiary of the act of justice, denying its own reason for being. The crisis of justice, by this disease, is also found in the meaningless rhetoric of proclamation of the "abstract man" through rights equally abstract with the intention to give teleological form to its manifestations. But the true existential meaning of justice and its finality at the same time is the man considered in his human dignity. The rhetoric specific to the separation between the justice and world in favour of the abstract man, impersonal has obvious manifestations.

Before the court, in a judgment, man is no longer in the concrete of his dignity as a person, but he becomes the “named” at most identified through a locus standing equally impersonal.

The existential rupture between the justice and world, further more the attempt of justice to deny its own medium that justifies its own reason to be, cannot confirm the natural dialectical order that should characterize a good placing of justice in its truth, but may have at the end of the road the nothingness, justice as an empty form, void of the fullness which only the “just” is offering when existing in relation to human’s dignity.

3. The contradiction between the justice understood and even in the acceptance of the normative order of law, and on the other side, the act of justice and the magistrate performing it. In philosophy one speaks about an autonomous world of the values existing per se and for itself independent even to man. As stated, justice is undeniable a reality and a normative institutional system but also a system of values. Unlike other systems of moral, religious values and in general cultural ones, the essence of justice consists also in its achieving and fulfilling through the act of justice of the magistrate without which the justice system does not close. One can speak at most about the autonomy of the right understood as an order of values, but not about the autonomy of justice outside the act by which it gets concretized. Unlike other systems of values or by other nature, justice is a clear example of a universal concrete fulfilled through the act of justice whose expression is firstly the decision of the judge.

Therefore the act of justice may confirm or refute the normative order of justice and equally as much the right as a system of values. It is a situation similar with the relation between the experiment and the scientific theory “the first being able to confirm or refute the theory, according to the case. Only that in the sphere of scientific theories an experiment may invalidate a theory legitimizing a new, superior order, that will include the old one such as it once happened with Einstein’s relativity theory. In contrast, the act of justice, if contrary to the normative order or the value order of law is only but a mere judiciary error, willfully, unintentionally or accidental of the magistrate which denies even the justice itself and implicitly the right abolishing thus the order of juridical and the lawful order having as finality not another order but the disorder, the chaos. How many judicial errors are now known or unknown.

One needs to emphasize the fact that the act of justice cannot dissociate the person of the one performing it from the magistrate. A judgment even anonymized is not anonymous: the act of justice contains in itself the person but also the personality of the magistrate. We can say that not only the magistrate is the author of the act of justice, but also the act of justice “makes” the magistrate. When the judiciary errors become obvious – the cause being the abandonment by the magistrate of the moral, social, professional statute, he being at peace with the disorder that is specific to the existential non-values – it is customary to say that these are isolated cases that do not characterize the justice system and lawful order. This is not true. Justice as a system of values needs to be confirmed in its own being, coming to truth by each act of justice, by each court judgment. A single judiciary error, a single corrupted or immoral magistrate “denies it by sending the judiciary and lawful order into nothingness, into non-existence. The contemporary reality still provides too many examples for such situations so that you wonder if there’s anything left into the value being of justice. Here is an acute manifestation and not only a chronical one of crisis of justice.

Justice located into its being and truth imposes the magistrate, as a fact of conscience, the object of judgment: the deeds of the man and not the man, meaning the phenomenal that is specific to the humanity of man. Being aware at the principles of law and implicitly the justice as a value specific to an order higher than the normative one, the judge, by fulfilling the act of justice, must although to teleologically relate to the concrete man even if he will rule only over the deeds (actions and omissions) thereof. Unlike this, in case of a sickly justice, the judge imagines that he has the power to judge the man.

4. The falling in exteriority. Of course the justice made by man and for man is profane, to the “measures of man”, but the sacred values are part of his being.

Being a component of the human temporary reality, the justice understood in its value dimension involves the relationship between transcendent and transcendental to which Kant and Heidegger referred to. As a reality of man and society, justice should not be transcendent, meaning “beyond” the man and the world and neither beyond his own reason for being. If this happens we are in the presence of a sickly manifestation specific to the crisis of justice, firstly by its separation from the “world” as mentioned

above. Justice must be and remain in its *transcendental* being respectively “on this side” of the existential precariousnesses of this world and outside the conflicts and political interests of all kinds, without implications in the struggle for power or power games. The transcendental of justice is this one’s being in its values dimension, is the right as justice manifested phenomenally through the act of justice.

The contemporary crisis of justice means falling from the immutability of the own existential and values transcendental into the social and political exteriority with the consequence of diminishing or even losing the very being of the “right as value”. Unfortunately the examples are too numerous: conflicts and contradictions inside the institutional system of justice; transformation of justice into a tool for the political actors or of another kind; involving into the struggle for temporary power or into the power games both of the whole justice system and of the magistrates; shifting from the publicizing of the acts of justice, to the media justice, done by the prime mass media; magistrates’ abandonment of the moral and professional statute for the illusory gain conferred by the involvement into the precariousnesses, sometimes miseries of the world; arrogant and aggressive rhetoric without substance by random using, and mainly for the satisfaction of some selfish interests many times immoral, in the sacred name of justice and law: “in the name of law”, “in the name of the right” which become simple formulas for legitimizing of what is lacking legitimacy. The falling into exteriority is a painful manifestation of the crisis of justice which is sensed not so much by the judiciary system itself but mainly by the system’s beneficiaries: the man, people and society.

We discussed about the crisis of justice. There is a justice of the crisis consisting in the illusion of the system to exist through the sickly contradictions presented above in a world which is not in the realization of the “progress in the conscience of liberty” such as Hegel believed, but mainly in a process of abolition, abandonment of the values cultural being and its replacing through civilization elements, excessive technicization, in a single word through the domination of the forms of civilization over the culture and not vice versa like normal. In social and political plan the world’s *dissolution* process is manifested through *mass democracy* and the *democratic individualism* with the consequence of ignoring the man as person and personality, man becoming an individual in a political and economical normative, social order in which he does not

confirm his *self* as he has become a mere number taken over by the rhetoric of forms and void ideals.

The crisis of justice cannot have a being as it is outside truth and its purpose like the society of crisis to which is trying to adapt itself. There can be no proper relation between the justice that is in serious sickly contradictions and a society that is in crisis with the purpose to legitimize the existence of a justice of crisis. The justice of crisis can however be a reality but devoid of truth, of being, because not all that exists it really *is*.

It is spoken, somehow with bewilderment about the loneliness and intransigence of the judge. The judge, the magistrate in general, cannot be lonely, he cannot isolate himself, cannot alienate himself. But he can be a *secluded one*. Living in community he must be in communion with the others and at the same time he can take in his being and mainly in his conscience as much of the feelings, values, aspirations of others, of course if all these bear the mark of the being, they are beneficial and not ailing. The common good, but only as a Christian value, must become the own good. The seclusion, the withdrawal in oneself does not imply abandoning the social environment on the contrary it implies its regaining and evaluation by one's own self: "is something deeper in us than ourselves" said Happy Augustin. Only by seclusion in own self, the judge may understand man, he can assimilate him, he may understand a few about the world's self. Seclusion but not loneliness: to be with you in deeper own self, but in communion with yours' another one.

The judge must relate to the concrete man, not to the abstract one, the latter as Goethe understood the sum of all people. He must bring closer to his being Eminescu's words "in every man a world starts its existence", discovering and understanding this world in every man that comes before the judgment seat. In his solitude the joy of the judge must be that to which Kant is referring to: "two things fill the soul with ever newer and growing admiration and veneration: the starry sky above me and the moral law inside me".

Of course, the judge is looking down the ground or (at the earth), such as Aristotel's hand is pointing to in Rafael's painting. Only thus can he take the real, the concrete, the existing, so that together with Plato, to rise up to the idea. The judge is looking down the earth naturally in order to feel, to know not only the rational in the real,

but also the real as a rational and to be aware of piety's meanings."Taller is the man kneeling than standing" – pointed out father Arsenie Boca.

Intransigence can not be in the nature of a judge's being, because it implies the impersonal authority, manifested in the name of the law and justice, but in fact without man and without justice. Intransigence means being placed in the exclusive plan of the formal logic with its categoric distinction between the true and false, between "yes" and "no". Yet, how many senses, how much richness of meanings life is offering between these extreme values to which judicial needs be identified.

Not the intransigence, but piety, mercy should characterize the judge because only thus can he see and understand something of every person's humanity. Noica said:"one needs to have mercy for the insignificant ones to see their meaningfulness" [3]. The piety of the judge is the piety of justice. How well the being and meaning of justice was described on 1919 by the great legal expert Matei Cantacuzino, and how far we depart today from the truth of justice to immerse ourselves into the unauthentic of the "other justice", of the crisis: "In a small church in Rome I saw the painting with a woman holding the black earth into her hands. She warmly embraced it; her expression showed she was a mother, with her eyes turned up to the sky she seemed she was trying to pull the light out of the sky's blue. I was expecting to have written underneath: Charity or Justice or Philanthropy. It was not. It was *Justice!* A justice unblindfolded and understanding all pains, and not the other justice, blind with the sword in one hand and holding a scale with the other hand, so little, that it couldn't contain any of our miseries.

### **III THE PRINCIPLES OF LAW. A PHILOSOPHICAL DIMENSION.**

An argument for which the philosophy of law needs to be a reality present not only in the theoretical sphere but also in the practical activity for normative acts drafting or justice accomplishing, is represented by the existence of the general principles and branches of law, some of them being consecrated also in the Constitution.

The principles of law, by their nature, generality and profoundness, are themes for reflection firstly for law's philosophy, only after their construction in the sphere of law metaphysics, these principles can be transposed to the general theory of law, can be consecrated normatively and applied to jurisprudence. In addition, there is a dialectical

circle because the “understandings” of the principles of law, after the normative consecration and the jurisprudential drafting, are subject to be elucidated also in the sphere of the philosophy of law. Such a finding however imposes the distinction between what we may call: *constructed principles of law* and on the other side *the metaphysical principles of law*. The distinction which we propose has as philosophical grounds the above shown difference between ‘constructed’ and ‘given’ in the law.

The constructed principles of law are, by their nature, juridical rules of maximum generality, elaborated by the juridical doctrine by the law maker, in all situations consecrated explicitly by the norms of law. These principles can establish the internal structure of a group of juridical relationships, of a branch or even of the unitary system of law. The following features can be identified: 1) are being elaborated inside law, being as a rule, the expression of the manifestation of will of the law maker, consecrated in the norms of law; 2) are always explicitly expressed by the juridical norms; 3) the work of interpretation and enacting of law is able to recognize the meanings and determinations of the law’s constructed principles which, obviously, cannot exceed their conceptual limits established by the juridical norm. In this category we find principles such as: publicity of the court’s hearing, the adversarial principle, law supremacy and Constitution, the principle of non-retroactivity of law, etc.

Consequently, the law’s constructed principles have, by their nature, first a juridical connotation and only in subsidiary, a metaphysical one. Being the result of an elaboration inside the law, the eventual significances and metaphysical meanings are to be, after their later consecration, established by the metaphysic of law, at the same time, being norms of law, have a mandatory character and produce juridical effects like any other normative regulation. Is necessary to mention that the juridical norms which consecrate such principles are superior as a juridical force in relation to the usual regulations of law, because they aim, usually, the social relations considered to be essential first in the observance of the fundamental rights and of the legitimate interests recognized to the law subjects, but also for the stability and the equitable, predictable and transparent carry on of juridical procedures.

In case of a such category of principles, the above named dialectical circle has the following look: 1) the constructed principles are normatively drafted and consecrated

by the law maker; 2) their interpretation is done in the work of law's enacting; 3) the significances of values of such principles are later being expressed in the sphere of metaphysics of law; 4) the metaphysical "meanings" can establish the theoretical base necessary to broaden the connotation and denotation of the principles or normative drafting of several such newer principles.

The number of the constructed principles of law can be determined to a certain moment of the juridical reality, but there is no preconstituted limit for them. For instance, we mention the "principle of subsidiarity", a construction in the European Union law, assumed in the legislation of several European states, included in Romania.

The metaphysical principles of law can be considered as a 'given' in relation to the juridical reality and by their nature, they are outside law. At their origin they have no juridical, normative, respectively jurisprudential elaboration. They are a transcendental 'given' and not a transcendent of the law, consequently, are not "beyond" the sphere of law, but are something else in the juridical system. In other words, they represent the law's essence of values, without which this constructed reality cannot have an ontological dimension.

Not being constructed, but representing a transcendental, metaphysical "given" of law, it is not necessary to be expressed explicitly by the juridical norms. The metaphysical principles may have also an implicit existence, discovered or valued throughout the work for law's interpretation. As implicit "given" and at the same time as transcendental substance of law these principles must eventually meet in the end in the contents of any juridical norm and in every document or manifestation that represents, as case is, the interpretation or enacting of the juridical norm. It should be emphasized that the existence of metaphysical principles substantiates also the teleological nature of law, because every manifestation in the sphere of juridical, in order to be legitimate, must be suited to such principles.

In the juridical literature, such principles, without being called metaphysical, are identified by their generality and that's why they were called "general principles of law". We prefer to emphasize their metaphysical, value and transcendental dimension, which we consider metaphysical principles of juridical reality. As a transcendental 'given' and not a constructed one of the law, the principles in question are permanent, limited, but

with determinants and meanings that can be diversified within the dialectical circle that contains them.

In our view, the metaphysical principles of law are: *principle of fairness; principle of truth; principle of equity and justice; principle of proportionality; principle of liberty*. In a future study, we will explain extensively the considerents that entitle us to identify the above named principles for having a metaphysical and a transcendental value in respect to the juridical realities.

The metaphysical dimension of such principles is undeniable, yet still remains to argument the normative dimension. An elaborate analysis of this problem is outside the objective of this study, which is an extensive expose about the philosophical dimension of the principles of law. The contemporary ontology does not consider the reality by referral to classical concept, in substance or matter. In his work „*Substanzbegriff und Funktionsbegriff*” (1910) Ernest Cassirer opposes the modern concept of function to the ancient one of substance. Not what is the “thing” or actual reality, but their way of being, their inmost make, the structure concern the modern ones. Ahead of knowledge there are no real objects, but only “relations” and “functions”. Somehow, for the scientific knowledge, but not for the ontology, the things disappear and make space for the relations and functions. Such an approach is operational cognitive for the material reality, not for the ideal reality, that ‘world of ideas’ which Platon was talking about. [4]

#### **IV. CONCLUSIONS**

The normative dimension of juridical reality seems to correspond very well to the observation made by Ernest Cassirer. What else is the juridical reality if not a set of social relations and functions that are transposed in the new ontological dimension of “juridical relations” by applying the law norms. The principles constructed applied to a sphere of social relations by means of juridical norms transforms them into juridical relations, so these principles correspond to a reality of judicial, understood as the relational and functional structure.

There is an order of reality more profound than the relations and functions. Constantin Noica said that we have to name an “element” in this order of reality, in which the things are accomplished, which make them *be*. Between the concept of

substance and the one of function or relation a new concept is being imposed, that will maintain the substantiality without being dissolved in functioning, to manifest the functionality [5].

Assuming the great Romanian philosopher idea, one can assert that the metaphysical principles of law evoke not only the juridical relationships or functions, but the “valoric elements” of juridical reality, without which it would not exist.

The metaphysical principles of law have a normative value, even if not explicitly expressed by law norms. Furthermore, such as results from jurisprudence interpretations, they can even have a supernormative significance and thus, can legitimate the justnaturalist conceptions in law. These conceptions and the superjuridicality doctrine asserted by Francaise Geny, Leon Duguit and Maurice Duverger, consider that justice, the constitutional justice, in particular, must relate to rules and superconstitutional principles. In our view, such standards are expressed precisely by the metaphysical principles which we referred to. The jurisprudential conceptions were applied by some constitutional courts. It is famous on this meaning, the decision on January 16<sup>th</sup> 1957 of the Federal Constitutional Court of Germany with regard to the liberty to leave the federal territory. The Court declares: “The laws are not constitutional unless they were not enacted with the observance of the norms foreseen Their substance must be in agreement with the supreme values established by the Consitution, but they need to be in conformity with the *unwritten elementary principles* (s.n.) and with the fundamental principles of the fundamental Law, mainly with the principles of lawfull state and the social state” [6].

One last thing we wish to emphasize refers to the role of the judge in applying the principles constructed especially the metaphysical principles of law. We consider that the fundamental rule is that of interpretation and implicitly of enacting any juridical regulation within the spirit and with the observance of the valoric contents of the constructed and metaphysical principles of law. Another rule refers to the situation in which there is an inconsistency between the common juridical regulations and on the other side the constructed principles and the metaphysical ones of the law. In such a situation we consider, in the light of the jurisprudence of the German constitutional court, that the metaphysical principles need to be applied with priority, even at the expense of

a concrete norm. In this manner, the judge respects the character of being of the juridical system, not only the functions or juridical relations.

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## THE JUDICIAL RESPONSIBILITY REGARDING WORK SAFETY

Lecturer **EUFEMIA VIERIU, PhD**  
Petroleum-Gas University ( Romania)  
eufemia\_vieriu@yahoo.com

### Abstract

Violation of the pre-established regulations through an inappropriate behaviour triggers the responsibility of the guilty person forcing them to bear the most different consequences of his act.

Judicial responsibility is both a kind and an integral part of social responsibility whose singularity consists in the act that it derives from violating a law regulation that incubates. The compulsoriness of bearing a constraint has the sole reason of deviation from the judicial regulation. By triggering the responsibility and bearing the consequences devolving from it the violated law order is established.

In the content of the present article there will be approached specific aspects of the kinds of judicial responsibility within the labour law, their features as well as their sanction system.

Keywords: disciplinary responsibility, patrimonial responsibility, contraventional responsibility, criminal responsibility

Judicial responsibility is an institution of the labor law that sanctions the violation of the laws in force by the employer, employees and other participants to the labor process.

The types of judicial responsibility regarding the labor law are:

- disciplinary responsibility;
- patrimonial responsibility (of the employees and employers);
- contraventional responsibility;
- Criminal responsibility.

### *Disciplinary responsibility*

Disciplinary responsibility is a type of judicial responsibility, it specifies the labor law and interferes when a person working in a unit is guilty of committing a deviation from the job obligations mentioned in the labor agreement.[1]

**The features [2] of disciplinary responsibility:**

- it has contractual nature because it is part of a person's duty by including him in the labor collective of an employer, by closing the individual labor agreement;
- it has a strictly personal character therefore it can be engaged by every employee;
- it has a system of laws that regulate the behaviour of the employees while developing the labor process;
- it is transposed in a patrimonial or moral restraint;
- it has autonomous character;
- it functions on the ground of the employee's subordination towards the employer;
- It exercises both a sanctioning function and a preventive and educational one.

Disciplinary sanctions are a type of restraint provided by law having the purpose of defending the disciplinary order, the development of the responsibility spirit for conscientiously fulfilling labor duties and respecting the behaviour rules as well as the prevention of indisciplinary acts. They are specific measures to the labor law regarding the execution of the individual labor agreement.[3]

The labor law states that the disciplinary sanctions that the employer can apply in the case of the employee's disciplinary deviations are:

- warning letter

This type of responsibility consists of warning the employee, in a written manner, by the employer, about the committed deviation and the consequences occurred during the labor process.

According to the Labor Law the warning letter is the only disciplinary sanction applicable by the employer without prior disciplinary investigation.

- Demoting in function and giving the salary of the function to which the employee is demoted, for a period of maximum 60 days.

Demotion in function or category is the most severe sanction that can be applied while keeping the labor rapport. This is for people who are not at their first disciplinary

deviation and that bring considerable moral and material prejudice to the unit where they develop their labor process in certain circumstances that make the act very dangerous. The demotion must be effective, implying not only the diminution of the salary but also the temporary transition to another duty. For it to be legal, the demotion must be applied on a period of maximum 3 months.[4]

- reduction of the basic salary on a period of 1-3 months by 5-10%

This sanction targets only the basic salary not the allowances, increases or other salary additions. The legality of the sanction is ensured by the limits established by law, namely: the term of 1-3 months and the salary reduction procedure by 5-10%.

- reduction of the basic salary and/or, as appropriate, of the management increase on a period of 1-3 months by 5-10%

This sanction is exclusively applied to the management staff.

- the disciplinary termination of the individual labor agreement

It is the maximum disciplinary sanction, the most severe that implies the termination of the labor agreement of the guilty employee through the unilateral will of the employer.

The employer can dismiss the employee that has committed a serious deviation or repeated deviation from the labor discipline rules or from those established by the individual labor agreement, the applicable collective labor agreement or the internal regulations.

The disciplinary vindication of the employee is regulated by the Labor Law. The disciplinary sanction is cleared within 12 months from its application if the employee is not applied another disciplinary sanction within this term. The clearance of the disciplinary sanctions is stated by the written decision of the employer.

Stating the employee's guilt, after the prior investigation, the employer establishes the disciplinary sanction according to the dispositions of the Labor Law regarding:

- the circumstances in which the act was committed;
- the guilt degree of the employee;
- the consequences of the disciplinary deviation;
- the general behavior of the employee at work;

— The possible disciplinary sanctions that the employee might have suffered.

The sanctioning decision is the unilateral act through which the employer states the disciplinary sanction of the employee that committed a disciplinary deviation. The sanctioning decision is communicated to the employee within 5 calendar days from the date of the emission and is effective from the communication date. The communication is personally given to the employee with the signature of receipt or, in the case of its refusal, by registered letter at the employee's home or residence. The sanctioning decision can be contested at a court found in the region of the employee's residence within 30 days from communication.

According to the Labor Law, under the sanction of absolute nullity, the decision must contain:[5]

- the description of the act that constitutes the disciplinary deviation;  
the precision of the provisions of the personal status, internal regulations, individual labor agreement or collective labor agreement applicable that were violated by the employee;
- the reasons for eliminating the employee's defense during the prior disciplinary investigation or for not conducting an investigation;
- the grounds of the law according to which the disciplinary sanction is applied;
- the term during which the sanction can be contested;
- The court where the sanction can be contested.

#### *Patrimonial responsibility*

According to the dispositions of art. 269 of the Labor Law the employee is obliged, on the grounds of the rules and principles of the civil contractual responsibility, to compensate the employee if he has suffered a material or moral prejudice because of his employer during the fulfillment of the labor duties or related to the job, and art. 270 align. 1 provides that employees have patrimonial responsibility, on the grounds of the rules and principles of the civil contractual responsibility, for the material damage the cause to the employer because of and related to their work.

From the conjunction of these two articles there results that the regulation of patrimonial responsibility within the Labor Law is applied to both the employers and the employees.

The employees' patrimonial responsibility is a type of judicial responsibility that consists of their obligation to repair the material damage done to the employer because of and related to their work. [6]

They are not responsible for the damage caused by major force or other unexpected causes that could not be eliminated and for the damage that are part of the normal risk of the job.

The employer's responsibility has the following features: it is contractual, having the foundation in the individual labor agreement; it is reparatory; the prejudice is related to the job; the same laws are applied as in the case of civil contractual responsibility etc. [7]

Due to the fact that it is related to a specific principle of the bilateral obligations and because the compensations paid by the unit are retrieved from the guilty ones, the employer's responsibility is regulated in the same title as the patrimonial and disciplinary responsibility of the employees. [8]

According to the dispositions of art. 253 of the Labor Law, the employer can be obliged to:

- damage – interest for the prejudice caused to the employee by inexcusably delaying the payment of the salary or by not paying it;
- Paying compensations in case of cancellation of dismissal as well as in the case of acquitting the person suspended from function; for covering the prejudices caused to victims of labor accidents.

The patrimonial responsibility of the employer [9] can also occur in the following cases:

- the employee, without being dismissed, is prevented from working;
- the appropriate measures are not taken for ensuring the security of the clothing of the personnel that uses work equipment and therefore it is stolen or degraded;
- the employee suffers from a prejudice because of the discrimination he is subjected to;
- the legal term of forwarding the pensioning file is exceeded or the emission of the necessary documents for pensioning are delayed;
- the emission of the certificates completed incorrectly;

- The employer does not emit or delays the emission of the employment record at the termination of the labor relations and the delay of this document causes damage to its holder.

The employers are patrimonial responsible for the prejudices caused to the victims of the labor accidents or professional illnesses when the damages are not entirely covered by the public social insurance.

The main conditions for the patrimonial responsibility of the employees to exist are:

- the person who produced the damage to the employer is his employee;
- the illegal and personal act of the employee committed in relation to his work;
- the prejudice caused to the patrimony of the employer;
- the causal relation between the illegal act and the prejudice;
- The guilt of the employee.

A particular type of patrimonial responsibility occurs when the employee has received an unjustified sum or goods that he did not deserve from the employer. If the goods received in this way cannot be returned in their nature or if the employee received services he did not have access to, the employee is obliged to return their countervalue. The countervalue of the goods or services concerned is established according to the value they had on the day of the payment.[10]

These sums can be retained in monthly rates from the employee's salary. The rate cannot be higher than 1/3 of the monthly net salary without exceeding along with the other retentions that the one concerned would have of that salary.

#### *The contraventional responsibility*

The contraventional responsibility of the Labor Law is defined as the type of judicial responsibility that consists of sanctioning the contraventions of the people (physical or judicial) guilty of violating the legal provisions that prevent and sanction contraventions.[11]

The contravention is an illegal act committed with guilt that represents a lower danger to the society than other acts, the consequences being more restrained and constituting the ground of the contraventional responsibility.

The subject of the contraventional responsibility of the Labor Law is always the employer.

The object of the contravention is constituted by values, social relations, legal goods or interests protected by the rules of the contraventional law that are damaged or endangered by committing the act.[12]

The establishment of the contraventions of the labor law is the attribution of the work inspectors. The contraventionally sanctioned people can file a complaint against the minutes of establishing the contravention within 15 days from the date of communication at the court near which the contravention has been committed.

### *Criminal responsibility*

The criminal responsibility in the labor law is not only about the offenses incriminated in the Labor Code. The special part of the Criminal Code regulates several types of offense regarding the job.

The criminal responsibility implies committing an illegal act with the main feature that it has to be an illegal act, namely an offense.

The subjects of the criminal offense are on one side the state and on the other the offender.

The state represents the active subject that exercises judicial restraint by applying and ensuring the fulfillment of the judicial sanction and the offender, who is called the passive subject, must suffer the consequences of the criminal act, namely the application and execution of the sanction.

The content of the judicial report of criminal responsibility consists of the correlative sanctions and obligations of the parts.

The object of the criminal responsibility report consists of the sanction that the state applies to the person that committed the illegal act.

Criminal responsibility has the following features:[13]

- it is individual and personal (it cannot be transmitted through files amongst the living or because of decease, with onerous or free title);
- the guilty person is responsible for himself (the responsibility for another's act is excluded);

- Its establishment triggers the application of a sanction from those provided by law.

According to the Labor code the following criminal acts committed by employers are offenses:

- not executing a final court order regarding the payment of the salaries within 15 days from the date of the execution request addressed to the employer by the interested part is an offense sanctioned by 3 to 6 months in prison or by fine (art. 277);
  - not executing a final court order regarding the reintegration in labor of an employee is an offense sanctioned by 6 months to a year in prison or by fine (art.278);
  - the act of the person that repeatedly establishes for the employees with an individual labor agreement salaries under the value of the minimum gross salary of the country provided by law is an offense sanctioned by 6 months to a year in prison or with criminal fine (art. 2791, align. (1));
  - the repeated refusal of a person to allow, according to law, the access of the work inspectors in any of the unit's spaces or to provide them the requested documents, according to law is an offense sanctioned by 6 months to a year in prison or by criminal fine (art. 2791 align. (2));
  - employing more than 5 people, regardless their citizenship, without closing an individual labor agreement is an offense sanctioned by 1 to 2 years in prison or by criminal fine (art. 2791 align. (3));
  - employing minors without respecting the legal age conditions or using them for activities that violate the legal provisions about the labor regime of the minors is an offense sanctioned by 1 to 3 years in prison (art. 2801 align. (1));
  - employing a person who is illegally staying in Romania, knowing that the person is a victim of the human trafficking is an offense sanctioned by 6 months to 3 years in prison (art. 2801 align (2));
  - The labor performed by a person who is illegally staying in Romania, knowing that this person is a victim of human trafficking or the labor performed by maximum 5 people, regardless their citizenship, without closing an individual

labor agreement that endangers their lives, integrity or health is an offense sanctioned by 6 months to 3 years in prison (art. 2801 align. (3)).

For the offenses presented above the employer can be obligated by court, according to art. 2801, align. (5), to pay sums that represent:

- any remaining remuneration owed to the illegally hired people. The amount of the remuneration is presumed to be equal with the medium gross salary, if the employer or the employee cannot prove otherwise;
- the amount of all taxes and social insurances contribution that the employer would have paid if the person would have been legally hired, including the delay penalties and the appropriate administrative fines;
- The expenses determined by the transfer of the remaining payments to the country where the illegally hired person has willingly returned or was returned according to the law provisions.

Law nr. 319/2006 of labor security and health regulates the following offenses:[14]

- not taking one of the legal measures of labor security and health by the person who had to take these measures, if there is a serious and imminent danger of labor accident or professional illness is sanctioned by 1 to 2 years in prison in the case of the simple version of the offense; by 1 to 3 years in prison or by fine, if the offense has produced serious damages; by 3 months to a year in prison or with fine or by 6 months to a year in prison or by fine in the case that the offense was guiltily committed;

- not respecting the obligations and measures by any person regarding the labor security and health if by this a serious and imminent danger of a work accident or professional illness is created is sanctioned by: for the simple version, 1 to 2 years in prison or fine; if the offense has produced serious damages, 1 to 3 years in prison or fine; and in the case in which the offense has been guiltily committed, 3 months to a year in prison or fine or 6 months to a year in prison or fine (art. 38).

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# EVOLUTION OF LEGAL RULES RIGHT ON FOREIGNERS ACQUIRE LAND IN ROMANIA

**Professor NICOLETA DIACONU, PhD**  
*"Spiru Haret" University (Romania)*  
*Associate Teacher - Police Academy*  
*"Alexandru Ioan Cuza"*  
*nicoled58@yahoo.com*

## **Abstract**

The issue of land acquisition in Romania by foreign individuals or legal entities accounted for over time a sensitive issue. If the regulations adopted by 2003 categorically forbade land sales to foreigners in the context of Romania's accession to the European Union has become permissive legal framework, foreigners can acquire ownership of lands, as stipulated by special laws.

Keywords: legal rules, acquire land, Romania, European Union, special laws

## **1. Aspects of the legal condition of aliens in Romania**

### **1.1. Term foreign**

The legal regime of foreigners in Romania individuals is regulated both by internal legal acts and international legal acts.

The notion of "alien" is defined by the provisions of the Government Emergency Ordinance no. 194/27 December 2002, art. 2 contains a series of "definitions", representing the legal aspect, the legal qualifications of the concepts it defines. Thus, the provisions of the ordinance, the terms offered legal qualifications: foreign stateless foreigners authority, visa, visa, airport transportation, right of residence, residence, marriage of convenience.

Under the provisions of art. 2 letter a) of O.U.G. No. 194/2002[1] is considered "foreign" Romanian stateless person.

The provisions of art. 2 letter b) defined the notion of "stateless" which means foreigner who does not have citizenship of any state.

The enactment provides a clear and unified conception of the notions of "foreign" and "stateless", removing ambiguous interpretations of these concepts. Previous regulations did not define clearly the concept of statelessness, it is appreciated that the

person without citizenship, being assimilated by way of interpretation of the foreigner. The current regulation beyond this shortcoming, determining the application of the law.

Although the personal status of the alien is subject to national laws and regulations of their own personal status of stateless keep the law of the domicile or residence[2], we consider that the current regulation are necessary conditions for and stateless persons can benefit from some favorable provisions in the Conventions or international treaties concerning certain aspects of foreign .. so far, stateless persons could not benefit from the provisions of such conventions, just foreign nationals being granted certain rights provided by their sources of public international law.

### **1.2. The notion of legal condition of the foreign**

The legal institution of "legal condition of foreigners" is one of the areas of private international law.

The legal condition of the alien Notiu means all the legal rules governing the ability to use the alien, that the rights and obligations it may have in a particular state, who is a stranger.

Regarding the content or scope of the institution's legal condition of the alien, must be underlined that, on the one hand, it refers to a set of rights and obligations that are protected by legal rules specific to various branches of law and on the other hand that legal provisions which establish these rights and duties are covered by different sources both internal and international sources. With regard to international sources in the interest of the legal condition of the foreigner those international legal instruments containing provisions relative to certain rights and obligations of foreigners, such as legal assistance treaties and bilateral agreements in certain areas, consular conventions, agreements for the promotion and safeguarding investments, double taxation conventions, treaties and trade agreements, technical cooperation agreements economic and transport, etc.

The legal status of the foreigner is established by the State of residence of the foreigner, and hence its unilateral nature. Not be excluded, however, the conclusion of international agreements concerning the legal status of aliens, which gives him a bilateral character.

In determining the legal status of the alien, the State of residence can follow two directions: providing an alien legal system appropriate to their interests and legal regime stranger as similar to that of its citizens. For economic reasons some states resort to other factors in determining the legal status of foreigners, tourism being one of them, often most importantly.

The provisions of Article 57 of the Constitution on 'exercise of the rights and freedoms "establish that Romanian citizens, foreign citizens and stateless persons shall exercise their rights and liberties in good faith, without violating the rights and freedoms of others.

Under the provisions of art. 18 para. 1 of the Constitution, foreign citizens and stateless persons that live in Romania shall enjoy general protection of persons and property, guaranteed by the Constitution and other laws<sup>14</sup>.

Rights enjoyed by foreigners in Romania are covered by domestic legislation and in international regulations.

In principle, in Romania, the legal regime applicable to foreigners is a national scheme, with some exceptions.

## **2. Evolution of regulations on land acquisition by foreigners**

### **2.1. The evolution of the constitutional provisions**

Constitution of 1991, like the previous ones, that Constitutions of 1866, 1923 and 1938, denying the sale of land to foreigners and stateless persons.

In the new geopolitical context, with the accession of Romania's role in the European Constitution in Article 44 paragraph 2 of the 2003 has that "Foreign nationals and stateless persons may acquire private ownership of land under the terms resulting from the accession of Romania to the European and other international treaties to which Romania is a party, on a reciprocal basis, as provided in the organic law and lawful inheritance. "

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<sup>14</sup> The same regulation is taken and the provisions of art. 3 pt. 1 of O.U.G. No. 194/27 December 2002

The constitutional provisions aimed at gaining ownership of land in general without distinguishing between classes of lands or within or outside the city.

### **2.2. Law Nr. 54 of 2 March 1998 on the legal circulation of land [3]**

Pending amendment of the 2003 Constitution, the Law no. 54 of 2 March 1998 on the legal circulation of land prohibiting alienation of land by foreigners. Thus, at art. 3, the law provided that "foreign citizens and stateless persons can not acquire ownership of the land. Individuals who have Romanian citizenship and residence in Romania abroad can acquire by legal acts between living and heritage, land of any kind. Foreign legal entities may acquire land in Romania by legal acts inter vivos or upon death. "

**2.3. Constitutional Court Decision no. 408 of 7 October 2004 [4]** on the unconstitutionality of the provisions of Article 3 para. (1) of Law No. 54/1998 on the legal circulation of land put prohibitive provisions of the law consistent with the Constitution of 2003 permissive decision finds that prohibitive effects generated by critical legal text can not find the application in the current constitutional regime (ie, the set of art. 44 para. 2 with art. 154 paragraph 1 of the Constitution adopted in 2003).

### **2.4. 247/2005 law on the reform of property and justice[5]**

The provisions of Title X of the Law. 247/2005 was regulated legal circulation of land, sitting in the art. 3 that [6] "foreigners and stateless persons may acquire ownership of land in Romania as provided by special law." So, I appreciate that the provisions of Law no. 247/2005 were provisions for reference, foreigners and stateless persons can not acquire land through effective application of the law to be passed a special law in this regard.

### **2.5. 312/2005 Act for entitlement to private property by foreign nationals and the foreign legal persons [7]**

This law, which came into force on accession to the European Union, comprised Displays The following provisions on land sales to foreigners;

- According to art. 3 "citizen of a Member State, stateless persons domiciled in a Member State or in Romania, as well as the legal entity formed under the laws of a Member State may acquire ownership of land under the same conditions as those provided by law for Romanian citizens and Romanian legal persons. "

- According to Article 4, "a citizen of a Member State resident in Romania, stateless persons resident in Romania residing in a Member State and a non-resident legal person constituted under the laws of a Member State may acquire ownership over land for residences or secondary offices, the end of a period of five years from the date of accession to the European Union ".

- According to Article 5, "a citizen of a Member State, stateless persons domiciled in a Member State or in Romania, as well as the legal entity formed under the laws of a Member State may acquire ownership of agricultural land, forests and forestry land in end of a period of seven years from the date of accession to the European Union ".

The provisions of par. (1) does not apply to self-employed farmers and are appropriate:

- a) nationals of Member States or stateless persons domiciled in a Member State, the taking up residence in Romania;
- b) stateless persons residing in Romania.

Member States citizens or stateless persons domiciled in a Member State prove the quality of the self-employed farmer with documents issued / issued by the competent authorities of the Member State or origin. Stateless persons residing in Romania prove that quality certificate issued in this regard by the Ministry of Agriculture and Rural Development.

Persons under par. (2) acquire ownership of agricultural land, forests and forestry land under the same conditions applicable to Romanian citizens from Romania's accession to the European Union.

Agricultural land use, forests and forest land can not be changed during the transition to the persons referred to in para. (2). "

Analyzing these provisions that citizens of the EU / EEA could acquire land in Romania since 2012 residences and where applicable, secondary locations.

With regard to third-country nationals, as provided. Article 6, they can acquire land in Romania solely on the basis of mutual international agreement between the Romanian state and country of affiliation. If no such agreement, the citizen who is not a member state of EU / EEA can only buy ownership of building, acquiring a right of superficies on land adjacent building during its existence.

For the correct application of the law to be clarified certain aspects of the legal classification of concepts, as follows:

a) First you need clear meaning of the term "residence" to determine the scope of persons covered by the provisions of Articles 3 and 4.

The literature was analyzed legal rules describes the concept of "right of residence" that will apceciindu the Romanian legislator was that the application of Law 312/2005 to be given to the description of the right of residence Romania by OUGnr.102 / 2005, amended by OGnr.30 / 2005[8].

b) Second to be clarified whether 312/2005 law is "special law" referred Devic. art. 3 of Title X of Law 247/2005.

In this regard, the literature has found that Law no. 312/2005 not be considered special law referred to art. 3 of Title X of Law. 247/2005 as land laws concerning civil circuit courts outside runs and not to enter into civil circulation with the restoration of property rights by issuing the title deed and Lgea no. 312/2005 covers civil circuit courts. [9]

Special Law on reconstitution of ownership was considered to be Law. 18/1991 as it was republished in 1998 and then amended in 2005, no longer concerned, in June 1998, the acquisition of ownership of foreign citizens on land inheritance path. Special law of the land, reissued in this form officially left silent situation acquiring ownership of land by foreigners through inheritance. The analysis of the provisions of that law, acquiring ownership of land on the path reconstruction based on acquiring the land law is based either on the quality of the applicant was the owner (ie interest on their own) or the quality heir of the former owner (ie interest as an heir).

c) The text of the law does not contain a legal qualification of the term "farmer" to implement the provisions of article 5 of the law. Follow this quality is proven with

documents issued / issued by the competent authorities of the Member State or origin. I think that requires a uniform legal qualification of the term "farmer".

**2.6. Law. 17/2014 regarding some measures to regulate the sale and purchase of agricultural land located in the unincorporated area.** [10]

As provided. art. 2 of the Act, "agricultural land located in town not covered by this regulation. The provisions of this law shall apply Romanian citizens or nationals of a Member State of the European Union, of the states that are party to the European Economic Area Agreement (EEAA) and the Swiss Confederation and stateless persons residing in Romania, a member of European Union in a State party to the EEAA and the Swiss Confederation and the Romanian legal persons who are nationals or of a Member State of the European Union, the states party to the EEAA and the Swiss Confederation. Citizens and legal persons belonging to a European Union Member State or States which are party to the EEAA or the Swiss Confederation may acquire agricultural land in Romania in terms of reciprocity.

Citizen of a third country and stateless persons residing in a third State and legal persons having the nationality of a third country may acquire ownership of agricultural land located in the unincorporated area as regulated by international treaties, reciprocal, under this law ".

According to Article 3 "farmland from outside the city to a depth of 30 km from the state border and the Black Sea, to the interior, and those from outside the city at a distance of up to 2,400 m of special objectives may be alienated the sale only with the approval of the Ministry of Defence specific, issued in consultation with state agencies with responsibilities in national security, the specialized internal structures referred to in art. 6 paragraph 1 of Law no. 51/1991 on Romania's national security, as amended and supplemented. "

In art. 4 of the law is regulated right of preemption. The 'transfer by sale, a farm located in unincorporated tereurilor be subject to the pre-emption right of the individual co-owners, tenants, neighbors, individuals, individuals aged up to 40 years pursuing agricultural activities across administrative territorial locality where the land is situated,

respectively, and the Romanian State (the State Domains Agency), in that order, at the price and on equal terms. "

**2.7. Order no. 719/740 / M.57 / 2333 approving the Methodological Norms for the application of Title I of the Act no. 17/2014. [11]**

Methodological rules detailing the rules and procedures to be followed in the event of the transfer by sale of agricultural land located in the unincorporated area.

The main steps of the procedure are:

- Submission of application at City Hall by the seller on the display showing the sale offer, together with the documents referred to in the law;

- Sending file by mayor central structure (the technical specialist within MARD) and spatial structures (Directorates for Agriculture and Rural Development county) within 3 working days of the date of filing;

- Any pre-emptive rights holders wishing to exercise this right at the town hall communication record sales offer is accepted within 30 days from the posting of the offer for sale at the town hall, under penalty of forfeiture;

- Choosing preemptorului potential buyer by the seller, in accordance with the procedures laid down in art. 7 of law and communicate his name to the town hall.

- Transmission by mayor central structures or regional structures, where appropriate, particulars of preemptorului potential buyer chosen by the seller;

- Publication of tenders for the sale of land on the site of the central and territorial structures of the institution;

- Issue final opinion by the central structure, if the land is purchased by a preemption, to conclusion of the final vanzare. Avizul / negative opinion forward the seller by mail with return receipt, or at his request, be given to the seller or authorized person. The final opinion is valid six months from the date of the seller. The opinion goes further fulfillment of that period, if the parties have concluded a preliminary contract during its term or option pact covers unincorporated agricultural land for which it was issued.

- If any preemption not its intention to purchase, in legal terms, the sale is free;

- City issued a certificate vendor, accompanied by a certified copy of the original offer of sale, are expected to choose a buyer. If the offer is not set any conditions, land can be sold under any circumstances except the price reduction.

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## THE COMPONENTS OF THE SALARY

DUMITRU VIERIU, PhD  
dumitru\_vieriu@yahoo.com

### Abstract

The salary is an essential element of the labor agreement, a part of the obligations assumed by the employer and of the judicial cause of the employed person, it constitutes the totality of the monetary rights proper for performed labour.

Being considered an essential element of the labour agreement next to the kind of labour and workplace, the monthly base salary is usually established through collective and/or individual negotiations without being pre-established.

In the content of the present article there will be approached specific aspects regarding the components of the salary, indemnities and additions.

Likewise, there will be brought into discussion the existent specific rapport between the rated and the real salary as well as the existence of some measures in the domain of applying some programmes regarding a minimum vital salary, referring to the minimum country salary.

Keywords: basic salary, indemnities, additions, salary categories, minimum national salary

### *The basic salary*

Labor is an essential feature of the human activity, man being the only being that consciously makes an effort to obtain benefits. Simultaneously, labour is a life condition because without performing labor the goods necessary for life cannot be obtained.

Along with the labor type and the work place, the salary is an essential element of the labor agreement, a part of the obligations taken by the employer and of the judicial cause of the hired person, it constitutes the totality of the financial rights appropriate for the performed labor.

In modern economy there are some modern mechanisms for establishing the salary, for differentiating them according to branches, jobs, professions and as well as for adapting them to the economic situation.

The components of the salary system are the components of the salary itself, namely the basic salary, increases and additions to the basic salary.[1]

The practical side of the salary system also includes the elements that compose the salary, salary types, ways of payment, as well as the measures of social salary protection for example the indexation – compensation and the minimum salary.

There are legal provisions about this in every country, from the most economically developed, such as: The United Kingdom, The United States, France, Japan, Germany, to those that are still developing such as: Hungary, Poland and Romania.

While the basic salary is considered a fixed part of the salary, increases and additions can be considered a varying part of it.

The basic salary is the main part of the total salary that is appropriate to every employee, usually taking into account the study level, professional training and qualification, the importance of the job, the characteristics of the duties and the professional competences. It not only constitutes the fixed and main part of the salary but also a reference element according to which the other rights of the employee are calculated such as different indemnities, increases, etc.[2]

In the public sector the personell paid from public funds can receive salary, monthly payment or monthly indemnity of inclusion for the performed labor.

Law number 284/2010 provides that the gross salary, the gross monthly payment include the basic salary, the payment of the basic function/ salary of the basic function, increases, indemnities, compensations, as well as the other elements of the salary system appropriate to every personell cathegory of the budgetary sector.

The basic salaries, function payments/salaries and monthly indemnities of inclusion are differentiated by function according to the importance, responsibility, the complexity of the activity and the necessary study level for performing the activity. [3] The making of the basic salary, payments of the basic functions/ salaries of the basic functions and of the monthly indemnities of inclusion hierarchy both in the sphere of activity and in the same sphere, is based on the evaluation of the posts, the differentiation being made according to the following criteria:

- knowledge and experience;
- the complexity, creativity and diversity of the activities;
- the judgment and impact of the decisions;
- influence, coordination and supervision;

- contacts and communication;
- Incompatibilities and special treatment.

Within every function, to ensure the possibility to differentiate the basic individual salaries according to the level of professional training of every person and to the person's work experience, the basic salaries are differentiated by:

- levels in the case of superior studies and short term superior studies;
- Professional stages in the case of secondary studies or professional levels for public servants.

Usually there are used 2 or 3 levels and 2 or 3 professional stages.

Within every level or every professional stage the differentiation of the basic salaries is usually made on a number of 5 gradations according to the 5 stages of seniority:

- from 3 to 5 years;
- from 5 to 10 years;
- from 10 to 15 years;
- from 15 to 20 years;
- Over 20 years.[4]

The differentiation of the basic salaries, function payments/salaries and of the monthly indemnities of inclusion is made by multiplying the hierarchy coefficients provided by every function (from 1.00 for the function with the least responsibility to 15.00 for the function with the greatest state responsibility) by the value of the coefficient 1.00.

The value for the hierarchy coefficient 1.00 from 2010 to 2015 is:

- 705 lei in 2010;
- 765 lei in 2011;
- 845 lei in 2012;
- 935 lei in 2013;
- 1015 lei in 2014;
- 1100 lei in 2015.[5]

For the management personnel the differentiation of the basic salaries is made according to the same criteria two levels of salary for the levels are usually used that contain increase for seniority to the maximum value. Within the basic salary of the management functions the management indemnity is included.

Usually, for trading companies, autonomous administrations and other private judicial people the basic salary is established by the collective labor agreement and the individual labor agreement and for the budgetary institutions by law or other legislative acts.

Being considered an essential element of the labor agreement alongside the work type and work place, the basic monthly salary is usually established through collective and/or individual negotiations without being pre – established. According to the legislative acts the basic salary cannot be lower than the minimum gross salary of the country established by governmental decisions.

The basic salary has a great importance to the salary system and salary politics of all states because it is not only the fixed and main part of the salary but also a standard of reference. According to this the other rights of the employees are calculated, namely the indemnities, increases, right to pension, unemployment benefit, rents, scholarships, as well as many of the employee's obligations such as taxes, contributions to the unemployment fund and to the social insurances one.

The salary is paid in cash at least once a month. The payment in kind of a part of the salary is possible if it is expressly provided by the applicable collective labor agreement or by the individual labor agreement and in this case the appropriate sum in cash cannot be lower than the minimum gross salary of the country. The salaries are paid before any other financial obligations of the employers.[6]

Usually, for the same function/post the basic salary is constant on a certain period of time according to the legislation in force.

### *Indemnities*

Indemnities are sums paid to the workers over the basic salary having the purpose of compensating the expenses that they have to make in order to fulfill some labor duties or in other work conditions. Indemnities can be: for fulfilling a management function, for delegation, detachment, settlement, permanent missions abroad, etc. The allowances granted with this purpose must not be mistaken for the indemnities appropriate to people that perform labor based on other categories of judicial relations than the individual labor agreement, when it has a perfect correspondence with the salary.

The monthly indemnity for people that have functions of public dignity is, as a rule, the only type of remuneration for the certain function activity and represents the basis of the calculation for establishing the rights and obligations that are determined according to the salary.[7]

Indemnities are, like increases and additions, a variable and accessory part of the salary, are usually encountered in the salary system of the personell from the public institutions and represent a financial right for some cathegories of the management personell.

The indemnity is regulated as an obligation of the employer in the following conditions: temporary interruption of the activity if the employees are at the employer's disposal, the indemnity being of minimum 75% of the basic salary appropriate to the occupied work place; participation to courses or professional training stages initiated by the employer, if the participations requires complete removal from activity; the effectuation of the rest leave that represents the sum that the employees receive during the rest leave, that is calculated as an average of the salary rights of the past 3 months prior to the leave and cannot be lower than the total value of the salary rights appropriate for that period.

The delegation or detachment is the sum appropriate for covering the personal expenses of the detached or delegated employees. The delegated employees of the units in the country or abroad will benefit of the reimbursement of the transportation, ensurance and accommodation expenses accoding to the conditions established by the collective labor agreements for the other levels; travelling allowance, the amount of which is established by negociation at branch, goups of units or unit level. The minimum level of that allowance is the one established through the legislative acts applicable to the public institutions.

The dettached employees of the units benefit from delegation rights. If the dettachment exceeeds 30 consecutive days instead of the daily allowance an indemnity equal to 50% of the daily basic salary is paid. The detached employees mentain all the rights they had on the dettachment day aside from the ones regarding hygiene and work safety, even if at the work place where the employees have been detached to these cannot be found. If at the dettachment places the equivalent rights have greater

levels other rights are granted as well, the detached people benefit from them, including all the rights regarding hygiene and work safety of the new work place.

In case of bancruptcy or judicial liquidation, the employees have the status of privileged creditors and their monetary rights form privileged claims that will be paid in full, before the other creditors will revendicate their share. The employers will keep records where the performed activity will be mentioned based on the individual labor agreement and the rights of the employees and they will release proof about that. The employees who retire because of the age limit will recieve an indemnity equal to at least two basic salaries had in the month of the retirement. Apart from the help provided by law, to which they are entitled, the employees will benefit from the following : in case of the employee's death, the family will recieve at least two medium salaries per unit, if the death occured due to a work accident, a work related accident or a professional illness, the amount given to the family will be of at least three medium salaries per unit; a medium wage per unit, given to the mother for the birth of every child, if the mother is not employed, her husband benefits from the payment of one medium salary per unit and a medium salary per unit paid by the unit on the death of the husband, wife or a first degree relative that is dependent on the employee.[8]

The monthly indemnities provided by law ar in a goss sum and are taxed according to the legal dispositions in force.

The differentiation of the indemnities and basic salaries of the officials and other budgetary employees is the free option of the legislator, considering the importance and complexity of different functions. The legislator is also entitled to establish certain increases to the indemnities and basic salaries, periodic prizes and other incentives that he can differentiate depending on the personell cathegories, he can modify them during different periods of time, he can suspend or even cancel them. The equal rights and non-discrimination principle is applied only to equal or similar cases and the differentiated judicial treatment, established considering different objective situations, has neither privileges nor disciminations.

#### *Increases*

The increases arealso a variable part of the salary to which the employee has the right if he performs the activity in certain conditions or if he meets certain special

requirements. The increases are established as a percentage that is applied to the basic salary when the conditions provided by law are met or, as appropriate, the collective or individual labor agreement.

Regarding the increases, namely the variable and accessory elements of the salary, The Supreme Court of Cassation and Justice states that : “the increases are only granted in the work places where they are not part of the basic salary, being provided by the Labor Code, laws and ordinances, by the collective labor agreement at the national level and the collective labor agreements at branch, groups of units and units level.

In the present legal system the increases are not rewards or gratifications, they mainly constitute a compensatory factor for certain work conditions or for fulfilling some special requirements (professional or of seniority) that gives increased efficacy to the performed labor.

The increases to the basic salary are granted if the following conditions are met:

- the employee must have a post in a specialization that gives him the right to a certain increase;
- The employee must effectively work according to the conditions provided by law, the collective labor agreement or, as appropriate, the individual labor agreement.

In other words, regardless of the study level, the importance, complexity and work duties, function (post), performed profession, quantity, quality and work value, the branch, sphere or level of activity and the amount of the basic salary (indemnity) of an employee, he has to be given a certain increase if he works effectively according to the conditions provided by law for granting that certain increase.

There is no legitimate, objective and reasonable justification that, if two employees that do not find themselves in the same or similar judicial situation, in terms of occupied posts, job attributions, responsibilities etc, but both work with title, for example, in the same special working conditions, hard, dangerous or harmful, just one of them to receive the appropriate increase, and the second to not receive it because the law or the ordinance under which the latter employee is remunerated does not provide this increase.

The Labor legislation provides the following increases categories:

**Increases for extra hours** are only granted if the performed labor over the normal labor programme could not be compensated with the appropriate free time during the following 30 calendar days. From the conjunction of the dispositions of article 40, align (3), letter © of the collective labor agreement on a national level and article 120, align (2), of the Labor Code, an increase of 100% of the basic salary is granted for extra hours for the first 120 hours of a calendar year and of 75% for the extra hours performed over this limit.

Employees can be summoned to perform extra hours only with their consent but for preventing or removing some natural disasters or other cases of major force employees have the obligation to perform the additional labor requested by the employer.

These amounts of increases for extra hours are also provided for the budgetary units.

**The increase for the work performed during the weekly repose.** When labor is performed during the weekly repose the employees benefit from an increase that is negotiated between parts and that is, according to the collective labor agreement on a national level, of 100% of the basic salary for the first 120 hours of a calendar year and of 50% for the hours performed over this limit.

If the weekly repose is cumulatively granted after a period of continuous activity of maximum 15 calendar days, the employees have the right to an increase of 150% for the work performed during the weekly repose.

Employees whose weekly repose was suspended according to the provisions of the Labor Code have the right to an increase of 150% for the work performed in these conditions.

**The increase for working during the legal holidays** is granted only if the work performed during these days could not be compensated by the appropriate free time during the following 30 calendar days. The granted increase cannot be lower than 100% of the basic salary.

**The increase for seniority.** According to the collective labor agreement on a national level this increase is of at least 5% for 3 years seniority and maximum 25% for over 20

years seniority, of the basic salary. The seniority stages and the amount of the afferent increase of every stage is negotiated by every employer.

**The increase for working at night** is granted if the work time is within the hours of 22:00 – 6:00 and the duration of this work is of at least 3 hours. The increase is granted only if the employer does not have the possibility to reduce the work programme with an hour. The amount of this increase established by the collective labor agreement on a national level is of 25 % of the basic salary appropriate to every worked hour during the mentioned period of time. The employees that work in special conditions where the work time is under 8 hours a day also benefit from this increase.

**The increase for also exercising another function** is, according to the collective labor agreement on a national level of up to 50% of the basic salary regarding the replaced function.

**The increase for special, tough, dangerous or uncomfortable conditions of labor** is, according to the collective labor agreement on a national level of 10% of the basic salary.

The increase for tough labor conditions is granted when the physical effort necessary for performing the tasks is much higher than normal or if the labor is performed in difficult conditions such as travelling on rough terrain, uncomfortable work position, outdoor labour with great temperature variations.

The increase for uncomfortable work conditions. In the budgetary sector an increase of up to 30% of the basic salary is used from which only the sanitation and canalization workers benefit.

**The increase for harmful work conditions** is, according to the collective labor agreement on a national level, of 10% of the minimum salary negotiated on a unit level. This increase is utilized when on the premises where the employee works there are emitted, during the production process, certain harmful substances, either powder (asbestos, silicon, coal, certain metals) vapors or gas (acids, thinners, Sulphur dioxide, ammonia, other harmful substances); at the workplace there are registered powerful noises or vibrations.[9]

## **SALARY CATEGORIES**

### *Nominal and real salary*

The salary thus varies according to countries, domains, companies and people. On a long term, the amount of the salary has a general tendency to grow. This happens because of the productivity growth that entitle employees to ask for a bigger salary.

The nominal salary is the sum that the employee receives from the unit he works or performs labor at. The nominal salary in which the taxes are included is the nominal gross salary. The nominal salary is the negotiated one, taking into account the evolution of prices and charges. If the prices have the tendency to inflationary grow, the negotiation of the nominal salary will take into account this phenomenon, imprinting a tendency of growth.

The net salary is the one that the employee receives as an income from which there have been subtracted taxes and other deductions provided by law (for example for the unemployment fund).

The nominal salary is a dynamic measure, varying according to the emphasized factors. Both the amount of the salary and the differences between the salaries must be established so that to permanently keep the work motivation and aspiration for training evolution, as essential for obtaining a bigger salary.

The nominal salary is the sum that the employee receives for the performed services, including bonuses for seniority and activity period.[10]

The objective base of this salary is represented by the value of the work force. Compared to the price of the actual merchandise, the one of the work force is usually undervalued. This is a consequence of the supply and demand rapport of the labor market, the supply generally being bigger than the demand. As a consequence, there is a pressure on the nominal salaries or, more precise, a decrease under the value of the work force. Therefore, in order to counter the diminution of the salaries under a certain level considered obligatory either as a minimum of existence or as life standard, the state interferes through certain levers, one of them, amongst the most important and efficient being the establishment of a minimum guaranteed salary.

**The real salary** consists of the quantity of goods and services that the individuals can obtain with the nominal salary.

Naturally, the rapport between the nominal and real salary must be the same, meaning that on different periods with the same sum received for the performed labor it is possible to obtain the same quantity of goods and services. But, there are numerous situations in which with the same nominal salary or even with a higher one there are obtained less goods than in a previous period.

When the nominal salary grows but the cost of the food, clothing and other necessary goods grows as well, actually, the real salary diminishes which, obviously, affects the standard of living of the employees and their families. This is what happens since 1990 in our country. The nominal salaries have spectacularly grown but the prices have grown even more.[11]

The field studies have shown that the higher earnings have been registered in the air transports field, financial and banking institutions, tobacco industry and in the extraction of shale gas and petroleum. On the other side, the lowest salaries have been registered in the activities of insurance of the House of Pensions, sanitation and similar activities, leather and footwear industry, wood processing.

Likewise, the salary can be also differentiated between gross and net. The gross salary is the nominal salary to which both sides usually commit. The net salary is the sum received by the employee after the salary taxes have been subtracted from the gross salary.

Apart from the individual salary, there have also been constituted the collective and social salaries to stimulate the employees. The collective salary is granted to all the employees of a company for participating to its results, to the making of the profit. It is only granted from the profit and it can be differentiated according to the employees' participation to the profit making. The social salary is a sum that the society, in its whole, grants to increase the incomes of certain categories of employees or unemployed. The social salary is granted from the budget to all that have the right to receive it, equally. While the collective salary leads to the improvement of the employees' standard of living, the social salary only ensures the minimum level of existence.

The size and dynamics of the salary are also influenced by numerous indirect factors such as the level of organisation into unions and their capacity to obtain victories for the employees' claims, the employees' capacity to organise and dialogue with the

economic unit, patronal organisations and with the specialised organs of the state, international migration of the work force, Legislation regarding the strike and claim movement of every country.[12]

### *The minimum national salary*

The International Organisation of Labor has militate ever since its foundation, in 1919, for guaranteeing a salary to ensure convenient living conditions for all workers. With the occasion of the Conference of Philadelphia of 1944 there has been provided the obligation of these organisations to help all countries of the world to elaborate and apply certain programmes regarding a minimum vital salary.

What is understood by minimum salary has been established by the Report of the experts reunion summoned by the the International Labour Organization, with the occasion of its 168 session (Geneva, february – march 1967) : “ the level of remuneration below which no salary can be either by law or factually, regardless of its calculation manner; is a salary that has the power of the law in every country and that is applicable under the punishment of criminal sanctions or other specific sanctions. The minimum salary is the salary considered sufficient for satisfying vital needs of food, clothing, education, etc. Of the employees, considering the economic and cultural development of every country<sup>15</sup>.”

In the definition that is given to the minimum growth salary, the french Labor Code is referring to the needs of the employees, indicating that this salary ensures those with a lower remuneration the guarantee of the purchase power as well as the participation to the economic development of the nation.

According to the International Labor Organisation, the determination of the minimum salaries must take into account, as much as possible, the following criteria:

- the needs of the employees and of their families;
- the general level of the national salaries;
- the life cost and its fluctuations;

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<sup>15</sup> In their legislation, the countries use different terms to describe the concept of minimum rates of pay: vital minimum wage (Argentina); salary minimum share (Luxembourg ); minimum income (Chile); interprofessional minimum wage increase (France) etc

- social security performances;
- the standard of living of other social groups;
- The economic factors, including the demands of the economic development, productivity and interest of reaching and maintaining a high level of occupying the work force;

In our country a reference to the minimum salary has been made by the Labor Code of 1972 according to which: “there is established by law, according to the planned development of the economy, the minimum national salary, considering the level of the work productivity, the national income, pursuing the satisfaction of the permanently increasing needs of the employees and their family members.

By the Governmental Decision number 133/1991 there has been established for the first time in our country, on february 25, 1991, a minimum national gross salary of 3.150 lei for a complete work programme of 170 hours per month which represents 15.55 lei/hour. In the same period there has been institutionalised the notion of “minimum national salary”.

Considering that the labor legislation has the value of a minimal regulation and the contractual clauses mentioned are more favorable to the employees it is certain that the socialpartnerscan negotiate and establish minimum salaries superior to those provided by the Government. Ofcourse that in the case of public servants and other personell that is not under the incidence of the collective labor agreements the minimum salaries are those provided by the applied legislative acts and not by such an agreement.

The austerity measures introduced by the Government in 2010 have determined a diminuation of the minimum salary.As a result, by the Governmental Decision 1193/2010 there has been established for the year 2011 a salary of 670 lei.[13]

The Labor Code, in article 159, provides that the basic minimum national gross salary guaranteed in payment according to the normal working programme is established by Governmental Decision offer consulting the unions and patronages. If the normal working programme is, accordin to law, under 8 hours a day the hourly basic minimum gross salary iscalculating by rapping the basic minimum national gross

salary to the number of hours per month according to the legal working programme approved.

The employer cannot negotiate an establish basic salaries through the individual labor agreement under the hourly basic minimum national gross salary. He is obligated to guarantee the payment of a gross monthly salary at least equal to the basic minimum national gross salary. The disposition is also applied if the employee is at work, within the programme, but cannot perform his activity due to reasons that cannot be attributed to him, with the exception of strike.

This final text requires some explanations, thus, under its incidence there are not only active employees that perform labor but also those whose activity is interrupted for reasons not attributed to them, for example, for economic, technological, structural, etc. The interruption of activity can be total, all employees being affected, or partial, only some of the employees being affected. But, in order to benefit from a gross salary equal to the minimum national gross salary the employees must be at work within the established programme. The participants to strike are not under the incidence of the law, regardless if it is legal or illegal.

Therefore, the employer is not obliged to guarantee them the mentioned salary.

The solution is correct since the interruption of the activity is their own will and does not have a cause that cannot be attributed to them.

The basic minimum national gross salary guaranteed in payment must be brought to the attention of the employees by the employer that will chose the modality or modalities of advertisement (posters, information). [14]

For ensuring a decent living in the establishment of the minimum salary there must be taken into account both the products and services necessary for an employee to lead a modest life and the minimum quantities of products and services necessary on a given time, according to which to be determined the monthly average and the establishment of the prices for the established products and services, the average number of family members, the average number of employees per family.

We can state that in the present situation the salary represents the main stimulation of the employees therefore it is essential that the meaning and content of the notion of salary to be regarded both from the point of view of the one who pays the

salary, the employer, and from the point of view of the one who receives it, the employee, who is the beneficiary of the salary incomes.

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## Procedural Issues concerning the Appointment of the European Commission

**Lecturer MIHAELA ADINA APOSTOLACHE**

*Petroleum-Gas University of Ploiesti (Romania)*

*mihapostolache@yahoo.com*

### Abstract

This paper addresses the issue of the appointment of members for the European executive, as a result of changes imposed by the Treaty of Lisbon. It envisages the double approval of the Commission by the European Parliament, under Article 17 of the Treaty on the European Union: the European Parliament initially elects the candidate nominated by the European Council for Presidency of the Commission; secondly, the Parliament approves the Commission as a whole. The procedure for electing the President of the European Commission is presented in detail in Article 117 of the Rules of Procedure of the European Parliament, while the procedure to approve the Commissioners by the European Parliament is extensively regulated by Annex XVI of the Rules of Procedure, in accordance with Article 17 of the Treaty on European Union.

**Keywords:** European Commissioners, mandate, competences, procedures, criteria, portfolios.

### Preamble

The European Commission can be considered “the institution through which the technocratic character of the early European Union has manifested” [1], the Commission constituting the nucleus of the European Coal and Steel Community (ECSC), in which it was intended “to ensure the achievement of the objectives set out in the Treaty” [2].

The name “European Commission” has been used after the Maastricht Treaty which established the European Union; until then the name “Commission of the European Communities” was used. It is considered to be “*the most revolutionary*” institution of the EU, and the “engine of European integration”, the most original institution of the union system. But the role of the Commission, currently placed in the executive area, has been somewhat “sidelined” within the EU by the two institutions forming the Union legislature, the European Parliament and the Council.

The term “European Commission” refers, in a restricted sense, only to the College of Commissioners, and in a broad sense, to the entire organization that includes both the College and the administrative organization supporting it and serving its activity [3].

**Procedures Applied in the Appointment of Members of the European Commission**

Following the adoption and entering into the force of the Lisbon Treaty, according to paragraph 5 of Article 17 of Treaty on European Union (TEU), the Commission members are selected from nationals of the member states, in accordance with a system of strictly equal rotation between the member states, reflecting their demographic and geographical diversity. This system is established by the European Council, which, according to Article 244 of Treaty on the Functioning of the European Union (TFEU), decides unanimously.

The amendments brought by the TEU on the appointment of the Commissioners is very important because of the direct political connection it establishes between the European Parliament, democratically elected, and the Commission, a link strengthened by the establishment of the period of the Commission mandate as the duration of a parliamentary term. We believe that the Commission status has been revalued by TEU, being also strengthened in respect to a more noticeable democratic relation.

At its beginning, the Commission was designated (Article 9 and Article 10 of ECSC). The designation procedure was subsequently replaced by a procedure of election. Practically, it is *a double approval of the Commission by the European Parliament*, done under Article 17 of the Treaty on European Union: The European Parliament initially elects the candidate nominated by the European Council for Presidency of the Commission; secondly, the Parliament approves the Commission as a whole. To prepare the vote properly, the Parliament thoroughly studies the candidatures of the Commissioners proposed by the Council, in agreement with the President and given the portfolios that the latter may assign.

Paragraph 7 of Article 17 of TEU regulates *the election procedure for the President of the Commission*, also contained in Article 117 of Title V "Relations with other institutions and bodies" from the Rules of Procedure of the European Parliament. Thus, the European Council, acting by a qualified majority, shall propose a candidate to the European Parliament for Presidency of the Commission, taking into account the elections for the European Parliament, but only after appropriate consultations. The candidate is elected by the European Parliament through secret vote, by a majority of its component members. If the candidate does not meet the required majority, the

European Council, acting by a qualified majority, shall propose, within a month, a new candidate to be elected by the European Parliament, following the same procedure.

If the President of the Parliament and that of the Council are elected from the members of the respective institution, the President of the Commission has an important role in choosing its members, having the position of “Chief Commissioner”, above the other members, a function expressly established in the Treaties [4]. Originally, the President of the Commission was considered as a “*primus inter pares* in the college, but now he is very much a *primus*” [5]. The value of this function depends on the personality and vision of its owner [6]. The Commission shall achieve its mission under the political guidance of its President, who shall decide on its internal guidance in order to ensure the consistency, effectiveness and character of collegiality of his actions [7].

Regarding *the appointment of candidates for the position of European Commissioner*, each of the 28 member states appoint a Commissioner, the President of the Commission having the role to allocate portfolios among them.

*The principles underlying the system of rotation* by which the members of the European Commission are elected are the following:

- Strictly equal treatment applied to the member states regarding the determination of the rotation sequence and the time spent by their representative in the Commission; therefore, the difference between the total number of mandates held by nationals of two member states can never be more than one;

- Each successive Commission, in accordance with the above principle, it is constituted as to satisfactorily reflect the demographic and geographical range of the Member States.

The approval procedure of the Commissioners by the European Parliament is extensively regulated by Annex XVI of the Rules of Procedure [8]. The evaluation by the European Parliament of the appointed Commissioners is done based on their general competence, European commitment and personal independence of each. In addition, the Parliament may determine to what extent they are aware of their potential portfolio and their communication skills. Also, it must take into account, in particular, the criterion of gender balance, and it may express its opinion on the allocation of portfolios proposed by the elected President.

In order to take a decision related to the skills of future Commissioners, the Parliament may request all relevant information, thus receiving their Curriculum vitae and statements of financial interests.

The Presidents' Conference organizes the hearings of the Commissioners appointed before the concerned committee or committees, which are public; each appointed commissioner is invited to appear for a single hearing. If a mixed portfolio is envisaged, there are three cases [9]:

a) If the appointed commissioner's portfolio falls within the competence of a single committee, the designated Commissioner is heard only by that committee (the competent committee);

b) If the appointed commissioner's portfolio falls, in relatively equal proportions, within the competence of several committees, the designated commissioner is jointly heard by those committees (joint committees);

c) If the appointed commissioner's portfolio falls mainly within the competence of a committee and only to a small extent in the competence of at least one of the other committees, the designated commissioner is heard by the main competent committee, with the association of the other or others (associated committees).

Each hearing lasts three hours and is broadcast audio/video live. The hearings are conducted in circumstances and conditions that offer fair and equal opportunities for the appointed commissioners to present themselves and express their opinions, following the development of a pluralistic political dialogue between the appointed commissioners and the members of the European Parliament. Also, before the end of the hearing, the appointed commissioners are given the opportunity to make a brief final statement.

The President of the committee and the coordinators within each committee shall meet immediately after the hearing to proceed with the evaluation of each designated commissioner. For each of them, a single evaluation statement shall be done. The evaluation statements of the committees, adopted and made public within 24 hours of the hearing, shall be examined by the Conference of Committee Presidents and then transmitted to the Conference of Presidents. If the committees need more information to

complete the assessment, the President shall address, on behalf of those committees, a letter to the elected President of the Commission.

At a session of Parliament, when the President of the European Council and Council Chairman are invited, the elected President of the Commission shall submit the entire College of designated Commissioners together with its program. The presentation is followed by a discussion, and then any political group or a number of at least 40 members may submit a draft for resolution. After the vote on the draft resolution, the Parliament decides by a majority of the votes cast, Roll Call, whether or not it approves the appointment, as a body, of the elected President and designated commissioners. Following this, the new Commission can be formally appointed by the European Council by qualified majority.

“The qualified majority” is a majority of 73.9% of the votes of the countries, each country being assigned a fixed number of votes. For example, Romania is assigned 14 votes, taking into account the number of inhabitants. For a qualified majority, the voting conditions should be met for a minimum 55% of states, representing at least 65% of the EU population; therefore it must be at least 260 of the 352 votes of the 28 states [10].

In summary, *the procedural steps for appointing European Commissioners* consider, under paragraph 7 of Article 17 of TEU, the following aspects [11]:

1. In accordance with the criteria of paragraph 3 - general competence, commitment to the European idea, guarantees of independence, the system of rotation between the member states – the member states propose members of the Commission;

2. The Council, in agreement with the elected President, shall adopt the list of the other persons whom it proposes to be appointed members of the Commission, based on suggestions made by the member states;

3. The President, the High Representative of the Union for Foreign Affairs and the Security Policy, and other members of the Commission shall be subject, as a collegial body, to a vote of approval by the European Parliament;

4. The Commission, based on this approval, is appointed by the European Council, acting by a qualified majority.

The members of the Commission exercise their functions assigned by the President under his/her authority [12]. Based on this public authority, the Commission is

named after its president [13]. During their office, the members of the Commission may not exercise any other occupation, whether gainful or not [14].

At taking office, the members of the Commission solemnly undertake that, during their mandate, and after its termination, they comply with the obligations imposed by the mandate and, in particular, with the obligation of honesty and prudence in accepting, afterwards, certain appointments or benefits. In the event that these obligations are violated, at the Council referral that acts by a simple majority, or the Commission referral, the Court of Justice may decide, if necessary, to dismiss the respective member (under Article 247 of TFEU) or declare them revoked from the right to a pension or other equivalent benefits (Article 245 of TFEU).

More vice presidents, appointed from among the Commissioners, shall assist the President. The novelty introduced by the Lisbon Treaty is that a vice president has the function of High Representative of the European Union for Foreign Affairs and the Security Policy.

### **Membership of the European Commission 2014-2019**

At the Summit in Brussels on June 27<sup>th</sup> 2014, Jean-Claude Juncker, the former Luxembourg Prime Minister, was designated, by 26 of the 28 heads of state and government within the EU, as the candidate for the presidency of the European Commission. He was elected by the European Parliament on July 15<sup>th</sup> 2014 with 422 votes “for”, 250 “against” and 47 abstentions.

Juncker, who only needed 376 to win the presidency of the EU executive, is the candidate of the European People’s Party which won the most mandates in the Europarliamentary elections and, according to the rules, which had the right to nominate its candidate. Juncker’s rival to the presidency of the European Commission, the Socialist Martin Schulz, remained president of the European Parliament, following an agreement between the populars and the social-democrats.

As the elected President of the European Commission, Jean-Claude Juncker presented on September 10<sup>th</sup> 2014 in Brussels the composition of the College of European Commissioners for the period 2014-2019 and distribution sector portfolios, stating: “*The European Commission that I present today is a political, dynamic and*

*efficient Commission, ready to give a new impetus to Europe. I have given portfolios to individuals and not to countries. I place 27 players on the field. Each of them has a specific role to play. This is my winning team, the one to restore Europe on the path of creating jobs and economic growth* [15]. *“I have decided to make some changes and speed up some things” ... “There are team leaders and team players. They shall work together in a spirit of collegiality and mutual trust”*, also said Jean-Claude Juncker.

The next European Commission will have seven vice presidents, who will coordinate the main areas of activity: Frans Timmermans (senior vice president of the EC, called “the right hand” by President Jean-Claude Juncker, will be responsible for inter-institutional relations and the rule of law), Kristalina Georgieva (budget and human resources), Andrus Ansip (digital single market), Alenka Bratušek (single energy market), Valdas Dombrovskis (euro and social dialogue), Jyrki Kaitanen (employment, economic growth, investment and competitiveness) and Federica Mogherini (who is also the EU High Representative for Foreign Affairs).

After the appointment of the former Polish Prime Minister, Donald Tusk, as the European Council president, in late August, it is noted that in the composition of the new European Commission, four of the seven positions of vice presidents were entrusted to Estonia, Bulgaria, Latvia and Slovenia, thus creating the image of “a Europe more open to the East” [16].

Jean-Claude Juncker also said that the new Commission is a political one, which contained five former heads of government and 13 ministers or former ministers, and also members of the European Parliament. The new Community Executive brings a new organization that aims to better concentrate on communitarian policies. Therefore, there will be teams of commissioners focusing on certain policies coordinated by vice presidents [17]. Each vice president will have the task of transmitting the President’s orders to the Commissioners under their authority and to report the results. We can say it resembles a pyramid operation, perhaps even more “political” than before.

Of the 28 nominated commissioners, nine are women. Overall, the European Commission is politically balanced: EPP - 14 commissioners, S&D - 8 commissioners, ALDE - 5 commissioners and ECR - 1 commissioner.

Six members of the Barroso II Commission will be included in future EU executive: Kristalina Georgieva (Bulgaria), Neven Mimica (Croatia), Gunther Oettinger (Germany), Johannes Hahn (Austria), Maros Šefčovič (Slovakia) and Cecilia Malmström (Sweden).

The European Commissioner appointed by Romania, who also had the quality of Vice President of the European Parliament, MEP Corina Cretu, will hold the regional policy portfolio in the next European Commission. It is considered a significant portfolio, given that it has one of the largest budgets allocated. For the period 2014-2020, the funds allocated to the regional and cohesion policy exceed 351 billion Euros. The regional policy portfolio will have in its subordination, for the first time, the General Directorate for Research and Innovation and will focus on economic growth, one of the principles announced as priorities in Jean Claude Juncker's political program.

Between September 29<sup>th</sup> and October 3<sup>rd</sup> 2014 the European future commissioners were heard in specialized Euro committees, the final vote on the composition of the European Commission being given on October 22<sup>nd</sup>. After the European Parliament gives its consent, the European Council formally appoints the new European Commission in accordance with Article 17 of the Treaty on European Union.

Although it does not possess the power to appoint commissioners, the Parliament can reject the proposed nominations as a whole or a part of them. For example, the European Commissioner from Hungary, Tibor Navracsics, which had been assigned the portfolio of Education and Culture, was rejected by the European Parliament, being considered unsuitable for this portfolio. He is the first European commissioner to be rejected by the new European Parliament with 14 votes against and 12 for. The competent Committee members who voted said that the MEP is suitable to be a European Commissioner, but not for the portfolio initially assigned; there is the possibility for him to receive a different portfolio.

Such situations also existed in 2010, when the Commissioner designated by Bulgaria was eliminated from the Barroso II team after a hearing regarded as less than anticipated by the members of the European Parliament.

Also, the former Prime Minister of Slovenia, Alenka Bratušek, proposed for the position of vice president of the European Commission for Energy, was rejected by a

large majority (112 votes against and 13 votes for), due to the unconvincing performance during the hearings. In her place Violeta Bulc, Commissioner for Transport, was proposed, who, along with Maros Šefčovič, the Slovakian candidate initially accepted for Transport, but promoted to the position of Vice President of the Energy Union, are heard on October 20<sup>th</sup> in Strasbourg.

The British Jonathan Hill, appointed Commissioner for Financial Services, did not receive a positive feedback following the hearing of October 3<sup>rd</sup> 2014 in the European Parliament. He is the first politician not to pass the test of the specialized committee, a mandatory step to validate the new European Commission. Jonathan Hill was recalled for hearings a week later, because during the discussions the British had vaguely answered several questions and admitted that he had not had the time to study very technical files in depth.

Regarding the candidate from Hungary, Tibor Navracsics, who was accepted by the Parliament for the position of Commissioner and not for the portfolio that was allocated - Education, Culture and Rights of Citizens, the situation remained ambiguous. In this respect, Jean-Claude Juncker's spokesman, Margaritis Schinas declared that the President of the European Commission would clarify this issue during the discourse to be held before the vote in plenary.

## **Conclusions**

The Commission has always been "the political force most devoted to integration" [18], which permanently campaigned for meeting the goals of the Community. There is an optimistic view of the specialists in this field regarding the European Commission's role in the future, based on its influence and focusing on the importance of its bureaucracy.

The complex system of electing the Commission represents a mix of international and national elements [19]. Thus, the democratic legitimacy of the Commission results partly from the member states and partly from the European Parliament.

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